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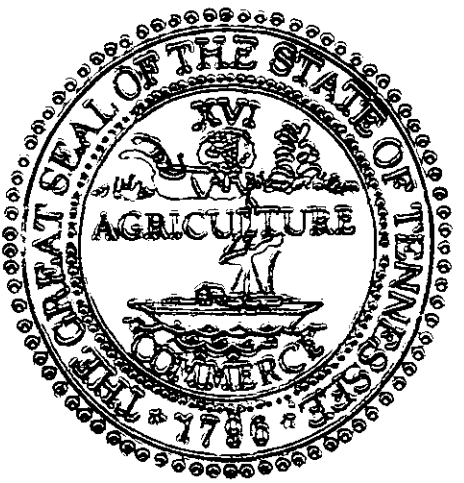

Published Under the Direction of
RILEY C. DARNELL, SECRETARY OF STATE
By
Brook K. Thompson, State Election Coordinator

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TENNESSEE ELECTION LAWS

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CODE AND STATUTES

CHAPTER 3

CONSTRUCTION OF STATUTES

SECTION.
1-3-102. Computation of time.

1-3-102. Computation of time. — The time within which any act provided by law is to be done shall be computed by excluding the first day and including the last, unless the last day is a Saturday, a Sunday, or a legal holiday, and then it shall also be excluded. [Code 1858, § 48; Shan., § 60; Code 1932, § 11; Acts 1965, ch. 203, § 1; T.C.A. (orig. ed.), § 1-302.]

Compiler's Notes. This section may be superseded in part by Tenn. R. Crim. P. 45 and Tenn. R. Civ. P. 6.01.

Cross-References. Computation of time for election purposes, § 2-1-115.

Section to Section References. This section is referred to in § 2-1-115.

Textbooks. Pritchard on Wills and Administration of Estates (4th ed., Phillips and Robinson), §§ 78, 773.

Tennessee Jurisprudence, 2 Tenn. Juris., Appeal and Error, § 51; 16 Tenn. Juris., Judgments and Decrees, § 73; 23 Tenn. Juris., Time, § 1.

Law Reviews. 1985 Tennessee Survey: Selected Developments in Tennessee Law, 53 Tenn. L. Rev. 337 (1986).

Cited: Boutwell v. Lewis Bros. Lumber Co., 27 Tenn. App. 460, 182 S.W.2d 1 (1944); Waller v. Skeleton, 31 Tenn. App. 103, 212 S.W.2d 690 (1948); O'Brien v. State, 205 Tenn. 405, 326 S.W.2d 759 (1959); Venn v. Tennessean Newspapers, Inc., 201 F. Supp. 47 (M.D. Tenn. 1962), aff'd, 313 F.2d 639 (6th Cir.), cert. denied, 374 U.S. 830, 83 S. Ct. 1872, 10 L. Ed. 2d 1053 (1963); Reed v. State, 581 S.W.2d 145 (Tenn. Crim. App. 1978); Weill v. Evans Lumber Co. (In re Johnson), 25 Bankr. 889 (Bankr. E.D. Tenn. 1982); Simmons v. Firestone Tire & Rubber Co., 747 F. Supp. 1256 (W.D. Tenn. 1990).

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1. Application of Statute.

The provisions of this section apply when the computation of time begins on the happening of some event or the performance of some act, and the performance of some act within a given length of time thereafter is indispensable in order that some right may be saved or that some liability may be avoided. They have no application to the computation of the time of service and return of process. Dickinson v. Lee, 42 Tenn. 615 (1866).

The provisions of this section have no application to acts required to be done by private contract where the time for performance is stipulated. Shankle v. Home Ins. Co., 175 Tenn. 228, 133 S.W.2d 489 (1939).

This section applies to acts provided by law to be done, and does not apply to a situation involving the last day of the grace period of an

insurance policy falling on Sunday. Simpkins v. Business Men's Assurance Co., 31 Tenn. App. 306, 215 S.W.2d 1 (1948).

This section is a statutory enactment of the common-law rule. Needham v. Moore, 200 Tenn. 445, 292 S.W.2d 720 (1956).

This section merely provides a method for the computation of time "within which any act provided by law is to be done." It does not purport to change the common-law method of age computation. State v. Alley, 594 S.W.2d 381 (Tenn. 1980).

This section is applicable to private contracts. Carefree Vacations, Inc. v. Brunner, 615 F. Supp. 211 (W.D. Tenn. 1985).

This section and § 56-7-1102 et seq. did not apply to extend insured's right to accept continuous coverage under insurance policy where the policy had lapsed for nonpayment of premium and the insurer had extended an offer to renew coverage upon certain conditions being met. Robinson v. Tennessee Farmers Mut. Ins. Co., 857 S.W.2d 559 (Tenn. Ct. App. 1993).

2. Bill of Exceptions.

While this section does not embrace an order giving time "until" a certain date to perform an act, an order of the court giving "until" a specified day to file a bill of exceptions included that day. Blalock v. State, 108 Tenn. 185, 65 S.W. 398 (1901).

Where a motion for a new trial was overruled and 60 days granted for the filing of a bill of exceptions and the 60 days expired on Sunday a bill of exceptions duly filed and approved by the trial judge on the 61st day was in time. Taylor v. State, 180 Tenn. 62, 171 S.W.2d 403 (1943).

Where the defendant immediately following a final decree on September 24, 1942, was allowed 30 days in which to file his bill of exceptions, which time was later extended an additional 30 days, the bill of exception filed on November 24, 1942 came too late in that it was filed 61 days after the final decree. Fletcher v. Russell, 27 Tenn. App. 44, 177 S.W.2d 854 (1943), overruled in part on other grounds, J.C. Bradford & Co. v. Martin Constr. Co., 576 S.W.2d 586 (Tenn. 1979).

3. Appeal.

Where, by excluding the day on which the appeal was granted and including the first day of the next term, only five days intervened between the appeal and the convening of the criminal court, the appeal would run to the next succeeding term of the criminal court, in view of § 27-4-103. Luke v. State, 171 Tenn. 76, 100 S.W.2d 656 (1936).

The provisions of this section apply in computing the 10-day period provided by § 27-5-108 for appeals from decisions of general sessions courts, and Sunday is excluded only if it is the last day. Biggs v. Memphis Loan & Thrift Co., 215 Tenn. 294, 385 S.W.2d 118 (1964).

Fact that § 15-1-101 declares Saturdays to be half-holidays on which public offices may be closed did not require that Saturdays be counted as half days in computing the 10-day period for appeal from decisions of general sessions courts provided by § 27-5-108. Biggs v. Memphis Loan & Thrift Co., 215 Tenn. 294, 385 S.W.2d 118 (1964).

4. Elections.

Where district attorney general died on July 4 and the next biennial election was held August 4, such election was "more than 30 days after the happening of the vacancy." Hanover v. Boyd, 173 Tenn. 426, 121 S.W.2d 120 (1938).

An election law governed so that nominating petition of candidate for statewide election had to be filed at least 60 days before election even though such day fell on Sunday and general provisions of this section would not operate to permit such petition to be filed the following Monday. Koella v. State ex rel. Moffett, 218 Tenn. 629, 405 S.W.2d 184 (1966).

5. Statute of Limitations.

Under a statute barring debts against the estates of decedents, unless suit is brought within two years from the qualification of the personal representative a suit brought on the first day of September, 1853, is in time, where the administrator was legally appointed and qualified on the first day of September, 1851. Elder v. Bradley, 34 Tenn. 247 (1854).

A suit upon a judgment rendered on the 20th day of November, 1883, is not barred by the 10 years' statute of limitations, if it is commenced on the 20th day of November, 1893. Cowan, McClung & Co. v. Donaldson, 95 Tenn. 322, 32 S.W. 457 (1895).

6. —Grace Periods.

A life insurance policy's 31-day grace period which ends on a Sunday is extended to the next business day. Flowers v. Provident Life & Accident Ins. Co., 713 S.W.2d 69 (Tenn. 1986).

Since § 56-7-2307 requires that life insurance policies contain a grace period of one month, the days of that grace period should be counted as provided by this section. Flowers v. Provident Life & Accident Ins. Co., 713 S.W.2d 69 (Tenn. 1986).

The payment of a premium under a grace period provision of a life insurance policy is an act provided by law. Flowers v. Provident Life & Accident Ins. Co., 713 S.W.2d 69 (Tenn. 1986).

7. Redemption.

Where land sold for debt is redeemable "at any time within two years after such sale," the computation of the time shall be made by excluding the day of sale. Jones v. Planters' Bank, 24 Tenn. 619, 42 Am. Dec. 471 (1845); Rothwell v. Gettys, 30 Tenn. 135 (1850).

8. Contracts.

While this statute relates only to acts provided by law to be done, it is in accord with

sound principles to say that the rule prescribed is a sound one to be observed in the interpretation of contracts, where no different meaning is given by the instrument, or where no different intention is manifest from the contract. Cowan, McClung & Co. v. Donaldson, 95 Tenn. 322, 32 S.W. 457 (1895); Allen v. Effler, 144 Tenn. 685, 235 S.W. 67 (1921); Allen v. Reed, 147 Tenn. 612, 250 S.W. 546 (1922).

Whether the day on which a contract is executed is to be included or excluded, under the provision for performance within a specified number of days "from" the day of execution of the contract is to be determined according to the tenor of the instrument and the intent of the parties. Allen v. Effler, 144 Tenn. 685, 235 S.W. 67 (1921).

Under a contract giving persons an option to buy land "at any time within 18 days from the date hereof," the date on which the contract was executed is to be excluded. Allen v. Effler, 144 Tenn. 685, 235 S.W. 67 (1921).

The same rule as provided by this section for computation of time as to acts required by law has been applied by the courts to private contracts. Dobson & Johnson, Inc. v. Waldron, 47 Tenn. App. 121, 336 S.W.2d 313 (1960).

9. Deed of Trust.

In computing the time of notice required in a deed of trust, the first day of publication of the notice should be excluded, and the last day included. Pope v. Craft, 1 Tenn. App. 356 (1925).

10. Fractions of Day.

The general rule is that the law knows no fractions of a day. Allen v. Effler, 144 Tenn. 685, 235 S.W. 67 (1921).

11. Petition for Rehearing.

Where opinion of supreme court was filed on June 6 and petition for rehearing was filed on June 16, such petition was filed within 10 days. Eslinger v. Miller Bros. Co., 203 Tenn. 688, 315 S.W.2d 261 (1958).

12. Computation of Age.

The conventional or prevailing attitude and belief evidenced by birthday commemorations and celebrations to the contrary notwithstanding, legally one attains any given age one day before his birthday. State v. Alley, 594 S.W.2d 381 (Tenn. 1980).

DECISIONS UNDER PRIOR LAW

1. In General.

Before the law in this section was enacted, it was an established principle that the time should be computed as to save the right intended to be favored by the law, or to be secured by the parties to a contract. Thus, sometimes excluding the first day and sometimes including it. Jones v. Planters' Bank, 24 Tenn. 619, 42 Am. Dec. 471 (1845); Elder v. Bradley, 34 Tenn. 247 (1854); Dickinson v. Lee, 42 Tenn. 615 (1866); Turner v. Odum, 43 Tenn. 455 (1866).

The tendency of later cases before this section was to exclude the day of the act or event, unless for a special reason it was necessary to include it. Simpson v. Peck, 32 Tenn. 54 (1852); Elder v. Bradley, 34 Tenn. 247 (1854).

TITLE 2

ELECTIONS

CHAPTER.

CHAPTER 1

GENERAL PROVISIONS

2-1-101. Short title. — This title may be cited as the "Election Code." [Acts 1972, ch. 740, § 1; T.C.A., § 2-101.]

Cross-References. Municipal elections, title 6, ch. 53.

Referendum election for abolition of office of county superintendent, § 49-2-301.

Supervision of elections by defense force prohibited, § 58-1-402.

Section to Section References. This title is referred to in §§ 6-18-105, 17-4-118.

Chapters 1-19 are referred to in § 2-13-319.

Law Reviews. Ethical Requirements for Judicial Candidates (Joe G. Riley), 26 No. 3, Tenn. B.J. 12 (1990).

Comparative Legislation. General provisions:

Ala. Code § 17-1-1 et seq.

Ga. O.C.G.A. § 21-2-1 et seq.

Miss. Code Ann. § 23-15-1 et seq.

Mo. Rev. Stat. § 115-015 et seq.

N.C. Gen. Stat. § 163-135 et seq.

NOTES TO DECISIONS

ANALYSIS

1. Compliance with election laws.
2. Administration.

1. Compliance with Election Laws.

The general rule is that only a substantial compliance, rather than a strictly literal compliance, with the election laws is required, so that, absent proof of fraud, the court would not hold illegal either the ballots of persons who merely voted in the wrong city precinct or the ballots of women who had married since their prior registration and who had simply failed to report a change of name; but where there were more than five clearly illegal ballots cast in an election because of the improper and unauthorized late registration of voters who had not previously registered to vote in municipal elections, those were not minor or technical violations but rather violations of major and important statutory provisions governing the registration of voters, so that the election was held void and a new election ordered. Lanier v. Revell, 605 S.W.2d 821 (Tenn. 1980).

2. Administration.

Although fact that the chair of a county election commission was the campaign manager for the successful candidate for mayor was not a direct violation of the election laws, it created an appearance of impropriety which aroused suspicion and distrust of the administration of the election laws and was, at a minimum, ill-advised. Lanier v. Revell, 605 S.W.2d 821 (Tenn. 1980).

Collateral References. 25 Am. Jur. 2d Elections §§ 1-3.

29 C.J.S. Elections §§ 1-13.

Elections ⇨ 1-28.

2-1-102. Purpose. — The purpose of this title is to regulate the conduct of all elections by the people so that:

(1) The freedom and purity of the ballot are secured;

(2) Voters are required to vote in the election precincts in which they reside except as otherwise expressly permitted;

(3) Internal improvement is promoted by providing a comprehensive and uniform procedure for elections; and

(4) Maximum participation by all citizens in the electoral process is encouraged. [Acts 1972, ch. 740, § 1; T.C.A., § 2-102.]

Cross-References. General assembly authorized to require voters to vote in the precinct where they reside, Tenn. Const., art. IV, § 1.

Law Reviews. Tennessee Civil Disabilities: A Systemic Approach (Neil P. Cohen), 41 Tenn. L. Rev. 253.

Cited: State ex rel. Inman v. Brock, 622 S.W.2d 36 (Tenn. 1981); Crowe v. Ferguson, 814 S.W.2d 721 (Tenn. 1991).

2-1-103. Scope of title. — All elections for public office, for candidacy for public office, and on questions submitted to the people shall be conducted under this title. [Acts 1972 ch. 740, § 1; T.C.A., § 2-103.]

Cited: State ex rel. Wise v. Judd, 655 S.W.2d 952 (Tenn. 1983); Bemis Pentecostal Church v. State, 731 S.W.2d 897 (Tenn. 1987).

2-1-104. Definitions. — (a) In this title, unless a different meaning is clearly intended:

(1) "Armed forces personnel" means members of the army, navy, air force, marine corps, coast guard, environmental science services administration, and public health service of the United States or members of the merchant marine of the United States, and their spouses and dependents;

(2) "Ballot" means either a piece of paper or the labelled face of a voting machine prepared by appropriate election officials for voters to use to cast their votes;

(3) "Ballot box" means a container in which paper ballots are to be placed after being marked by voters;

(4) "Ballot label" means a piece of paper, cardboard or other material which is placed in the ballot frames of a voting machine to make a ballot;

(5) "Computerized county" means a county which utilizes a computerized voter registration system which has been approved by the coordinator of elections;

(6) "County executive committee" means a political party's authoritative county body which is constituted either under the law or under the rules of the political party;

(7) "Election" means a general election for which membership in a political party in order to participate therein is not required;

(8) "Election officials" means the officers of elections, judges, voting machine operators, precinct and assistant precinct registrars, and inspectors appointed under this title;

(9) "Federal election" means an election held to:

(A) Nominate a political party's candidate for congress or its candidates for elector for president and vice president;

(B) Determine the presidential preference of a political party's members; or

(C) Choose a member of congress or electors for president and vice president;

(10) "Mail" means first class United States mail, but any higher class of mail may be used when "mail" is specified;

(11) "Majority party" means the political party whose members hold the largest number of seats in the combined houses of the general assembly;

(12) "Minority party" means the political party whose members hold the second largest number of seats in the combined houses of the general assembly;

(13) "Newspaper of general circulation" means a publication bearing a title or name, regularly issued at least as frequently as once a week for a definite price, having a second class mailing privilege, being not less than four (4) pages, published continuously during the immediately preceding one-year period, which is published for the dissemination of news of general interest and is circulated generally in the political subdivision in which it is published and in which notice is to be given. In any county where a publication fully complying with this definition does not exist, the state coordinator of elections is authorized to determine the appropriate publication to receive any required election notice. A newspaper which is not engaged in the distribution of news of general interest to the public, but which is primarily engaged in the distribution of news of interest to a particular group of citizens, is not a "newspaper of general circulation";

(14) "Political party" means an organization which nominates candidates for public office;

(15) "Poll book" means the official record book of an election containing poll lists;

(16) "Poll list" means the official list of the names of voters in an election. In computerized counties, such a list may consist of a computer printout of registered voters who voted in that election;

(17) "Polling place" means the room or rooms where voters apply to vote and mark and cast their ballots;

(18) "Precinct" means a geographic unit for the holding of elections having one (1) polling place;

(19) "Primary election" means an election held for a political party for the purpose of allowing members of that party to select a nominee or nominees to appear on the general election ballot;

(20) "Protective counter" means a voting machine counter which cannot be reset and which records the total number of movements of the operating lever of the machine;

(21) "Public counter" means a voting machine counter which shows the total number of movements of the operating lever of the machine at any point in time during an election;

(22) "Question" means a statement of a constitutional amendment or any other proposition submitted to the vote of the people;

(23) "Registered voter" means a qualified voter who has fulfilled the registration requirements of this title;

(24) "Regular August election" means the election held on the first Thursday in August of every even-numbered year;

(25) "Regular November election" means the election held on the first Tuesday after the first Monday in November in every even-numbered year;

(26) "Resident" has the meaning given in §§ 2-2-102 and 2-2-122;

(27) "State election" means an election held to:

(A) Nominate a political party's candidates for state, county or district offices; or

(B) Choose state, county or district officers;

(28) "Statewide election" means an election held to nominate or to choose officers elected by or to submit a question to the voters of the entire state; and

(29) "Statewide political party" means either:

(A) A political party at least one (1) of whose candidates for an office to be elected by voters of the entire state in the past four (4) calendar years has received a number of votes equal to at least five percent (5%) of the total number of votes cast for gubernatorial candidates in the most recent election of governor; or

(B) For one (1) year after petitioning successfully, a political party which has a membership equal to at least two and one-half percent (2.5%) of the total number of votes cast for gubernatorial candidates in the most recent election of governor as shown by petitions to establish a political party filed with the coordinator of elections and signed by registered voters as members of the party and certified as to registration of the signers by the county election commissions of the counties where the signers are residents.

(b) Where any act or section of the Tennessee Code refers to chapters or sections of the former title 2 of the Tennessee Code which was repealed effective January 15, 1973, such references are deemed references to the appropriate chapters or sections of this title. [Acts 1972, ch. 740, §§ 1, 5; 1973,

ch. 327, § 1; 1975, ch. 72, § 5; T.C.A., § 2-104; Acts 1980, ch. 725, §§ 1, 2; 1983, ch. 450, § 1; 1990, ch. 727, §§ 1, 2.]

Section to Section References. This section is referred to in §§ 2-2-115, 2-2-138, 5-1-104, 6-1-202, 6-1-210, 6-20-202, 49-1-301.

Textbooks. Tennessee Jurisprudence, 10 Tenn. Juris., Elections, §§ 11, 12.

Law Reviews. Tennessee Civil Disabilities: A systemic Approach (Neil P. Cohen), 41 Tenn. L. Rev. 253.

Cited: Bemis Pentecostal Church v. State, 731 S.W.2d 897 (Tenn. 1987).

NOTES TO DECISIONS

ANALYSIS

1. Constitutionality.
2. Selection of nominees.

1. Constitutionality.

It is reasonable to require minority political parties to demonstrate support from electors by the means prescribed in this section in order to obtain a position on the ballot for statewide offices pursuant to § 2-13-201, and these requirements do not invidiously discriminate against minority parties. Tennessee Libertarian Party v. Democratic Party, 555 S.E.2d 102 (Tenn. 1977).

2. Selection of Nominees.

The method of selecting nominees used by the Tennessee State Democratic Executive Committee is not an election within the meaning of that term in this section. State ex rel. Inman v. Brock, 622 S.W.2d 36 (Tenn.), cert. denied, 454 U.S. 941, 102 S. Ct. 477, 70 L. Ed. 2d 249 (1981).

2-1-105. Voting eligibility. — Only qualified voters who are registered under this title may vote at elections in Tennessee. [Acts 1972, ch. 740, § 1; T.C.A., § 2-105.]

Cross-References. Right to vote, Tenn. Const., art. IV, § 1.

2-1-106. Absenteeism for voting. — (a) Any person entitled to vote in an election held in this state may be absent from any service or employment on the day of the election for a reasonable period of time, not to exceed three (3) hours, necessary to vote during the time the polls are open in the county where the person is a resident.

(b) A voter who is absent from work to vote in compliance with this section may not be subjected to any penalty or reduction in pay for such absence.

(c) If the tour of duty of an employee begins three (3) or more hours after the opening of the polls or ends three (3) or more hours before the closing of the polls of the county where the employee is a resident, the employee may not take time off under this section.

(d) The employer may specify the hours during which the employee may be absent. Application for such absence shall be made to the employer before twelve o'clock (12:00) noon of the day before the election. [Acts 1972, ch. 740, § 1; T.C.A., § 2-106.]

Cross-References. Exemption of national guard from duty on election day, § 58-1-229.

2-1-107. Signer of petition — Address required. — (a) Any person signing a petition required under this title, whether for nomination of a candidate, for a referendum or for any other purpose, shall include the address of such person's residence. The signer of a petition must include the address of

such person's residence as shown on such person's voter registration card in order for that person's signature to be counted; provided, that if the address shown on the petition is within the precinct in which the person is registered but is not the address shown on the registration card, the signature shall be valid and shall be counted. In the event that the signer of a petition includes information on a nominating petition that exceeds the information contained on such person's voter registration card, the signature shall be counted if there is no conflict between them. If no street address is shown on the signer's voter registration card, that person's signature and address as shown on such person's voter registration card shall be sufficient. However, a street address shall be sufficient, and no apartment number shall be required.

(b) Any person who signed a permanent registration card shall sign any petition signed under this title; provided, that any person who printed such person's name on such person's permanent registration card shall print the name on any petition signed under this title. However, failure to comply with the foregoing shall not operate to disqualify any nominating signature or candidate's signature.

(c) A person's regular signature shall be accepted just as such person's legal signature would be accepted. For example, for the purposes of this section "Joe Public" shall be accepted just as "Joseph Q. Public" would be accepted. [Acts 1972, ch. 740, § 1; T.C.A., § 2-106; Acts 1981, ch. 478, § 2; 1988, ch. 933, § 1.]

Section to Section References. This section is referred to in §§ 6-1-202, 6-18-104, 6-30-106.

NOTES TO DECISIONS

1. Verification of Signatures.

Data processing method used to verify signatures on two petitions for a referendum election on proposed amendments to charter of Metropolitan Government of Nashville and Davidson County, whereby computer compared signatures on petitions with permanent voter registration file, without checking addresses, and reported a match only if the name keyed in corresponded exactly with a name listed on the voter registration file, contravened the public policy of the state and would be deemed arbitrary and not in conformity with the law. State ex rel. Wise v. Judd, 655 S.W.2d 952 (Tenn. 1983).

2-1-108. Filing of required documents. — (a) When any document is required to be filed by a date or time prescribed by this title, it shall be received by the officer or body with which it is to be filed by the date or time prescribed.

(b) The document shall be prominently marked with the time and date of filing and a receipt showing the same information shall be given to the person filing the document. [Acts 1972, ch. 740, § 1; T.C.A., § 2-108.]

2-1-109. Copies of documents — Certification. — (a) Whenever copies or duplicates of documents, other than tally sheets and similar election return papers, are required, they shall be legible and may be made by any copying method, including photocopying, which is commonly used in business in this state for permanent records.

(b) If copies or duplicates have to be certified, they shall be certified as true copies of the original either by a person who signed the original or by the person who made the copies. The person who certifies the copies or duplicates

shall indicate the capacity in which such person is certifying. [Acts 1972, ch. 740, § 1; T.C.A., § 2-109.]

2-1-110. Publication of notice by commission or board. — When a commission or board established under this title is required to publish any notice in a newspaper of general circulation:

(1) It shall publish the notice, if possible, in a newspaper of general circulation published in the county in which notice is to be given; and

(2) It shall publish the notice in as many newspapers of general circulation as may be necessary to give notice effectively to the qualified voters of the area in which notice is to be given. [Acts 1972, ch. 740, § 1; T.C.A., § 2-110.]

Cross-References. Newspaper of general circulation defined, § 2-1-104.

2-1-111. Oath of administrators of election laws. — Each person charged with the administration of any part of the election laws of this state shall, before entering upon the performance of such duties, take the following oath:

"I do solemnly swear (affirm) that I will support the Constitution and laws of the United States and the Constitution and laws of the State of Tennessee, and that I will faithfully and impartially discharge the duties of my office." [Acts 1972, ch. 740, § 1; T.C.A., § 2-111.]

Cross-References. Oaths of office, §§ 8-18-107 — 8-18-114.

Section to Section References. This section is referred to in § 2-7-105.

Textbooks. Tennessee Jurisprudence, 10 Tenn. Juris., Elections, § 7.

NOTES TO DECISIONS

ANALYSIS

1. Irregularities in qualification.
2. Nature of requirement of oath.
3. Violation of oath.

1. Irregularities in Qualification.

Irregularities in the qualification of the inspectors of the election do not render the election void, for strictness in technical conformity to the requirements of the statute would defeat rather than uphold popular elections. McCraw v. Harralson, 44 Tenn. 34 (1867); Cook v. State, 90 Tenn. 407, 16 S.W. 471, 13 L.R.A. 183 (1891).

2. Nature of Requirement of Oath.

The requirement that officers and clerks of elections shall take the prescribed oath is mandatory to secure the purity of the ballot by permitting all legal voters to vote, and preventing illegal voters from voting, and by securing a correct count of the ballots cast; but when it affirmatively appears that no injury was done, either to the voters or to the candidates, the failure to take and subscribe the prescribed oath by the officers of an election is a mere irregularity for which the election will not be invalidated. Browning v. Gray, 137 Tenn. 70, 191 S.W. 525 (1916).

3. Violation of Oath.

An indictment which charges judges of election with violations of their oath need not aver that the acts alleged were done "with the intent to affect the election, or the result thereof," since intent is not an element of the offense. United States v. Jackson, 25 F. 548 (W.D. Tenn. 1885).

2-1-112. Restrictions on commission or board membership or service as election official. — (a) Neither an elected official nor an employee of a state, county, municipal or federal governmental body or agency or of an elected official may serve as a member of a county election commission or as a

member of a county primary board or as an election official. No candidate in an election may act in connection with that election as a member of any board or commission established under this title or as an election official.

(b)(1) This section does not disqualify any person who is within its terms solely because the person is a notary public, an employee, faculty member or instructor at an institution of higher education, a school teacher, or a member of a reserve unit of the United States army, air force, marine corps or navy, or a member of the national guard unless the person is a full-time employee or member of such reserve unit or the national guard, or unless the person is on active duty.

(2) This section does not disqualify any employee of a county or city school system who does not work directly under the supervision of an elected official from serving only on election day as an election official.

(3) This section does not disqualify any person from service as an officer of elections, judge, machine operator, assistant precinct registrar or inspector because the person is a member of a reserve unit of the United States army, air force, marine corps or navy or the national guard except while the person is on active duty. [Acts 1972, ch. 740, § 1; 1978, ch. 538, § 1; 1979, ch. 304, § 1; T.C.A., § 2-112; Acts 1981, ch. 106, § 1; 1984, ch. 664, § 1.]

Cross-References. Qualifications of commissioners, § 2-12-102.

2-1-113. Meetings of boards and commissions. — (a)(1) Boards and commissions established under this title shall meet on the call of their chair, or if there is no chair, of the oldest member of the body in age.

(2) All meetings shall be open and subject to the provisions of title 8, chapter 44.

(3) With respect to meetings regularly scheduled by county election commissions or county primary boards, the public notice requirement of this section may be met by permanently posting in the commission office a conspicuous meeting notice. All notices shall state the time, place and purpose for which the meeting is called.

(4) Official minutes of all meetings shall be kept in permanent form and shall include the vote of each member on all issues passed upon. Minutes shall be available to the public for examination at reasonable times.

(b) A majority of the members shall constitute a quorum for any board or commission established under this title. Action shall be taken by vote of the majority of the members of the board or commission present. Any action taken at a meeting which does not meet the requirements of this section is voidable at the request of any person who is adversely affected by the action. [Acts 1972, ch. 740, § 1; 1978, ch. 754, § 1; T.C.A., § 2-113; Acts 1980, ch. 609, § 2.]

2-1-114. Requisites for political parties. — No political party may have nominees on a ballot or exercise any of the rights of political parties under this title until its officers have filed on its behalf with the secretary of state and with the coordinator of elections:

(1) An affidavit under oath that it does not advocate the overthrow of local, state or national government by force or violence and that it is not affiliated with any organization which does advocate such a policy; and

(2) A copy of the rules under which the party and its subdivisions operate. Copies of amendments or additions to the rules shall be filed with the secretary of state and with the coordinator of elections within thirty (30) days after they are adopted and shall be of no effect until ten (10) days after they are filed. [Acts 1972, ch. 740, § 1; T.C.A., § 2-114.]

NOTES TO DECISIONS

1. Election Contests.

Person seeking to contest election as to office of judge of supreme court, who did not establish by competent proof that he was a bona fide candidate and who, after answer denying that he had filed the affidavit required by this section and that he was a legal nominee of a bona fide party, did not establish that he had met the statutory requirements, was not entitled to maintain such action. Freeman v. Felts, 208 Tenn. 201, 344 S.W.2d 550 (1961).

Collateral References. Political principles or affiliations as ground for refusal of government officials to take steps necessary to representation of party or candidate upon official ticket. 130 A.L.R. 1471.

2-1-115. Computation of time. — The computation of time within which to do any act required by this title shall be in accordance with § 1-3-102. [Acts 1979, ch. 306, § 4; T.C.A., § 2-115; Acts 1980, ch. 609, § 3; 1991, ch. 273, § 1.]

NOTES TO DECISIONS

1. First Day.

The "first day" which is excluded in the calculation of the 10-day period in § 2-17-105 is the day of the election. Sanders v. Parks, 718 S.W.2d 676 (Tenn. 1986).

2-1-116. Removal of campaign advertising. — (a) After the conclusion of a primary, general, or special election, candidates in such election shall be responsible for the removal of any signs, posters, or placards advocating their candidacy, which have been placed on highway rights-of-way or other publicly owned property. The removal of such materials shall be accomplished within a reasonable period of time following the election, not to exceed three (3) weeks.

(b) Any candidate in a primary election who will also be a candidate in a general or special election following that primary shall not be required to remove any signs advocating such candidate's candidacy until after the conclusion of the general or special election.

(c) This section shall not be construed as being penal in nature. There shall be no punitive measures taken against a candidate or workers if all signs are not removed. [Acts 1983, ch. 197, § 1.]

Law Reviews. Selected Tennessee Legislation of 1983 (N.L. Resener, J.A. Whitson, K.J. Miller), 50 Tenn. L. Rev. 785 (1983).

2-1-117. Newspaper of general circulation. — Notwithstanding any provision of this chapter to the contrary, in any municipality in any county

having a metropolitan form of government and a population of more than one hundred thousand (100,000) according to the 1990 federal census or any subsequent federal census, and in any municipality incorporated pursuant to the provisions of title 6, chapter 18, having a population of not less than eleven thousand two hundred (11,200) nor more than eleven thousand three hundred (11,300) according to the 1990 federal census or any subsequent federal census, which lies within both a county having a metropolitan form of government and a population in excess of one hundred thousand (100,000) according to the 1990 federal census or any subsequent federal census and a county having a population of not less than one hundred three thousand one hundred (103,100) nor more than one hundred three thousand four hundred (103,400) according to the 1990 federal census or any subsequent federal census, for the purposes of this chapter a "newspaper of general circulation" includes a publication bearing a title or name, regularly issued at least as frequently as once a week for a definite price, having a third-class mailing privilege, being not less than four (4) pages, published continuously during the immediately preceding one-year period, which is published for the dissemination of news of general interest to the community which it serves, and is circulated generally in the municipality in which it is published and in which notice is to be given. [Acts 1993, ch. 507, § 1; 1994, ch. 898, § 1.]

CHAPTER 2

VOTER REGISTRATION

SECTION.

PART 1—REGISTRATION BY ELECTION COMMISSIONS

PART 1—REGISTRATION BY ELECTION COMMISSIONS

2-2-101. Definitions. — As used in this chapter:

(1) "Commission" means the county election commission unless another intent is clearly shown;

(2) "Administrator of elections" means the chief administrative officer appointed by the county election commission. The "administrator of elections" created by this section is the immediate successor to the "registrar-at-large" for each county; and

(3) "Deputy" means all office personnel or clerical assistants other than the Administrator of Elections and is the immediate successor to "deputy registrar." [Acts 1972, ch. 740, § 1; T.C.A., § 2-201; Acts 1997, ch. 558, §§ 21, 22.]

Compiler's Notes. Acts 1997, ch. 558, § 34 provided that the act take effect upon becoming a law. The act was returned without the governor's signature and became effective under the provisions of Tenn. Const., art. III, § 18.

Amendments. The 1997 amendment rewrote (2) and added (3).

Effective Dates. Acts 1997, ch. 558, § 34. June 25, 1997.

Cross-References. Duties of coordinator of elections, § 2-11-202.

Administrators of elections, ch. 12, part 2 of this title.

Law Reviews. Tennessee Civil Disabilities: A Systemic Approach (Neil P. Cohen), 41 Tenn. L. Rev. 253.

Comparative Legislation. Registration:
Ala. Code § 17-4-120 et seq.
Ark. Code § 7-5-305 et seq.
Ga. O.C.G.A. § 21-2-110 et seq.
Ky. Rev. Stat. Ann. § 116.013 et seq.
Miss. Code Ann. § 23-15-11 et seq.
Mo. Rev. Stat. § 115.132 et seq.
N.C. Gen. Stat. § 163-65 et seq.
Va. Code § 24.1-41 et seq.

Cited: Dunn v. Palermo, 522 S.W.2d 679 (Tenn. 1975).

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

1. Scope of Law.

The provisions of voters' registration law applied to all elections, including those of municipalities in counties falling within its provisions, and to all voters, whether as property holders or residents, voting in the election. State v. Weaver, 122 Tenn. 198, 122 S.W. 465 (1909).

2. "Voter" Defined.

The word "voter" as used in election and

registration laws generally indicates one who is qualified to vote and not one who is actually registered. Trammell v. Griffin, 141 Tenn. 139, 207 S.W. 726 (1918).

3. Effect of Permanent Registration Statute on Other Laws.

Failure to comply with the provisions of a statute providing for a special registration of voters between the time and election to establish a city manager form of government was called and held did not substantially affect the results of such an election or invalidate the election in view of the provisions of the statute providing for permanent registration of voters. Bohr v. Abercrombie, 200 Tenn. 268, 292 S.W.2d 38 (1956).

4. Voting Without Registration.

A person who voted, without registering, at a municipal election, when such election fell within the provisions of the registration act was guilty of a misdemeanor. State v. Weaver, 122 Tenn. 198, 122 S.W. 465 (1909).

5. Willful Misconduct of Election Officials.

Where election judges accepted the ballots of nonregistered voters, with the evidence at hand to determine whether or not they were registered, such acts, even though negligent, constituted such reckless disregard of their official duty as to make the act equivalent to willful and fraudulent conduct. Fox v. State, 171 Tenn. 226, 101 S.W.2d 1110 (1937).

6. Registration No Prerequisite to Office Holding.

The statutes do not prescribe the qualifications of electors, but were enacted to regulate the exercise of the elective franchise, and registration is not necessary to make one a "voter" in a city, so as to be eligible, under its charter, to election as mayor. Trammell v. Griffin, 141 Tenn. 139, 207 S.W. 726 (1918).

Collateral References. 25 Am. Jur. 2d Elections §§ 95-115.

29 C.J.S. Elections §§ 36-52.

Constitutionality of statutes in relation to registration before voting at election or primary. 91 A.L.R. 349.

Elections ⇐ 95-119.

2-2-102. Qualified voter. — A citizen of the United States eighteen (18) years of age or older who is a resident of this state is a qualified voter unless the citizen is disqualified under the provisions of this title or under a judgment of infamy pursuant to § 40-20-112. [Acts 1972, ch. 740, § 1; 1973, ch. 327, § 2; T.C.A., § 2-202; Acts 1981, ch. 342, § 2; 1994, ch. 919, § 1.]

Cross-References. Acts purging registration, § 2-2-106.

Duties of election coordinator, § 2-11-202.

Judgment of infamy, § 40-20-112.

Notice of infamy, § 40-20-113.

Registration information, § 2-2-116.

Restoration of suffrage, §§ 2-2-139, 40-29-101.

Suffrage for persons convicted of infamous crimes, § 2-19-143.

Section to Section References. This section is referred to in §§ 2-1-104, 2-6-502.

Textbooks. Tennessee Jurisprudence, 10 Tenn. Juris., Elections, §§ 4, 6.

Law Reviews. Residency Requirements — Application of "Compelling State Interest" Test, 2 Mem. St. U.L. Rev. 114.

Cited: Taylor v. Armentrout, 632 S.W.2d 107 (Tenn. 1981); Tyler v. Collins, 709 F.2d 1106 (6th Cir. 1983).

NOTES TO DECISIONS

Decisions Under Prior Law

Analysis

1. Residence generally.
2. Intent of voter.
3. Sufficiency of period.
4. Constitutionality.

1. Residence Generally.

Inmates of a branch of the national home for disabled volunteer soldiers are not considered residents of the state and are not legal voters at elections therein since the United States is given exclusive jurisdiction over the land on which such branch home was erected. State ex rel. Lyle v. Willett, 117 Tenn. 334, 97 S.W. 299 (1906). See, however, § 2-2-107.

Persons employed at the Johnson City branch of the national home for disabled sol-

diers and inmates working therein, who have homes and families outside the grounds where they spend their nights, being residents of the state, and otherwise qualified, are entitled to vote. State ex rel. Lyle v. Willett, 117 Tenn. 334, 97 S.W. 299 (1906).

Residence, as used in this connection, is equivalent to domicile. Brown v. Hows, 163 Tenn. 178, 42 S.W.2d 210 (1931).

2. Intent of Voter.

The intention of a voter to fix his voting place in another county does not avail to make him a legal voter in that county unless it is accompanied by an intention to make such county his home or residence. Brown v. Hows, 163 Tenn. 178, 42 S.W.2d 210 (1931).

Prospective voter does not have to declare that he will remain a resident for a fixed period after he votes. Schultz v. Lewallen, 188 Tenn. 206, 217 S.W.2d 944 (1948).

3. Sufficiency of Period.

It appeared that 30 days was an ample period for the state to complete whatever administrative tasks were necessary to prevent fraud and a year or even three months, too much. Dunn v. Blumstein, 405 U.S. 330, 92 S. Ct. 995, 31 L. Ed. 2d 274 (1972).

4. Constitutionality.

The former Tennessee statute governing residence requirements for voters was held unconstitutional under U.S. Const., amend. 14, as denying equal protection of the laws and infringing on the constitutionally protected right of freedom to travel. Dunn v. Blumstein, 405 U.S. 330, 92 S. Ct. 995, 31 L. Ed. 2d 274 (1972).

Collateral References. Residence or domicile of student or teacher for purpose of voting. 44 A.L.R.3d 797.

Right of married woman to use maiden surname. 67 A.L.R.3d 1266.

State voting rights of residents of federal military establishment. 34 A.L.R.2d 1193.

2-2-103. Effect of change of residence within thirty (30) days of election. — If a registered voter moves such voter's residence from this state after the thirtieth day before an election for electors for president and vice president and for that reason does not satisfy the registration requirements of such voter's new residence for that election, the voter continues to be a registered voter but only for electors for president and vice president in that election in the voting precinct in which the voter was last registered. The voter may vote either in person or by absentee ballot. [Acts 1972, ch. 740, § 1; T.C.A., § 2-203.]

Law Reviews. Constitutional Law — Voting — Cancellation of Registration for Failure to Vote Violates Voter Qualification Provision of State Constitution, 126 Vand. L. Rev. 185.

2-2-104. Persons entitled to register. — The following persons may register permanently under this title:

(1) A person who is a qualified voter when such person applies to register;

(2) A person residing in an area within this state which has been ceded to the federal government if the person is otherwise qualified to vote; and

(3) A person who will be eighteen (18) years of age on or before the date of the next election after the person applies to register and who is otherwise eligible to register. [Acts 1972, ch. 740, § 1; T.C.A., § 2-204; Acts 1994, ch. 919, § 2.]

Cited: Taylor v. Armentrout, 632 S.W.2d 107 (Tenn. 1981).

2-2-105. Permanency of registration. — Registration of voters under this title is permanent. When a voter has once been registered under the

provisions of this title or under any previous permanent registration law if the voter would be eligible under this title, it is unnecessary for such voter to register again unless the voter's registration is purged under this title or was purged under a previous permanent registration law. [Acts 1972, ch. 740, § 1; T.C.A., § 2-205.]

Textbooks. Tennessee Jurisprudence, 10 Tenn. Juris., Elections, § 6.

Cited: Taylor v. Armentrout, 632 S.W.2d 107 (Tenn. 1981).

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

1. Legislative Power to Prohibit Voting. The general assembly has the power to prohibit any registered voter from voting at any election, after changing his residence, by removing to another, either within or without the ward or district where he has registered, unless he reregisters, even though he removed after the closing of the last registration and before the election. Moore v. Sharp, 98 Tenn. 491, 41 S.W. 587 (1897); State v. Weaver, 122 Tenn. 198, 122 S.W. 465 (1909).

2-2-106. Acts purging registration — Notice. — (a) The registration of a person shall be purged:

(1) At the request of the voter;

(2) Ninety (90) days after a change of name for any reason, except by marriage;

(3) If the voter dies;

(4) Upon receiving information that a person has been convicted of an infamous crime as defined by § 40-20-112 from the state coordinator of elections, the district attorney general, United States attorney, clerk of the court that entered the conviction, or other source upon verification by the clerk of the convicting court; or

(5) Upon written confirmation from the voter that the voter has changed the voter's address to an address outside the county of registration or has registered to vote in another jurisdiction.

(6) [Deleted by 1996 amendment.]

(b) It is the responsibility of the county election commission to implement an address verification program to identify any voter who has changed the voter's residence address without notifying the election commission. This address verification program shall conform with the intent of this section and part 2 of this chapter and the National Voter Registration Act of 1993. The county election commission shall complete the address verification process at least on a biennial basis, but may do so annually. The county election commission shall complete any such process not later than ninety (90) days before the regular August election.

(c) If, as a result of the address verification program, the county election commission determines that a voter has changed the voter's residence address, the administrator of elections shall mail a forwardable confirmation notice to the registrant at the address of registration with a postage prepaid, preaddressed return form on which the voter may verify or correct the new address information. The county election commission shall also follow this process if indications exist that the voter may no longer reside at the address

at which the voter is registered, such as the voter's failure to vote, or otherwise update the voter's registration over a period of two (2) consecutive regular November elections.

(d) Upon the mailing of a notice pursuant to subsection (c), the administrator of elections shall place the registration in inactive status and then take one (1) of the following steps as appropriate to the response of the voter or the failure of the voter to respond to the notice:

(1) If the voter returns the form or otherwise notifies the election commission in writing and indicates that there is in fact no change in address, the voter's registration will be returned to active status;

(2) If the voter returns the form or otherwise notifies the election commission in writing and indicates a new address within the county of current registration, the voter's registration will be updated to reflect the new address of residence;

(3) If the voter returns the form or otherwise notifies the election commission in writing and indicates a new address in another county, the administrator of elections shall remove the voter's name from the voter registration rolls, and shall advise the voter how to register in the new county of residence;

(4) If a voter fails to respond to a confirmation notice and the voter in fact does not have a new address or has a new address within the same precinct, the voter may appear at the voter's polling place and vote in any election held between the time the notice was sent and the second regular November election held after the notice was sent. When appearing to vote, the person will be required to make written affirmation on the affidavit as described in § 2-7-140 and vote according to the procedures outlined in that section;

(5) If a voter fails to respond to a confirmation notice and if the voter has changed the voter's residence address to an address within the same county but in another precinct, the voter may correct the registration and vote at the appropriate polling place for the voter's new residence in any election held between the time the notice was sent and the second regular November election held after the notice was sent. When appearing to vote, the person will be required to make written affirmation on the affidavit as described in § 2-7-140 and vote according to the procedures outlined in that section;

(6) If a voter fails to respond to a confirmation notice and if the voter has changed the voter's residence address to an address outside the county of registration, the voter may not vote until such voter becomes properly registered in the new county of residence except as provided in § 2-7-115; and

(7) A voter may use a response to a confirmation notice to update the voter's registration to reflect a change in the voter's name.

(e) If the voter fails to respond to the confirmation notice, does not appear to vote, and does not update the voter registration between the time the notice is sent and the second regular November election held after the notice was sent, the administrator of elections shall purge the voter's registration.

(f) Notwithstanding anything in this section to the contrary, the administrator shall send a voter's registration card by non-forwardable mail.

(g) Voter registrations that are inactive pursuant to the provisions of this section shall not be included in a county's total of registered voters. The administrator shall maintain a separate total of voters on inactive status.

(h) Any person who intentionally makes a false affirmation pursuant to this section violates § 2-19-107 and shall be punished as provided in § 2-19-107.

(i) [Deleted by 1996 amendment.] [Acts 1972, ch. 740, § 1; 1976, ch. 407, § 1; T.C.A., § 2-206; Acts 1981, ch. 345, § 4; 1993, ch. 518, §§ 19, 21; 1994, ch. 947, § 8; 1995, ch. 76, § 2; 1996, ch. 735, §§ 1, 2; 1997, ch. 550, § 1.]

Compiler's Notes. The National Voter Registration Act of 1993, referred to in (b), is codified as 42 U.S.C. § 1973gg et seq.

References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

Amendments. The 1996 amendment deleted (a)(6), which read: "Under § 2-2-132, if the voter does not vote for four (4) successive calendar years, excluding the year of registration unless during that time the voter has maintained an active registration record by transferring or correcting the voter's registration."; and deleted (i), which read: "The county election commission shall not purge a voter for a failure to vote under this section between January 1, 1995, through May 1, 1996, in accordance with 42 U.S.C.A. § 1973gg-6(a)(3) and (4) and (b)(2); provided, that if the provisions of 42 U.S.C.A. § 1973gg-6(a)(3) and (4) and (b)(2) are repealed, the former state law concerning the purge of voter registrations for failure to vote shall be restored to full force and effect."

The 1997 amendment rewrote (d) and (e), which read: "(d) Upon the mailing of a notice pursuant to subsection (c), the registrar shall take one (1) of the following steps as appropriate, regardless of whether the voter responds to the confirmation notice: (1) If the new address is within the county of current registration, the voter's registration will be updated to reflect the new address of residence. If the new address is not in the county of current registration, the registrar shall place the voter in an inactive status. (2) If the voter returns the form and confirms the new address in another county, the registrar shall remove the voter's name from the voter registration rolls, and the registrar shall advise the voter how to register in the new county of residence. (3) If a voter fails to respond to a confirmation notice and if the voter in fact does not have a new address, the voter may appear at the voter's polling place and vote in any election held between the time the notice was sent and the second regular November election held after the notice was sent. To vote, the voter shall make a written affirmation before the officer of elections at the voter's polling place that: (A) The voter's residence address has not changed; and (B) The voter is entitled to vote. (4) If a voter fails to respond to a confirmation notice and if the voter has changed the voter's residence address to an address within the same county but in another precinct, the voter may correct the registration and vote in any election held between the time the notice was sent and the second regular November election held after the notice was sent. To vote, the voter shall make a written affirmation of the voter's new address on election day before either: (A) The officer of elections at the voter's old polling place; or (B) An election official at the county election commission office. (5) Any person voting pursuant to subdivision (4)(A) shall be issued a paper ballot and shall be entitled to vote only for those offices on the ballot in the precinct in which the voter resides. The officer of elections, in the presence of a judge of a different political party and the voter, shall mark through the races where the voter is not entitled to vote. The officer of elections and such judge shall initial each race marked through. The voter shall then proceed to vote as prescribed by § 2-7-114. (6) A voter may go to the polling place established for the precinct in which the voter's new address is located during any election held between the time the notice was sent and the second regular November election held after the notice was sent and be permitted to reactivate the voter's registration record for future elections. To reactivate a registration record, the voter shall make a written affirmation of the new residence address before the officer of elections at the new precinct.

"(e) If the voter fails to respond to the confirmation notice, and if the voter fails to make the changes authorized in subsection (c), within the required time frame, the registrar shall purge the voter's registration."

Effective Dates. Acts 1996, ch. 735, § 3. April 12, 1996.

Acts 1997, ch. 550, § 11. June 23, 1997.

Cross-References. Duties of election coordinator, § 2-11-202.

Judgment of infamy, § 40-20-112.

Notice of infamy, § 40-20-113.

Qualified voters, § 2-2-102.

Registration information, § 2-2-116.

Restoration of suffrage, §§ 2-2-139, 40-29-101.

Suffrage for persons convicted of infamous crimes, § 2-19-143.

Section to Section References. This section is referred to in §§ 2-2-132, 2-2-207.

Textbooks. Tennessee Jurisprudence, 10 Tenn. Juris., Elections, § 6.

Cited: Taylor v. Armentrout, 632 S.W.2d 107 (Tenn. 1981).

NOTES TO DECISIONS

1. Surname of Married Woman.
Woman was not required to assume surname of her husband upon marriage or to register anew under her husband's surname and registrar improperly purged her voting registration for refusal to so register. Dunn v. Palermo, 522 S.W.2d 679 (Tenn. 1975).

Collateral References. Right of married woman to use maiden surname. 67 A.L.R.3d 1266.

2-2-107. Precinct or municipality of registration — Change of habitation without change of residence. — (a)(1) A person shall be registered as a voter of the precinct in which the person is a resident, and, if provided for by municipal charter or general law, may also be registered in a municipality in which the person owns real property in order to participate in that municipality's elections.

(2) Notwithstanding any provision of this title to the contrary, if a person's residence is located on real property which is located in both a municipality and in an unincorporated area in the county in which the municipality is located, then such person shall be eligible to register either in the municipal precinct or the county precinct in which such property is located. In a county having a metropolitan form of government, "unincorporated area," as used in this subdivision, includes an area outside the boundaries of any of the smaller cities within the metropolitan government. The election by a person to register in the municipality or the unincorporated area of the county is a one-time election.

(b) If a voter moves such voter's habitation outside the precinct where the person is a registered voter but continues to be a resident of the precinct, the county election commission shall determine the person's rights and duties on the basis of the location of the person's last residence in the precinct before the person's change of habitation. [Acts 1972, ch. 740, § 1; 1978, ch. 944, § 1; T.C.A., § 2-207; 1996, ch. 765, § 1.]

Amendments. The 1996 amendment added (a)(2).

Effective Dates. Acts 1996, ch. 765, § 2. April 17, 1996.

Section to Section References. This section is referred to in § 7-1-112.

Textbooks. Tennessee Jurisprudence, 10 Tenn. Juris., Elections, §§ 4, 6.

Law Reviews. Tennessee Annexation Law: History, Analysis, and Proposed Amendments (Frederic S. Le Clercq), 55 Tenn. L. Rev. 577 (1989).

Cited: Taylor v. Armentrout, 632 S.W.2d 107 (Tenn. 1981); Brown v. Board of Comm'rs, 722 F. Supp. 380 (E.D. Tenn. 1989).

NOTES TO DECISIONS

1. Correction of Voter Registration Records.
Failure of county election commission to systematically check and correct voter registration records was unlawful under this section, where past registration procedures improperly permitted some voters to remain registered in voting precincts in which they no longer lived. Sullivan v. Crowell, 444 F. Supp. 606 (W.D. Tenn. 1978).

2-2-108. Commission offices — Hours — Functions. — (a)(1) Each commission shall have an office in the county courthouse or another public building and such other locations as the commission may designate for registering voters and performing other functions required or authorized by law. The main office shall be open at least from nine o'clock a.m. (9:00 a.m.) until four o'clock p.m. (4:00 p.m.) on such day or days each week as the commission directs.

(2) In counties with administrators of elections certified under § 2-11-202(b), who receive at least ninety percent (90%) or eighty-five percent (85%) of the assessor of property's salary pursuant to § 2-12-208(a)(1) or (a)(3), respectively, the commission office shall be open during the hours specified in this subsection at least five (5) days per week. In counties with administrators certified under § 2-11-202(b), who receive at least eighty percent (80%) of the assessor of property's salary pursuant to § 2-12-208(a)(2), the commission office shall be open during the hours specified in this subsection at least four (4) days per week. The hours such offices shall be open established by this subsection shall be the minimum hours, and nothing herein shall be construed as prohibiting the election commission from requiring such offices to stay open for additional hours per day or days per week.

(b) The county election commission may establish additional hours when the main office shall be open to perform the commission's statutory functions. The office shall be open as many days a week as necessary to register qualified registrants, to replace lost registration cards, to transfer or change registrations and to perform the other duties of the commission. [Acts 1972, ch. 740, § 1; 1974, ch. 642, §§ 1, 4; T.C.A., § 2-208; Acts 1980, ch. 712, § 1; 1982, ch. 635, § 1; 1986, ch. 930, § 2; 1991, ch. 75, § 1; 1994, ch. 919, § 3; 1996, ch. 1081, §§ 1, 2.]

Compiler's Notes. References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

Amendments. The 1996 amendment, in (a)(2), substituted "ninety percent (90%) or eighty-five percent (85%)" for "eighty percent (80%) or sixty-five percent (65%)" in the first sentence and substituted "eighty percent (80%)" for "seventy percent (70%)" in the second sentence.

Effective Dates. Acts 1996, ch. 1081, § 9. July 1, 1996.

Cited: Taylor v. Armentrout, 632 S.W.2d 107 (Tenn. 1981).

2-2-109. Registration periods. — (a) A qualified voter may register or have the voter's registration altered at the commission office at any time the office is open, except that applications for registration shall not be processed for twenty-nine (29) days before an election; provided, that a qualified voter may file a mail registration form by postmarking the registration form or submitting the registration form thirty (30) days before an election. A qualified voter may correct a deficient but timely filed mail registration form if the voter comes to the commission office no later than five (5) days before the election and presents the rejection of registration notice to the administrator of elections. The administrator shall register the person to vote if the person is otherwise eligible to register. The administrator shall be empowered to update an existing registration to place it within the correct precinct in the county when a voter changes address through the process described in § 2-7-140.

(b) When elections are being held in two (2) or more voting districts within any county, the time period for such registration or alteration of permanent registration records shall be calculated for each election separately, and such registration or alteration of permanent registration records is not prohibited in one (1) election because it is twenty-nine (29) days prior to another within the same county. [Acts 1972, ch. 740, § 1; T.C.A., § 2-209; Acts 1980, ch. 678, § 1; 1980, ch. 728, § 1; 1994, ch. 919, § 4; 1995, ch. 76, § 3; 1997, ch. 550, § 3.]

Compiler's Notes. References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

Amendments. The 1997 amendment rewrote (a).

Effective Dates. Acts 1997, ch. 550, § 11. June 23, 1997.

Section to Section References. This section is referred to in § 2-6-502.

Law Reviews. Tennessee Annexation Law: History, Analysis, and Proposed Amendments (Frederic S. Le Clercq), 55 Tenn. L. Rev. 577 (1989).

Cited: Taylor v. Armentrout, 632 S.W.2d 107 (Tenn. 1981).

NOTES TO DECISIONS

1. Effect of Late Registration.

The general rule is that only a substantial compliance, rather than a strictly literal compliance, with the election laws is required, so that, absent proof of fraud, the court would not hold illegal either the ballots of persons who merely voted in the wrong city precinct or the ballots of women who had married since their prior registration and who had simply failed to report a change of name; but where there were more than five clearly illegal ballots cast in an election because of the improper and unauthorized late registration of voters who had not previously registered to vote in municipal elections, those were not minor or technical violations but rather violations of major and important statutory provisions governing the registration of voters, so that the election was held void and a new election ordered. Lanier v. Revell, 605 S.W.2d 821 (Tenn. 1980).

2-2-110. Registration of those unable to appear at commission office. — The commission may provide for the registration of persons who cannot appear in person due to illness or other good cause by sending the administrator of elections to their homes or other place where they are within the county to register such persons. [Acts 1972, ch. 740, § 1; T.C.A., § 2-210.]

Compiler's Notes. References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

2-2-111. Supplemental registrations generally. — (a) The commission in any county may hold such supplemental registrations as it deems necessary before any election in locations other than the commission office.

(b) In addition to any supplemental voter registration otherwise required by this chapter, the county election commission, or its designee, in each county shall conduct at least one (1) supplemental voter registration each year for a period of at least four (4) hours at every public and private high school in the county, for the purpose of registration of those persons who will be eligible to vote in the next election. The publication requirements of § 2-2-114 shall not apply to the registration required by this subsection.

(c) As used in this section, "designees" does not include representatives of a nationally recognized political party or representatives of an organization which actively seeks to influence the outcome of an election. [Acts 1972, ch.

740, § 1; T.C.A., § 2-211; Acts 1980, ch. 715, §§ 1-4; ch. 772, § 1; 1982, ch. 588, § 1; ch. 719, §§ 1, 2; 1983, ch. 335, § 1; T.C.A. § 2-2-112(b); Acts 1991, ch. 103, §§ 1, 3.]

2-2-112. [Repealed.]

Compiler's Notes. Former § 2-2-112 (Acts 1972, ch. 740, § 1; T.C.A., § 2-212; Acts 1980, ch. 715, §§ 1-4; ch. 772, § 1; 1982, ch. 588, § 1; 1982, ch. 719, §§ 1, 2; 1983, ch. 335, § 1; 1991, ch. 103, §§ 2, 3), concerning supplemental registrations in particular counties, was repealed by Acts 1997, ch. 558, § 13.

2-2-113. [Repealed.]

Compiler's Notes. Former § 2-2-113 (Acts 1972, ch. 740, § 1; T.C.A., § 2-213), concerning precinct registration by precinct registrars, was repealed by Acts 1994, ch. 919, § 5.

2-2-114. Newspaper notice of commission office location — Notices of precinct or supplemental registrations. — (a) Not less than forty-five (45) days before any election, the commission shall publish, in a newspaper of general circulation in the county, a notice of the exact location and telephone number of its office or offices and the hours and days it is open.

(b) Whenever a county has a supplemental registration, the commission shall publish in a newspaper of general circulation in the county, a notice of the exact location and the time for such supplemental registration. The commission shall publish the notice not less than three (3) days before the beginning of each supplemental registration. The commission shall include in the notice a statement that a transfer of registration may also be done at the supplemental registration. [Acts 1972, ch. 740, § 1; 1978, ch. 941, § 1; T.C.A., § 2-214; Acts 1994, ch. 919, § 6.]

Section to Section References. This section is referred to in § 2-2-111.

2-2-115. Registration by mail — Forms. — (a) Qualified voters may register by mail by use of postal card forms in such a manner as provided for in this section.

(b)(1) The coordinator of elections shall prepare voter registration forms in accordance with the provisions of this section and shall provide for the printing of an ample quantity of such registration forms to be distributed under the provisions of this section.

(2) Printed registration forms shall be designed to provide a simple method of registering by mail to vote. Registration forms shall include such matter as the coordinator of elections requires to ascertain the qualifications of an individual applying to register under the provisions of this section, and to prevent fraudulent registration.

(3) Registration notification forms advising the applicant of the acceptance or rejection of the applicant's registration shall be completed and mailed by the county election commission to the applicant. If any registration notification form is undeliverable, it shall not be forwarded to another address but shall be returned to the county election commission mailing the form. If any registration notification form is returned as undeliverable and indicates an acceptance

of a voter's registration, the county election commission shall make a good faith effort to determine the proper address of the registrant and mail the form a second time. The second notice on registration notification forms shall be mailed a second time within ten (10) days from the date it was returned as undeliverable to the county election commission. Additionally, each county election commission shall keep a list of those forms which were returned to it as undeliverable both the first and second time and post such list monthly in the courthouse within such county. If the form is returned as undeliverable a second time, the voter's registration shall, upon receipt by the county election commission, be void.

(4) The coordinator of elections or any county election commission is authorized to enter into agreements with the postal service and with departments and agencies of the federal government or appropriate state or local agencies, for the distribution of the registration forms, or to arrange for the distribution of such forms so as to effectuate the purpose of this section.

(5) Whenever a state or county official has reason to believe that individuals who are not qualified voters are attempting to register to vote under the provisions of this chapter, such official shall notify the coordinator of elections and request the assistance of the coordinator of elections to prevent the fraudulent registration. The coordinator of elections shall give such reasonable and expeditious assistance as the coordinator deems appropriate in such cases.

(6) If a state or county official determines that there is a pattern of fraudulent registration, or any activities on the part of any individuals to vote who are not qualified voters, the coordinator of elections shall request the district attorney general within whose district these actions may occur, to bring action under this section. The district attorney general shall bring civil action in any appropriate court in Tennessee to secure an order to prevent fraudulent registration.

(7) Each person who registers by mail shall appear in person to vote in the first election the person votes in after such registration becomes effective; before voting at the appropriate polling place or election commission office, such person shall present satisfactory proof of identity. This subdivision does not apply to a person who is on the permanent absentee voting register. [Acts 1972, ch. 740, § 1; 1975, ch. 308, § 1; 1977, ch. 218, §§ 1, 2; 1978, ch. 508, § 1; 1978, ch. 941, § 2; 1979, ch. 302, §§ 1, 2; 1979, ch. 306, §§ 11, 21; T.C.A., § 2-215; Acts 1980, ch. 580, § 1; 1980, ch. 638, § 7; 1981, ch. 478, § 6; 1983, ch. 157, §§ 1, 2; 1983, ch. 413, § 1; 1989, ch. 274, § 1; 1991, ch. 34, § 1; 1993, ch. 379, § 1; 1994, ch. 859, § 12; 1994, ch. 919, §§ 7-12, 33.]

Cross-References. Early voting, ch. 6, part 1 of this title.

Section to Section References. This section is referred to in §§ 2-2-201, 2-2-204, 2-2-205.

Law Reviews. Selected Tennessee Legislation of 1983 (N.L. Resener, J.A. Whitson, K.J. Miller), 50 Tenn. L. Rev. 785 (1983).

2-2-116. Registration form. — (a) Permanent registration forms shall consist of an equal number of original forms of one (1) color and duplicate forms of another color. Each set of original and duplicate registration forms shall be suitable for locking in a looseleaf binder and shall be of such size as the

coordinator of elections deems fit to contain the information required with a margin of at least two (2) inches on the left side of the front for binding.

(b) At the top of each form shall be printed the word "Original" on the original form and "Duplicate" on the duplicate form, immediately followed on both forms by the words "Permanent Registration Record."

(c) The permanent registration record shall be substantially as follows, shall contain all the information required before being signed by the registrant, and shall be witnessed as indicated on the form.

PERMANENT REGISTRATION RECORD

1. _____
Last Name First Name Middle Name Sex

2. Legal Residence _____
Number Street or Road Apt.

3. City _____ County _____

4. Mailing Address if different from Legal Residence.

_____

5. Social Security number, if any _____

6. Date and place of birth _____

7. Are you a citizen of the United States? _____

8. Where were you last registered to vote?
City _____ County _____ State _____

9. Are you a resident of the State of Tennessee? _____

10. Have you ever been convicted of a crime which is a felony in this state, by a court in this state, a court in another state, or a federal court?

_____

11. If the answer to question ten (10) is "yes," list the crime, or crimes, for which you were convicted, and date, or dates, of conviction. _____

12. If the answer to question ten (10) is "yes," have you received a pardon or had your full rights of citizenship restored by a court for all crimes listed? __

State of Tennessee }
ss
County of }

I, being duly sworn on oath (or affirmation) declare that the above address is my legal residence and that I plan to remain at such residence for an undetermined period of time and say that to the best of my knowledge and belief all of the foregoing statements made by me are true.

_____
Signature of Applicant

If the registrant signs by a mark, or cannot sign at all, fill in the following information:

Height _____ Color of eyes _____

Color of hair _____ Distinguishing marks or features _____

Sworn to and subscribed to before me
this _____ day of _____, 19 ___,

_____

Signature of Administrator of Elections or other person taking affidavit

_____

Official Position

Registered as voter in District _____ Ward _____ Precinct _____ effective _____."

(d) Each registration by either mail or a voter registration agency other than a county election commission office shall have a numbered receipt which shall be returned to the registrant. The form shall contain the registrant's name and the name of the person to whom the registration card was submitted. The receipt shall contain a statement identifying the permanent registration record as a public record open to inspection.

(e) Counties which have adopted alternative electronic or microfilm registration systems, pursuant to § 2-2-137, shall be exempt from the provisions of subsections (a) and (b). [Acts 1972, ch. 740, § 1; 1978, ch. 941, § 3; T.C.A., § 2-216; Acts 1981, ch. 337, § 1; 1981, ch. 345, § 5; 1989, ch. 274, § 2; 1994, ch. 919, §§ 13-15.]

Compiler's Notes. References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

Cross-References. Acts purging registration, § 2-2-106.

Duties of election coordinator, § 2-11-202.

Judgment of infamy, § 40-20-112.

Notice of infamy, § 40-20-113.

Qualified voters, § 2-2-102.

Restoration of suffrage, §§ 2-2-139, 40-29-101.

Suffrage for persons convicted of infamous crimes, § 2-19-143.

Section to Section References. This section is referred to in § 2-2-137.

Cited: Tate v. Collins, 622 F. Supp. 1409 (W.D. Tenn. 1985).

Collateral References. Information as to age, sex, residence, etc., as a condition of registration, validity of statute requiring. 14 A.L.R. 260.

2-2-117. Voting record form. — (a) On the back of each registration form (or on a separate form if an alternate electronic registration system is used), there shall be printed a ten-year voting record form substantially as follows:

"VOTING RECORD

Name of Voter

YEAR	PARTY	General Election Ballot No. or Ballot Application Number	Primary Election Ballot No. or Ballot Application Number	Other Elections Ballot No. or Ballot Application Number
1971				
1972				
Continued for remainder of ten (10) years				

"

(b) The year dates printed in the first column shall be changed with each year's printing of the form. [Acts 1972, ch. 740, § 1; T.C.A., § 2-217; Acts 1984, ch. 935, §§ 1, 6; 1989, ch. 590, § 1; 1994, ch. 919, § 16.]

2-2-118. Filling out of permanent registration record — Change of registration or name. — (a) If a person registers to vote in the election commission office, the commission employee who assists the person in registering shall fill out the permanent registration record except for the person's signature or mark.

(b) When any person changes one's registration from postcard to in-person, the record from the old form may be transferred onto the new form, and the new form may indicate the date of transfer upon request of the registrant.

(c) Except as provided in subsection (d):

(1) When a person changes one's name for any reason on the registration form, the record from the old form may be transferred onto the new form, and the new form may indicate the date of transfer upon request of the registrant; and

(2) If a person changes one's name because of a change in marital status, the person may use either the old name or the new name. If the person wishes to have one's new name reflected on the registration form, the person shall so request the registrar at large or a designated employee.

(d) In any county having a population of not less than eight hundred twenty-five thousand (825,000) nor more than eight hundred thirty thousand (830,000) according to the 1990 federal census or any subsequent federal census, when a person changes one's name on one's registration form, the record from the old form may be transferred onto the new form, and the new form may indicate the date of transfer upon request of the registrant. [Acts 1972, ch. 740, § 1; 1975, ch. 308, § 6; T.C.A., § 2-218; Acts 1981, ch. 460, § 1; 1990, ch. 628, § 1; 1993, ch. 518, §§ 20, 21; 1994, ch. 919, § 17.]

2-2-119. Disabled registrant — Inability to write signature or make mark. — If a registrant's disability prevents the registrant from writing a signature or making a mark, the person who assists the registrant shall write the name for the registrant. Such person shall indicate this action by signing such person's name immediately after the space for the registrant's signature or mark. [Acts 1972, ch. 740, § 1; T.C.A., § 2-219; Acts 1994, ch. 919, § 18.]

2-2-120. Determination of registrant's right to register — Declaration as a registered voter. — The administrator of elections shall determine, from the registrant's answers to the questions on the permanent registration record and other questions, if necessary, whether the registrant is entitled to register. If the administrator determines that the registrant is entitled to register, the administrator shall declare the registrant a registered voter. [Acts 1972, ch. 740, § 1; T.C.A., § 2-220.]

Compiler's Notes. References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

Cited: Tate v. Collins, 622 F. Supp. 1409 (W.D. Tenn. 1985).

2-2-121. [Repealed.]

Compiler's Notes. Former § 2-2-121 (Acts 1972, ch. 740, § 1; T.C.A., § 2-221), concerning determination of residence and cancellation of registration, was repealed by Acts 1981, ch. 337, § 2. For factors in determining residence, see § 2-2-122; for cancellation of registration, see § 2-2-123; for rejection of registration, see § 2-2-125.

2-2-122. Principles for determination of residence — Factors involved. — (a) The determination of whether a person is a resident or where the person resides or has residence for purposes of the election code shall be made in the light of the following principles:

(1) The residence of a person is that place in which the person's habitation is fixed, and to which, whenever the person is absent, the person has a definite intention to return;

(2) A change of residence is generally made only by the act of removal joined with the intent to remain in another place. There can be only one (1) residence;

(3) A person does not become a resident of a place solely by intending to make it the person's residence. There must be appropriate action consistent with the intention;

(4) A person does not lose residence if, with the definite intention of returning, the person leaves home and goes to another country, state or place within this state for temporary purposes, even if of years duration;

(5) The place where a married person's spouse and family have their habitation is presumed to be the person's place of residence, but a married person who takes up or continues abode with the intention of remaining at a place other than where the person's family resides is a resident where the person abides;

(6) A person may be a resident of a place regardless of the nature of the person's habitation, whether house or apartment, mobile home or public institution, owned or rented;

(7) A person does not gain or lose residence solely by reason of the person's presence or absence while employed in the service of the United States or of this state, or while a student at an institution of learning, or while kept in an institution at public expense, or while confined in a public prison or while living on a military reservation; and

(8) No member of the armed forces of the United States, or such member's spouse or dependent, is a resident of this state solely by reason of being stationed in this state.

(b)(1) The following factors, among other relevant matters, may be considered in the determination of where a person is a resident:

(A) The person's possession, acquisition or surrender of inhabitable property;

(B) Location of the person's occupation;

(C) Place of licensing or registration of the person's personal property;

(D) Place of payment of taxes which are governed by residence;

(E) Purpose of the person's presence in a particular place; and

(F) Place of the person's licensing for activities such as driving.

(2) In determining the residency of a person involuntarily confined in a state institution, the mere anticipation of a future grant of living quarters in a

specific half-way house shall not be sufficient to establish intent to reside in such half-way house following release from the institution.

(c)(1) Notwithstanding any other provision in this chapter to the contrary, whenever county boundary lines cross through a farm being operated as a single unit, leaving such farm in two (2) separate counties, persons residing on such farms may make a one-time election to register to vote in either county. The administrator of elections shall place a person who chooses to register in the county which adjoins the physical location of the person's residence in the precinct where the property in the adjoining county is located.

(2) For the purpose of this subsection, "farm" means a tract of land of at least fifteen (15) acres constituting a farm unit engaged in the production of growing crops, plants, animals, nursery or floral products. Such farm shall produce gross agricultural income averaging at least one thousand five hundred dollars ($1,500) per year over a three-year period. [Acts 1972, ch. 740, § 1; 1973, ch. 327, § 3; T.C.A., § 2-222; Acts 1989, ch. 590, § 11; 1994, ch. 859, § 13; 1994, ch. 919, § 19.]

Compiler's Notes. References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

Section to Section References. This section is referred to in § 2-1-104.

Cited: Tate v. Collins, 622 F. Supp. 1409 (W.D. Tenn. 1985).

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

1. Constitutionality.

Tennessee's durational residency requirements were repugnant to the constitution of the United States and therefore were null, void and of no effect. Blumstein v. Ellington, 337 F. Supp. 323 (M.D. Tenn. 1970), aff'd sub nom. Dunn v. Blumstein, 405 U.S. 330, 92 S. Ct. 995, 31 L. Ed. 2d 274 (1972).

Collateral References. Residence, validity of requirement that candidate or public officer has been resident of governmental unit for specific period. 65 A.L.R.3d 1048.

2-2-123. Cancellation of previous registration. — If a registrant was previously registered in any other place, the registrant's application to register shall serve as a cancellation of registration for the last place of registration. Upon registration of the voter, the administrator of elections shall mail a copy of the new registration to the county election commission where the voter was last registered or otherwise notify such county election commission of the new registration. [Acts 1972, ch. 740, § 1; T.C.A., § 2-223; Acts 1994, ch. 919, § 20.]

Compiler's Notes. References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

Cross-References. Notice of cancellation attached to records, § 2-2-134.

Section to Section References. This section is referred to in § 2-2-134.

2-2-124. Registration card. — (a) After determining that the registrant is entitled to register, the administrator of elections shall give or mail to each voter who is registered permanently a registration card which shall certify that

the voter is registered. The voter shall sign the card in the presence of the administrator except for mail registrants or transferors.

(b) The card shall be in substantially the following form on material on which any alteration of the card or of the voter's signature will be readily apparent:

"PERMANENT REGISTRATION CARD

This is to certify that Mr. / Mrs. / Miss _____

of _____ voting precinct _____ ward

civil district of _____

_____ City _____ County

Tennessee, was duly registered on the ____ day of _____, 19 ____.

Residence _____ and is entitled to vote on and after _____.

_____

Administrator of elections

_____

Voter's Signature"

(c) On the reverse side of the card shall be printed the reasons for which the registration will be purged and how registration may be transferred to prevent purging.

(d) Registered voters determined by the administrator of elections to be blind so as to qualify for assistance in voting as provided by § 2-7-116(b) shall be provided a permanent registration card, on the reverse side of which shall be printed the provisions for assistance available to such voters under § 2-7-116(b). [Acts 1972, ch. 740, § 1; 1977, ch. 5, § 1; T.C.A., § 2-224.]

Compiler's Notes. References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

2-2-125. Rejected registration — Right to appeal — Reports of violations. — (a) If the administrator of elections determines that the registrant is not entitled to be registered, the administrator shall tell the registrant the reason, write the reason on the back of the original permanent registration record, and file the original and the duplicate alphabetically in a binder of rejected registrations.

(b) The administrator shall tell the registrant that the registrant has a right to appeal the decision to the commission within ten (10) days and offer the registrant an appeal form.

(c) The action of the commission on the registrant's application for registration on appeal shall be final administrative action.

(d) If the commission determines, after notice and hearing for the appellant, that the appellant was not entitled to register, the commission shall give the appellant a written statement of its reasons for so holding.

(e) If the commission believes that the appellant has violated the law in registering, it shall report the matter to the grand jury and the district attorney general. [Acts 1972, ch. 740, § 1; T.C.A., § 2-225.]

Compiler's Notes. References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

Cited: Tate v. Collins, 622 F. Supp. 1409 (W.D. Tenn. 1985).

2-2-126. Keeping of original and duplicate registration records. — (a) Once the person is registered, the administrator of elections shall file the original permanent registration record alphabetically in the master file of all the registered voters in the county. The duplicate registration records shall be placed in locked looseleaf binders with at least one (1) binder for each precinct, each arranged in a uniform way in the entire county. The administrator shall at all times have the duplicate form binders separated according to the boundaries of the precincts.

(b) The coordinator of elections shall devise a method to be followed for the filing and preservation of postal card registrations and computerized duplicate registration records in any county utilizing a computerized voter registration system. [Acts 1972, ch. 740, § 1; 1975, ch. 308, § 7; T.C.A., § 2-226; Acts 1984, ch. 935, §§ 2, 6; 1989, ch. 590, § 2.]

Compiler's Notes. References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

Textbooks. Tennessee Jurisprudence, 10 Tenn. Juris., Elections, § 6.

Cited: Taylor v. Armentrout, 632 S.W.2d 107 (Tenn. 1981).

2-2-127. Permanent registration records open to inspection. — Permanent registration records as public records shall be kept in a safe place by the commission, shall be available for public inspection, and may not be removed from the office of the commission except as required for the performance of duties under this title or in compliance with court orders. [Acts 1972, ch. 740, § 1; T.C.A., § 2-227.]

Textbooks. Tennessee Jurisprudence, 10 Tenn. Juris., Elections, § 6.

Cited: Jeffries v. State, 640 S.W.2d 854 (Tenn. Crim. App. 1979).

2-2-128. Forms — Retention in commission's office. — Permanent registration record forms and registration card forms may not be removed from the commission office except for the performance of duties under this title. [Acts 1972, ch. 740, § 1; T.C.A., § 2-228.]

Textbooks. Tennessee Jurisprudence, 10 Tenn. Juris., Elections, § 6.

2-2-129. Transfer of registration — Procedure. — A voter may transfer registration when such voter moves outside the precinct in which such voter is registered as follows:

(1) If a voter has moved within the same county, the voter may transfer the registration either in person or by mail. The voter may request a form which reads substantially as follows:

"I, _____ request that you
Print name
change my address on permanent registration records, shown on the enclosed registration card as _____
(Old Address)
to _____
(New Address)

_____
(Signature)
Date _____."

If a voter does not use the form, the voter shall include in the request for transfer all of the information required by this subdivision;

(2) If the voter moves outside the county, the voter may transfer by registering in the county of voter's new residence; and

(3) To provide an additional means of initiating and effecting transfers of voter registration within the county of current registration, the commission shall provide the officer of elections at each polling place and the officials at each early voting site with the proper affidavits. Voters who have moved within the county of registration may vote under the provisions described in § 2-7-140 and simultaneously transfer their registration. The written affidavit completed by the voter shall serve as a transfer of registration form for the voter. The election commission shall also make available transfer of address forms for voters who may anticipate a move in the future. [Acts 1972, ch. 740, § 1; 1977, ch. 365, § 2; T.C.A., § 2-229; Acts 1994, ch. 919, §§ 21-25; 1997, ch. 550, § 4.]

Amendments. The 1997 amendment rewrote (3).

Effective Dates. Acts 1997, ch. 550, § 11. June 23, 1997.

Cited: Taylor v. Armentrout, 632 S.W.2d 107 (Tenn. 1981).

2-2-130. Transfer of registration — New registration card. — The administrator of elections, after transferring a registration, shall immediately give or mail to the voter a new registration card unless the transfer is accomplished through the provisions of § 2-7-140. If the registration is transferred as a result of the provisions of § 2-7-140, the administrator shall not provide the voter with a new registration card until after the completion of the election. [Acts 1972, ch. 740, § 1; T.C.A., § 2-230; Acts 1997, ch. 550, § 5.]

Compiler's Notes. References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

Amendments. The 1997 amendment rewrote this section.

Effective Dates. Acts 1997, ch. 550, § 11. June 23, 1997.

2-2-131. Replacement registration cards — Correction of errors in registration records. — (a) If a voter states in writing that the voter has lost the registration card, the commission shall replace the registration card. A

card issued to replace another shall be marked "Replacement Registration Card." The permanent registration records shall show that the replacement was issued.

(b) The commission may correct any errors in registration records which are apparent on the face of the records or which are called to its attention by the voter whose record is incorrect. [Acts 1972, ch. 740, § 1; T.C.A., § 2-231; Acts 1994, ch. 919, § 26.]

Textbooks. Tennessee Jurisprudence, 10 Tenn. Juris., Elections, § 6.

Cited: Taylor v. Armentrout, 632 S.W.2d 107 (Tenn. 1981).

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

1. Limited period for revision.
2. Mandamus against registrars.

1. Limited Period for Revision.

Under the Code of 1932 the registrar had no power to revise the registration after expiration of five days allowed for correction of clerical errors. State ex rel. Lyle v. Willett, 117 Tenn. 334, 97 S.W. 299 (1906).

2. Mandamus Against Registrars.

Peremptory writ of mandamus would not be awarded, after the expiration of the five days formerly provided for the correction of clerical errors, to compel the election registrars to erase from the registration books the names of persons alleged to be disqualified as voters. State ex rel. Lyle v. Willett, 117 Tenn. 334, 97 S.W. 299 (1906).

2-2-132. Purging of permanent registration records — Notice of purge. — (a) The commission shall, not less than ninety (90) days before the regular August election, purge the permanent registration records of those persons whose registrations are required to be purged by § 2-2-106.

(b) The election commission in each county shall give notice of the purge by either or both of the following methods:

(1) The names of the persons who are purged shall be published in a newspaper of general circulation in the county not later than sixty (60) days before the election; or

(2) Notices shall be mailed not later than sixty (60) days before the election to all persons whose names are removed from the registration records at their addresses shown on the registration records. [Acts 1972, ch. 740, § 1; T.C.A., § 2-232; Acts 1983, ch. 450, § 2; 1984, ch. 878, § 1; 1990, ch. 628, § 2.]

2-2-133. Report to coordinator of elections of deaths in state — Notification of county commissions. — (a) The state office of vital records of the department of health shall furnish the coordinator of elections a monthly report of all persons eighteen (18) years of age or over who have died in the state. The report shall list the deaths by county with the names in alphabetical order. The report shall contain each decedent's full name, last address, date and place of birth, and social security number.

(b) The coordinator of elections shall, after receipt of the report, notify each county election commission of all persons of voting age who died with an address in their county. [Acts 1972, ch. 740, § 1; impl. am. Acts 1977, ch. 128, § 3; T.C.A., § 2-233.]

Cross-References. Vital records, title 68, ch. 3.

2-2-134. Notice of cancellation attached to registration records — Canceled registrations — Rejected ballots. — (a) When an administrator of elections receives the notice provided by § 2-2-123, the administrator shall immediately attach the notice to the permanent registration records of the voter.

(b) When a voter requests cancellation of registration, or the voter's registration is purged, the administrator shall cancel the registration by writing on the face of the permanent registration record of the voter "Registration terminated this _____ because _____
(Date)
_____"

The cancellation shall be signed by the administrator.

(c) The permanent registration records of the voter shall be placed in an alphabetically arranged file of purged registrations which shall be a public record. The file of purged registrations shall be retained by the county election commission for two (2) years from the date of the purge, after which time it may be destroyed by the county election commission.

(d) Upon purging a registration record, the administrator shall determine whether the voter has an outstanding or uncounted absentee ballot. If the voter has an outstanding ballot, it shall be marked "Rejected" on receipt. If the voter has an uncounted ballot already submitted, the administrator shall provide the commission with the voter's name and ballot number, and the voter's ballot shall be rejected and so marked on election day. [Acts 1972, ch. 740, § 1; 1979, ch. 306, § 7; T.C.A., § 2-234; Acts 1980, ch. 609, § 4.]

Compiler's Notes. References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

2-2-135. [Repealed.]

Compiler's Notes. Former § 2-2-135 (Acts 1972, ch. 740, § 1; T.C.A., § 2-235), concerning precinct registrars acting jointly, was repealed by Acts 1994, ch. 919, § 27.

2-2-136. Forms and supplies. — (a) The coordinator of elections, at the expense of the state, shall provide the county election commissions with all forms necessary to carry out this chapter. The commissions shall be the custodians of the forms.

(b) A county election commission may use a form generated by the county with the approval of the state coordinator of elections. [Acts 1972, ch. 740, § 1; 1975, ch. 183, § 1; T.C.A., § 2-236; Acts 1994, ch. 919, § 28.]

Compiler's Notes. This section may be affected by § 9-1-116, concerning entitlement to funds, absent appropriation.

2-2-137. Alternative electronic or microfilm registration system. — (a) Notwithstanding the provisions of this chapter to the contrary, a county

election commission may adopt a supplemental system for maintaining registration records utilizing electronic, electromechanical or microfilm equipment. This will be done with the approval of the county governing body. If the election commission exercises its option to place the permanent record "original," which has been signed by the registered voter on microfilm, the filmed record and the permanent registration "duplicate," which has also been signed by the registered voter, shall be the legal documents of registration, and the registration "duplicate" shall be retained in binders in the commission office as provided in § 2-2-116.

(b) Alternatively, if the commission exercises its option to place the permanent record "original" which has been signed by the registered voter on microfilm, or retain the "original" and adopt an electronic computerized method of storing and printing duplicate registration records, the "original" or microfilm of the "original" and the computerized printout of the "duplicate" shall be the legal documents of registration. The county election commission may, in its discretion, elect to use data processing equipment owned by a local governing body or contract with outside commercial data processing agencies, including other governmental agencies, or, with the approval of the legislative body of such county, may purchase appropriate data processing equipment.

(c) The coordinator of elections in consultation with the state election commission shall determine whether a supplemental system meets the requirements of this section and whether such system is compatible with any statewide system being operated by the secretary of state's office. The coordinator of elections shall establish minimum requirements for certification that allow the county election commissions to perform the duties required by this title. [Acts 1972, ch. 740, § 1; 1976, ch. 464, § 1; 1977, ch. 231, § 1; 1977, ch. 410, § 1; T.C.A., § 2-237; Acts 1984, ch. 935, §§ 3, 6; 1994, ch. 919, §§ 29-31; 1997, ch. 558, § 30.]

Compiler's Notes. Acts 1997, ch. 558, § 34 provided that the act take effect upon becoming a law. The act was returned without the governor's signature and became effective under the provisions of Tenn. Const., art. III, § 18.

Amendments. The 1997 amendment rewrote (c).

Effective Dates. Acts 1997, ch. 558, § 34. June 25, 1997.

Section to Section References. This section is referred to in § 2-2-116.

2-2-138. Voter registration lists — Purchase by citizens. — (a) In counties of this state having a population in excess of one hundred eighty thousand (180,000) according to the United States census of 1970 or any subsequent United States census, or in any computerized county, it is the duty of the commissioners of elections to prepare or cause to be prepared each month a listing, by voting precinct, of all persons registered to vote in each precinct during the preceding month. However, in the discretion of the commissioners of elections, such listing may be prepared on a bimonthly basis.

(b) Such list, and any other voter registration information such as voter history, if compiled, shall be available for purchase for a price not to exceed the cost of production. The state election commission shall establish a uniform cost for this information. Any county election commission whose cost of production exceeds this rate may petition the state election commission and be granted an increase upon establishing its actual cost to the satisfaction of the state

election commission. If the information is provided on computer generated media such as disk, diskette, tape, telecommunications or any other form of magnetic media, then the information shall be provided in non-proprietary and non-encrypted form. Minimum data standards shall be EBCDIC (Extended Binary Coded Decimal Interchange Code), ASCII (American Standard Code Information Interchange) or BCD (Binary Coded Decimal).

(c) The county election commission in counties with a population over two hundred fifty thousand (250,000) according to the 1980 census shall make voter registration lists available for purchase by any interested citizen, upon request and payment of the cost, at a price not in excess of the cost to prepare and publish such lists. The county election commission in counties with a population over two hundred fifty thousand (250,000) according to the 1980 census shall act upon such request within seven (7) days of receipt of the request, and reasons for rejection or modification of such request, if any, shall be set out in writing.

(d)(1) Any computerized county, as defined in § 2-1-104(a)(5), shall make the list required by this section available on computer diskette to any person who certifies on a form provided by the state election commission that such list will be used for political purposes.

(2) A false certification made pursuant to the provisions of this subsection is a Class C misdemeanor, punishable only by a fine of fifty dollars ($50.00). [Acts 1972, ch. 675, § 1; T.C.A., § 2-238; Acts 1981, ch. 478, § 7; 1993, ch. 379, § 2; 1994, ch. 919, § 32; 1995, ch. 196, § 1.]

Code Commission Notes. Constitutionality, OAG 94-038 (3/21/94).

Cross-References. Penalty for Class C misdemeanor, § 40-35-111.

2-2-139. Restoration of suffrage to persons convicted of infamous crimes. — (a) Any person who has forfeited the right of suffrage because of conviction of an infamous crime may register to vote and vote at any election for which the person is eligible by submitting sufficient proof to the administrator of elections in the county in which the person is seeking to register to vote, that:

(1) The person has been pardoned of all infamous crimes and the person's full rights of citizenship, including the right of suffrage, have been restored;

(2) The person's full rights of citizenship have been restored as prescribed by law; or

(3) An appellate court of competent jurisdiction has entered a final judgment reversing the person's conviction, or convictions, of all infamous crimes.

(b) For purposes of this section, a pardon or a certified copy of a judgment of a court of competent jurisdiction shall be sufficient proof to the administrator that the person fulfills the above requirements as to the offense or offenses specified on the pardon or judgment; however, before allowing a person convicted of an infamous crime to become a registered voter, it shall be the duty of the administrator in each county to verify with the state coordinator of elections that the person is eligible to register under the provisions of this section.

(c) The state election coordinator is hereby empowered to formulate a uniform procedure for verifying the registration eligibility of any person

convicted of an infamous crime. Upon receiving sufficient verification of such person's eligibility to register, the administrator shall allow such person to become a registered voter in the same manner and in accordance with the same laws, rules, or regulations as any other citizen of this state.

(d) The provisions of this section, relative to the forfeiture and restoration of the right of suffrage for those persons convicted of infamous crimes, shall also apply to those persons convicted of crimes prior to May 18, 1981, which are infamous crimes after May 18, 1981. [Acts 1981, ch. 345, §§ 3, 8.]

Compiler's Notes. Portions of this section concerning retroactive disenfranchisement of convicted felons whose crimes were not infamous when convicted but were infamous after May 18, 1981, have been held unconstitutional. See Notes to Decisions, 1. Constitutionality. Gaskin v. Collins, 661 S.W.2d 865 (Tenn. 1983).

References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

Cross-References. Acts purging registration, § 2-2-106.

Duties of election coordinator, § 2-11-202.

Judgment of infamy, § 40-20-112.

Notice of infamy, § 40-20-113.

Qualified voters, § 2-2-102.

Registration information, § 2-2-116.

Suffrage for persons convicted of infamous crimes, § 2-19-143.

Textbooks. Tennessee Jurisprudence, 6 Tenn. Juris., Citizenship, § 2.

NOTES TO DECISIONS

1. Constitutionality.

Retroactive disenfranchisement of felons whose crimes were not infamous at time of conviction but were made infamous later when the scope of infamous crimes was expanded was unconstitutional and violated Tenn. Const., art. I, § 5. Gaskin v. Collins, 661 S.W.2d 865 (Tenn. 1983).

PART 2—REGISTRATION BY OTHER STATE AGENCIES

2-2-201. Voter registration applications through department of safety — Contents. — In addition to any other voter registration procedure provided for by law, the department of safety and each county election commission shall provide for voter registration procedures as follows:

(1) The department of safety shall include a voter registration application as part of any motor vehicle driver license application or photo identification license used in Tennessee. Except as provided in subdivision (2)(B), an individual who completes the application and is otherwise eligible shall be registered to vote in accordance with the information supplied by the individual.

(2) The voter registration section of the application:

(A) May require a second signature or other information that duplicates, or is in addition to, information in the license section of the application only if the duplicate or additional information is necessary for prevention of multiple registration of the same individual, for determination of eligibility to vote, or for administration of voter registration or other aspects of the election process;

(B) Shall include a box or other device to permit an applicant for a motor vehicle driver license or photo identification license to decline to register to vote;

(C) Shall include a statement that specifies each eligibility requirement for voting, contains an attestation that the applicant meets each such

requirement, including citizenship, and requires the signature of the applicant, under penalty of perjury;

(D) Shall be made available by the department to the appropriate county election commission office; and

(E) Shall be processed as a voter registration-by-mail form, in accordance with § 2-2-115.

(3) No information relating to a declination under subsection (b)(2) may be used for other than official election-related purposes.

(4) Any motor vehicle driver license or photo identification license form used for change of residence address shall also serve as a notification of change of residence address for voter registration.

(5) The motor vehicle driver license or photo identification license application and change of address forms used in this state shall be subject to approval by the secretary of state for purposes of voter registration under this section.

(6) A completed voter registration or change of address of voter registration accepted at a motor vehicle office shall be transmitted to the appropriate county election office not later than ten (10) days after the date of acceptance; provided, that if the document is accepted within five (5) days before the last day for registration to vote in an election, the application shall be transmitted to the appropriate county election commission office not later than five (5) days after the date of acceptance. [Acts 1994, ch. 947, § 2.]

Section to Section References. This title is referred to in § 2-2-202.

2-2-202. Voter registration through other state agencies. — In addition to any other voter registration procedure provided by law and by § 2-2-201:

(1) All offices in the state that provide public assistance;

(2) All offices in the state that provide state-funded programs primarily engaged in providing services to persons with disabilities; and

(3) Public libraries, public high schools, offices of county clerks and offices of county registers of deeds;

shall serve as voter registration agencies. Those agencies designated under subdivision (2) that provide services to a person with a disability at the person's home, the agency shall provide the voter registration services at the person's home; provided, that a public library, a county clerk's office, or a county register of deeds office shall not serve as a voter registration agency if such office is located in the same building as the county election commission's office. [Acts 1994, ch. 947, § 3; 1997, ch. 501, § 1.]

Amendments. The 1997 amendment inserted "public high schools," in (3).

Effective Dates. Acts 1997, ch. 501, § 3. July 1, 1997.

Section to Section References. This section is referred to in §§ 2-2-203 — 2-2-205.

2-2-203. Prohibited acts by registering agencies — Penalty. — (a) A person who provides service described in § 2-2-202 shall not:

(1) Seek to influence an applicant's political preference or party registration;

(2) Display any such political preference or party allegiance; or

(3) Make any statement to an applicant or take any action, the purpose or effect of which is to discourage the applicant from registering to vote.

(b) A violation of this section is a Class C misdemeanor. [Acts 1994, ch. 947, § 4.]

Compiler's Notes. References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

Cross-References. Penalty for Class C misdemeanor, § 40-35-111.

2-2-204. Registration procedures. — (a) A voter registration agency that is an office described in § 2-2-202(1) and (2) shall:

(1) Distribute with each application for such service or assistance, and with each recertification, renewal, or change of address form relating to such service or assistance, the voter registration-by-mail application form described in § 2-2-115, unless the applicant, in writing, declines to register to vote;

(2) To the greatest extent practicable, incorporate in that agency's application for services or assistance, recertification, renewal or change of address form, a means by which a person who completes the form may decline, in writing, to register to vote;

(3) Provide to each applicant who does not decline to register to vote the same degree of assistance with regard to the completion of the registration application form as is provided by the office with regard to the completion of its own forms; and

(4) Accept the completed voter registration forms for transmittal to the appropriate county election commission to be processed as a voter registration-by-mail form in accordance with § 2-2-115.

(b) A completed voter registration accepted at a voter registration agency described in this section shall be transmitted to the appropriate county election commission office not later than ten (10) days after the date of acceptance; provided, that if the document is accepted within five (5) days before the last day for registration to vote in an election, the application shall be transmitted to the appropriate county election commission office not later than five (5) days after the date of acceptance. [Acts 1994, ch. 947, § 5.]

2-2-205. Registration procedures where agency does not require applications for its services. — (a) To the extent that a voter registration agency is an office, public library or high school described in § 2-2-202(3) and does not require or provide applications for its services, that office, public library or high school shall:

(1) Distribute or otherwise make available the voter registration-by-mail application form described in § 2-2-115 to those individuals the office, public library or high school serves;

(2) Provide the person the same degree of assistance with regard to the completion of the registration application form as is provided by the office, public library or high school with regard to the services offered by that office, public library or high school; and

(3) Accept the completed voter registration forms for transmittal to the appropriate county election commission to be processed as a voter registration-by-mail form in accordance with § 2-2-115.

(b) A completed voter registration accepted at a voter registration agency described in this section shall be transmitted to the appropriate county election commission office not later than ten (10) days after the date of acceptance; provided, that if the document is accepted within five (5) days before the last day for registration to vote in an election, the application shall be transmitted to the appropriate county election commission office not later than five (5) days after the date of acceptance. [Acts 1994, ch. 947, § 6; 1997, ch. 501, § 2.]

Amendments. The 1997 amendment substituted "office, public library or high school" for "office" throughout (a).

Effective Dates. Acts 1997, ch. 501, § 3. July 1, 1997.

2-2-206. Form for declining to register. — (a) The form by which a person may decline to register to vote that is required by § 2-2-204(a)(2) shall include the following:

(1) The question: "If you are not registered to vote where you live now, would you like to apply to register to vote here today?";

(2) If the agency provides public assistance, the statement, "Applying to register or declining to register to vote will not affect the amount of assistance that you will be provided by this agency.";

(3) Boxes for the applicant to check to indicate whether the applicant would like to register or declines to register to vote, together with the statement "IF YOU DO NOT CHECK EITHER BOX, YOU WILL BE CONSIDERED TO HAVE DECIDED NOT TO REGISTER TO VOTE AT THIS TIME.";

(4) The statement, "If you would like help in filling out the voter registration application form, we will help you. The decision whether to seek or accept help is yours. You may fill out the application form in private"; and

(5) The statement, "If you believe that someone has interfered with your right to register or to decline to register to vote or your right to privacy in deciding whether to register or in applying to register to vote, you may file a complaint with the coordinator of elections." The statement shall also include the address and telephone number of the coordinator of elections.

(b) Each voter registration agency shall maintain the declinations completed by their clientele. [Acts 1994, ch. 947, § 7.]

2-2-207. Rules and regulations. — The commissioner of safety in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, and the coordinator of elections in accordance with § 2-11-201(c), may promulgate rules to effectuate the provisions of this part and § 2-2-106. [Acts 1994, ch. 947, § 9.]

CHAPTER 3

PLACE AND TIME OF ELECTIONS

PART 1—POLLING PLACES

2-3-101. Polling places — Designation — Relocation. — (a) All elections shall be held in polling places designated by the county election commission. Each polling place shall be in the precinct it is to serve. If a county election commission determines that there is no place within a precinct which meets the requirements of this title for polling places, it shall designate the nearest available and suitable place no more than one-half (½) mile from the precinct boundary as the polling place. If no accessible polling place is available within the precinct, or, within the one-half (½) mile limit outside the precinct, with the approval of the state coordinator of elections, the county election commission may designate a suitable place within three (3) miles. No polling place location may be changed within ten (10) days of an election except in an emergency.

(b)(1) In any county having a metropolitan form of government and a population greater than one hundred thousand (100,000) according to the 1980 federal census or any subsequent federal census, if space is available, no more than one (1) polling place for a precinct may be located in the same room.

(2) At least thirty (30) days before a polling place is relocated, the county election commission shall mail a notice of intent to relocate to the elected officials representing the affected area. Such notice of intent shall be mailed to the candidates before the time the voters are notified of the change as provided in § 2-3-105. The provisions of this subdivision shall only apply to any county having a metropolitan form of government and a population greater than one hundred thousand (100,000) according to the 1980 federal census or any subsequent federal census. [Acts 1972, ch. 740, § 1; T.C.A., § 2-301; Acts 1989, ch. 78, §§ 1, 2; 1997, ch. 558, § 6.]

Compiler's Notes. Acts 1997, ch. 558, § 34 provided that the act take effect upon becoming a law. The act was returned without the governor's signature and became effective under the provisions of Tenn. Const., art. III, § 18.

Amendments. The 1997 amendment added the fourth sentence in (a).

Effective Dates. Acts 1997, ch. 558, § 34. June 25, 1997.

Cross-References. Boundaries of voting precincts, § 3-1-103.

Comparative Legislation. Time and place:
Ala. Code § 17-5A-1 et seq.
Ark. Code § 7-5-101 et seq.
Ga. O.C.G.A. § 21-2-260 et seq.
Ky. Rev. Stat. Ann. § 117.055 et seq.
Miss. Code Ann. § 23-15-281 et seq.
Mo. Rev. Stat. § 115.115 et seq.
N.C. Gen. Stat. § 163-1 et seq.
Va. Code § 24.1-95 et seq.

Cited: Taylor v. Armentrout, 632 S.W.2d 107 (Tenn. 1981).

Collateral References. 26 Am. Jur. 2d Elections §§ 193-199, 227-233.

29 C.J.S. Elections §§ 1, 72, 73, 76, 77, 100, 155, 190-207.

Elections ⇐ 29-45, 197-208.

2-3-102. Precincts — Establishment, consolidation, or change of boundaries — Splitting precincts. — (a)(1) After May 16, 1991, no voting precinct shall be established, created, consolidated, divided or the boundaries otherwise altered unless ordered by a court of competent jurisdiction, by reason of an annexation or other change in the boundary of a county or municipality or in accordance with subdivision (a)(2). Any boundary which is altered in accordance with the provisions of this subdivision shall coincide with a census block, tract, municipal or county boundary as designated on United States bureau of the census maps prepared for the 1990 federal decennial census.

(2) The county election commission may establish, consolidate or change the boundaries of precincts whenever the public convenience or law requires it; provided, that if any precinct boundary is altered pursuant to this subdivision then all of the following conditions must be met:

(A) Any boundary which is altered in accordance with the provisions of this subdivision shall coincide with a census block, tract, municipal or county boundary as designated on United States bureau of the census maps prepared for the 1990 federal decennial census; and

(B) All precinct boundaries within the jurisdiction of such county election commission that do not coincide with a census block, tract, municipal or county boundary as designated on United States bureau of the census maps prepared for the 1990 federal decennial census shall be altered so that such boundaries do coincide with a census block, tract, municipal or county boundary as designated on United States bureau of the census maps prepared for the 1990 federal decennial census.

(3) Any political subdivision which alters the boundaries of any voting precinct in accordance with the provisions of this subsection shall send a map to the office of local government and to the office of management information services for the general assembly, which map shall clearly show the new boundaries of such voting precinct.

(4) All census descriptions, census delineations, census district lines and other census designations as used in this subsection are those established for and by the United States bureau of the census for taking the 1990 federal decennial census in Tennessee.

(b) Notwithstanding any provision of § 3-1-102 or § 3-1-103 to the contrary, county election commissions may split precincts in primary and general

elections held to elect members of the general assembly if such precincts are required to be split by the provisions of Acts 1984, chapters 753 and 778.

(c) Notwithstanding the provisions of subdivision (a)(2) to the contrary, a precinct boundary established, consolidated or changed pursuant to subdivision (a)(2) may coincide with a line which divides a census block if:

(1) The line splitting the census block was approved by the United States bureau of the census and population was allocated between the areas split by such line pursuant to the fee paid block split program of such bureau; and

(2) In addition to the maps required to be submitted pursuant to subdivision (a)(3), the allocation of population for any split block is also sent to the office of local government and to the office of management information services for the general assembly. [Acts 1972, ch. 740, § 1; T.C.A., § 2-302; Acts 1984, ch. 951, § 1; 1991, ch. 373, § 1; 1993, ch. 362, § 1.]

Compiler's Notes. Acts 1982, ch. 900, § 49 and ch. 944, § 4 each provide that notwithstanding the provisions of this section to the contrary, the county election commission shall make such changes in the boundaries of precincts as may be necessitated by those acts (which changed the description of several state representative districts in subsection (d) of § 3-1-103) prior to any election held after the effective dates (April 4, 1982 and May 19, 1982) of those acts.

Acts 1984, ch. 753 and ch. 778 are codified, respectively, in §§ 3-1-102 and 3-1-103, as amended.

Cross-References. Changes in state representative district precincts, § 3-1-103.

Law Reviews. Local Government Law — 1961 Tennessee Survey (Eugene Puett), 14 Vand. L. Rev. 1335.

Cited: Taylor v. Armentrout, 632 S.W.2d 107 (Tenn. 1981).

2-3-103. Maximum size of precincts. — Precincts where voting machines are used shall, whenever practicable, in the judgment of the county election commission, after taking into consideration all facts and circumstances, be limited in size to a maximum of five thousand (5,000) registered voters. [Acts 1972, ch. 740, § 1; 1974, ch. 413, § 1; 1974, ch. 676, § 1; T.C.A., § 2-303; Acts 1991, ch. 249, § 1; 1997, ch. 558, § 7.]

Compiler's Notes. Acts 1997, ch. 558, § 34 provided that the act take effect upon becoming a law. The act was returned without the governor's signature and became effective under the provisions of Tenn. Const., art. III, § 18.

Amendments. The 1997 amendment substituted "five thousand (5,000)" for "three thousand (3,000)".

Effective Dates. Acts 1997, ch. 558, § 34. June 25, 1997.

2-3-104. Ratio of number of voters to voting machines. — Where voting machines are used, there shall be, as nearly as practicable, no more than six hundred fifty (650) registered voters per voting machine. [Acts 1972, ch. 740, § 1; T.C.A., § 2-304; Acts 1997, ch. 558, § 1.]

Compiler's Notes. Acts 1997, ch. 558, § 34 provided that the act take effect upon becoming a law. The act was returned without the governor's signature and became effective under the provisions of Tenn. Const., art. III, § 18.

Amendments. The 1997 amendment substituted "per voting machine" for "in precincts equipped with one (1) voting machine" in the first sentence and deleted the former second sentence, concerning minimum number of voting machines by population.

Effective Dates. Acts 1997, ch. 558, § 34. June 25, 1997.

2-3-105. Publication of changes in precinct boundaries — Notice to affected voters and office of local government. — Immediately after any

alteration of precinct boundaries, the county election commission shall publish the changed boundaries in a newspaper of general circulation in the county. The county election commission shall mail to each voter whose polling place is changed a notice of the voter's new polling place and precinct number. Furthermore, immediately after any alteration of precinct boundaries, the county election commission shall give written notification of such changes to the office of local government, comptroller of the treasury. [Acts 1972, ch. 740, § 1; T.C.A., § 2-305; Acts 1980, ch. 675, § 1.]

Section to Section References. This section is referred to in § 2-3-101.

Textbooks. Tennessee Jurisprudence, 10 Tenn. Juris., Elections, §§ 6, 11.

NOTES TO DECISIONS

ANALYSIS

1. Purpose.
2. Failure to publish changes.

1. Purpose.

One purpose of this section is to put affected voters on constructive notice of changes in precinct boundaries. Taylor v. Armentrout, 632 S.W.2d 107 (Tenn. 1981).

2. Failure to Publish Changes.

Where the election commission did not follow the statutory provisions for publishing the changed boundaries and notifying voters whose polling places were changed, but instead, since the polling places were changed only for municipal elections, undertook to have each voter fill out a duplicate set of registration forms, and this procedure was not completed prior to the expiration of the regular registration period, and the commission concluded to permit the so-called "re-registration" of city voters to continue through the date of the election, with the result that a number of voters apparently were permitted to vote in the wrong precinct, and there were numerous other technical violations of the general election laws, nonetheless the violations were held to be minor in nature and not such as would render the ballots of the voters illegal or result in voiding the election. Lanier v. Revell, 605 S.W.2d 821 (Tenn. 1980).

2-3-106. Description of boundaries — Filing and recordation — Availability to general assembly. — (a) The boundaries of each precinct shall be described either by metes and bounds or by a map of sufficient detail to delineate the boundaries of the precinct. Copies of the maps shall be filed and recorded in the office of the clerk of the county legislative body and in the office of the coordinator of elections and shall be available for public inspection.

(b) Copies of the maps shall be made available by the coordinator of elections to members of the general assembly upon request and upon payment of the actual cost of reproduction of the same. [Acts 1972, ch. 740, § 1; 1977, ch. 155, §§ 1, 2; T.C.A., § 2-306; Acts 1981, ch. 478, § 8.]

Cited: Taylor v. Armentrout, 632 S.W.2d 107 (Tenn. 1981).

2-3-107. Polling places — Physical requirements — Use of public buildings — Rentals for private buildings. — (a) The county election commission shall designate as polling places only rooms which have adequate heat, light, space and other facilities, including a sufficient number of electrical outlets where voting machines are used, for the comfortable and orderly conduct of elections.

(b)(1) The commission shall, insofar as practicable, arrange for the use of public schools and other public buildings for polling places.

(2) Upon application of the commission, the authority which has the control of any building or grounds supported by taxation under the laws of this state shall make available the necessary space for the purpose of holding elections and adequate space for the storage of voting machines without charge. A reasonable sum may be paid for necessary extra janitor service.

(c) When polling places are established in private buildings, the commission may pay a reasonable rental. [Acts 1972, ch. 740, § 1; T.C.A., § 2-312.]

Law Reviews. Tennessee Civil Disabilities: A Systemic Approach (Neil P. Cohen), 41 Tenn. L. Rev. 253.

2-3-108. Polling places — Tables and chairs for officials — Voting compartments — Supplies. — (a) The county election commission shall arrange for each polling place to have a sufficient number of tables and chairs for its election officials and poll watchers and voting compartments for the convenient use of voters in marking paper ballots.

(b)(1) Each compartment shall be so arranged that it is impossible for any person to see a voter's ballot while it is being marked. The arrangement shall be such that neither the ballot boxes nor the voting compartments are hidden from the view of the election officials and poll watchers or those just outside a guard rail which may run in front of the ballot box.

(2) The number of such voting compartments shall not be less than three (3) for every one hundred (100) voters registered to vote at a polling place where voting machines are not used.

(c)(1) One (1) voting compartment shall be provided at each polling place where voting machines are used.

(2) Each voting machine shall be so placed that it is accessible to only one (1) voter at a time and is in full view of all the election officials and watchers at the polling place.

(d) The county election commission shall provide for each polling place a sufficient supply of pencils, voting instructions, and boundary signs to be placed at the boundary provided in § 2-7-111. The flag of the United States shall be displayed outside of each polling place on election day. The county election commission shall ensure that such flag is available for each polling place. [Acts 1972, ch. 740, § 1; T.C.A., § 2-313; Acts 1987, ch. 362, § 3.]

Cross-References. Ballots and supplies, ch. 5, part 2 of this title.

NOTES TO DECISIONS

ANALYSIS

1. In general.
2. Arrangement of booths.

1. In General.

The case law of this state recognizes that statutory violations alone may be sufficient to invalidate an election, especially where they thwart those statutory provisions designed to: (1) prevent undue influence or intimidation of the free and fair expression of the will of the electors; or (2) ensure that only those who meet the statutory requirements for eligibility to vote, cast ballots. However, not every irregularity, or even a combination of irregularities, will necessitate the invalidation of an election. Forbes v. Bell, 816 S.W.2d 716 (Tenn. 1991).

Courts should be appropriately reluctant to take the step of declaring an election invalid. Forbes v. Bell, 816 S.W.2d 716 (Tenn. 1991).

If complaint had been properly drawn, the

purging by the trial court of a specific number of paper ballots in a particular precinct might well have been appropriate. But in the complaint, the contestant failed to demonstrate that a purge of those ballots would have changed the result of the election or rendered its outcome uncertain. Therefore, the court had no choice but to conclude that the chancellor correctly dismissed the complaint for failure to state a claim. Forbes v. Bell, 816 S.W.2d 716 (Tenn. 1991).

The allegations of complaint were insufficient to show, district-wide, that election was so permeated by fraud or illegality as to render the results incurably uncertain or to thwart the will of the electorate. Forbes v. Bell, 816 S.W.2d 716 (Tenn. 1991).

2. Arrangement of Booths.

There is a duty to arrange booths and afford secrecy in marking ballots, but irregularity or misconduct in that respect does not justify rejection of returns of the precinct. Barham v. Denison, 159 Tenn. 226, 17 S.W.2d 692 (1929).

2-3-109. Handicapped and elderly voters. — (a) Pursuant to the provisions of Public Law 98-435 of the 98th Congress, it is the legislative intent, by enactment of this legislation, to improve access for handicapped and elderly voters to registration facilities and polling places.

(b) For the purposes of this section:

(1) "Elderly voter" means any voter sixty-five (65) of age or older; and

(2) "Handicapped voter" means any voter who requires the use of a wheelchair, walker, cane, crutches or who requires the use of leg or back braces or similar such devices, or any voter who bears written certification from such voter's physician that in such physician's medical judgment such voter is physically disabled in such a manner to render such voter unable to go to such voter's polling place and vote.

(c) Every building which houses a county election commission office shall be accessible to elderly and/or handicapped voters by construction of ramps or other appropriate means.

(d)(1) All voting precincts shall be made accessible to elderly and handicapped voters, unless the state election commission and state election coordinator shall, in their sole discretion, determine that the precinct cannot reasonably be made accessible to the elderly and handicapped voters.

(2) Each county election commission shall furnish to the coordinator of elections, at the coordinator of election's request, a listing setting forth which polling places in the county are accessible and which are not. If a building suitable for use as a polling place which is accessible is available, such building shall be designated as the polling place for that voting precinct.

(e)(1) Not later than thirty (30) days prior to any election, the county election commission shall publish in a newspaper of general circulation a notice advising any elderly or handicapped voter that if such voter's polling place is inaccessible, such voter has the right to vote early or at the election commission office on election day.

(2)(A) Elderly or handicapped voters assigned to vote in precincts wherein the polling place is not accessible may vote at the election commission office on election day. Such voter shall complete an affidavit at the election commission office stating that such voter's designated voting location, to the best of the voter's knowledge, does not comply with the provisions of the Public Law 98-435 of the 98th Congress. The affidavit must be received by the county election commission not less than ten (10) days prior to the first election in which the elderly or handicapped voter plans to vote at the election commission office on election day. The election commission shall

maintain a record of all affidavits completed pursuant to this subsection and shall not require a voter to complete more than one (1) such affidavit unless the voter's precinct changes from the precinct cited in the affidavit on file. Upon receipt of such affidavit, the administrator of elections shall remove the voter's duplicate permanent registration card from the precinct binder and place the same in an alphabetical book to be used at the election office on election day. The election commission may vote persons voting hereunder on paper ballot or on voting machines, in the discretion of the voting commission.

(B) As an alternative to voting at the election commission office on election day, an elderly or handicapped voter assigned to vote in a precinct where the polling place is inaccessible may vote during the early voting period.

(C)(i) Each county election commission shall be responsible for notifying the officer of election on election day of any elderly or handicapped voter who votes at the election commission office.

(ii) The state election coordinator shall ensure that each county election commission takes the necessary steps to notify such elderly or handicapped voter's voting precinct of the filing of the voter's affidavit for future elections.

(f) The state election coordinator shall ensure that each county election commission takes the necessary steps and secures adequate facilities and supplies to carry out the requirements of this section.

(g) All the rights given and provisions made under this section are in addition to any voting rights or procedures which already are in existence relative to elderly, handicapped or physically disabled voters, and no provision or part hereof shall be deemed to restrict or diminish any such rights or procedures. [Acts 1985, ch. 72, §§ 1-9; 1991, ch. 184, §§ 1, 2; 1994, ch. 859, § 7; 1996, ch. 617, §§ 1, 2.]

Compiler's Notes. Public Law 98-435, referred to in this section, is known as the Voting Accessibility for the Elderly and Handicapped Act, and is codified as 42 U.S.C. 1973ee et seq.

References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

Amendments. The 1996 amendment deleted the last sentence in (e)(1) and rewrote (e)(2).

Effective Dates. Acts 1996, ch. 617, § 3. March 18, 1996.

Cross-References. Early voting, ch. 6, part 1 of this title.

Section to Section References. This section is referred to in § 2-6-201.

PART 2—TIMES OF ELECTIONS

2-3-201. Hours of election. — (a) Polling places shall be open for voting for a minimum of ten (10) continuous hours but no more than thirteen (13) hours. All polling places shall close at seven o'clock p.m. (7:00 p.m.), but when elections are being held in which the voters of counties in the eastern and central time zones are entitled to vote on a question, to choose a candidate, or to fill an office, polling places in such counties in the eastern time zone shall close at eight o'clock p.m. (8:00 p.m.) prevailing time and polling places in such counties in the central time zone shall close at seven o'clock p.m. (7:00 p.m.) prevailing time.

(b)(1) At least fifteen (15) days before the date of each election, the county election commission shall determine a uniform time for the opening of all polling places in the county.

(2)(A) All polling places shall open at eight o'clock a.m. (8:00 a.m.) prevailing time in counties having a population according to the 1970 federal census or any subsequent federal census of:

not less than	nor more than
63,700	63,800
28,200	28,300
24,200	24,300
23,475	23,500

(B) In any county having a population of not less than one hundred twenty thousand (120,000) according to the 1970 federal census or any subsequent federal census, all polling places shall open by eight o'clock a.m. (8:00 a.m.) prevailing time, but nothing shall prevent an earlier opening time in the discretion of the county election commission.

(c) In the case of municipal elections in a municipality having a population of not more than five thousand (5,000) according to the 1980 federal census or any subsequent federal census where there is no opposition for any of the offices involved, the polling places shall open at the hour of ten o'clock a.m. (10:00 a.m.) and close at the hour of six o'clock p.m. (6:00 p.m.). [Acts 1972, ch. 740, § 1; T.C.A., § 2-307; Acts 1980, ch. 649, §§ 4, 5; 1981, ch. 385, §§ 1, 2; 1982, ch. 665, § 1.]

Cross-References. Failure to use standard time, § 4-1-401.

Collateral References. Violation of law as regards time for keeping polls open as affecting election results. 66 A.L.R. 1159.

2-3-202. Judicial and county officers — Time for election. — Elections for the following offices shall be held at the regular August election when the election immediately precedes the commencement of a full term:

(1) Sheriff;
(2) Constable;
(3) Assessor of property;
(4) County clerk and clerks of the circuit and other courts;
(5) Register;
(6) County trustee;
(7) Members of the county legislative body;
(8) Judges of all courts; and
(9) District attorney general. [Acts 1972, ch. 740, § 1; 1978, ch. 934, § 28; T.C.A., § 2-308; Acts 1980, ch. 860, § 1.]

Cross-References. Election of assessor of property, § 67-1-502.

Election of judges generally, Tenn. Const., art. VI, § 4; §§ 16-3-101, 17-1-103.

Election of judges of the Court of Criminal Appeals, § 16-5-103.

Times of elections, Tenn. Const., art. VII, § 5.

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

1. Application of statute.
2. Provisions in conflict with constitution.

1. Application of Statute.

The statute fixing the time for holding elections for judicial officers applies to general elections and not to filling of vacancies. State ex rel. Attorney Gen. v. Allen, 57 S.W. 182 (Tenn. 1900).

2. Provisions in Conflict with Constitution.

The provisions of the Constitution, fixing the date from which terms of office shall be computed control over a statutory provision in conflict therewith and are to be substituted for the invalid statutory provision, and this applies to the term of office of a county tax assessor elected for the unexpired term of his predecessor. State ex rel. Waters v. Mayes, 165 Tenn. 381, 54 S.W.2d 941 (1932).

Collateral References. Validity of public election as affected by fact that it was held at time other than that fixed by law. 121 A.L.R. 987.

2-3-203. General assembly members, congressional representatives, presidential electors, governor and public service commissioner — Time for election. — Elections for the following offices shall be held at the regular November election when the election immediately precedes the commencement of a full term:

(1) Representative in the general assembly;
(2) Representative in the United States congress;
(3) Senator in the general assembly;
(4) Senator in the United States senate;
(5) Governor; and
(6) Electors for president and vice president.
(7) [Deleted by 1995 amendment.] [Acts 1972, ch. 740, § 1; T.C.A., § 2-309; 1995, ch. 305, § 55.]

Cross-References. Time of election of members of general assembly, Tenn. Const., art. II, § 7.

Section to Section References. This section is referred to in § 6-31-102.

2-3-204. Elections on questions. — (a) Elections on questions submitted to the people shall be held on dates set by the county election commission but not less than forty-five (45) days nor more than sixty (60) days after the county election commission is directed to hold the election under the law authorizing or requiring the election on the question. If the election is to be held in more than one (1) county, the county election commissions shall meet and set the date jointly.

(b) Resolutions, ordinances or petitions requiring the holding of elections on questions submitted to the people which are to be held with the regular August election, the regular November election or the presidential preference primary shall be filed with the county election commission not less than sixty (60) days prior to such election.

(c) If the date for an election on a question, as set by a county election commission or by two (2) or more commissions jointly, falls within thirty (30) days of an upcoming regular primary or general election being held in the

jurisdiction voting on the question, the commission or commissions may reset the date of the election on a question to coincide with the regular primary or general election, even though this may be outside of the time period established herein. All dates dependent on the date of the election shall be adjusted accordingly and any acts required to be done by these dates shall be performed timely if done in accordance with the adjusted dates. [Acts 1972, ch. 740, § 1; T.C.A., § 2-310; Acts 1980, ch. 649, § 1; 1981, ch. 478, § 9; 1997, ch. 558, § 2.]

Compiler's Notes. Acts 1997, ch. 558, § 34 provided that the act take effect upon becoming a law. The act was returned without the governor's signature and became effective under the provisions of Tenn. Const., art. III, § 18.

Amendments. The 1997 amendment added (b) and redesignated former (b) as present (c).

Effective Dates. Acts 1997, ch. 558, § 34. June 25, 1997.

Section to Section References. This section is referred to in §§ 6-1-202, 6-18-104, 6-30-106, 7-86-104.

Cited: Bemis Pentecostal Church v. State, 731 S.W.2d 897 (Tenn. 1987).

2-3-205. All elections on same day to be held at same time and place. — All elections held on the same day in a county shall be held during the same hours and in the same polling places in the precincts where the elections are to be held. [Acts 1972, ch. 740, § 1; T.C.A., § 2-311.]

2-3-206. Runoff following primary election for municipal office — Procedure for absentee voting required. — (a) Notwithstanding any provision of this title to the contrary, in any municipality in which the charter of such municipality provides for a runoff election following a primary election for municipal office, such runoff election may be held not less than thirty (30) days following the primary election.

(b) Notwithstanding any provision of this title to the contrary, the county election commission holding such runoff election shall provide a procedure for absentee voting in such election. [Acts 1980, ch. 590, §§ 1, 2.]

Cross-References. Absentee voting, ch. 6, part 2 of this title.

CHAPTER 4

ELECTION OFFICIALS

2-4-101. Officials conducting elections. — All elections shall be held by election officials appointed under this title. [Acts 1972, ch. 740, § 1; T.C.A., § 2-401.]

Comparative Legislation. Election officials:
Ala. Code § 17-6-1 et seq.
Ark. Code § 7-4-101 et seq.
Ga. O.C.G.A. § 21-2-30 et seq.
Ky. Rev. Stat. Ann. § 117.015 et seq.
Miss. Code Ann. § 23-15-211 et seq.
Mo. Rev. Stat. § 115.015 et seq.
N.C. Gen. Stat. § 163-41 et seq.
Va. Code § 24.1-73 et seq.

NOTES TO DECISIONS

ANALYSIS

1. Nature of election laws.
2. Authority of officials.
3. Special law conflicting with general law.

1. Nature of Election Laws.
The election laws of the state come within the class of general statewide laws applicable to municipalities as well as other subdivisions and arms of the state government. Clark v. Vaughn, 177 Tenn. 76, 146 S.W.2d 351 (1941).

2. Authority of Officials.
No one except the county election commissioners and registrars appointed by them have any authority over the books, records and recording of registrations, and resolution of county court attempting to fix one voting place in a precinct in place of three prior voting places was void. Byrd v. Rhea County, 207 Tenn. 62, 338 S.W.2d 545 (1960).

3. Special Law Conflicting with General Law.
Private Acts 1939, ch. 317, creating a board of election commissioners for the city of Athens and providing a different method of holding elections than provided in the general laws of the state, was unconstitutional as being in conflict with and suspending the general election laws of the state. Clark v. Vaughn, 177 Tenn. 76, 146 S.W.2d 351 (1941).

DECISIONS UNDER PRIOR LAW

ANALYSIS

1. Appointment of officers by commissioners.
2. Special law contrary to general law.
3. Election held by wrong officials.
4. Candidates for office.

1. Appointment of Officers by Commissioners.
Acts 1897, ch. 13, requiring commissioners to appoint officers of election, was held to embrace all kinds of elections, municipal as well as state and county. Weil, Roth & Co. v. Mayor of Newbern, 126 Tenn. 223, 148 S.W. 680, 1915A L.R.A. 1009, 1913E Ann. Cas. 25 (1912).

2. Special Law Contrary to General Law.
The statutory charter of a town, purporting to confer upon the sheriff the power of conducting elections for mayor, aldermen, recorder, and marshal of the town, did not control an election to determine the question of the issuance of bonds; but such election was properly conducted by the commissioners of election under Acts 1897, ch. 13. Weil, Roth & Co. v. Mayor of Newbern, 126 Tenn. 223, 148 S.W. 680, 1915A L.R.A. 1009, 1913E Ann. Cas. 25 (1912).

3. Election Held by Wrong Officials.
Bona fide purchaser of bonds for value was entitled to recover on municipal bonds though election to determine issuance of bonds was conducted by the sheriff instead of by commissioners, since the purchaser was not chargeable with notice that election authorizing issuance of bonds was not conducted by proper officials merely because the bonds were signed by mayor and clerk of board of aldermen instead of by mayor and the aldermen. Town of Newbern v. National Bank, 234 F. 209 (6th Cir.), cert. denied, 242 U.S. 634, 37 S. Ct. 18, 61 L. Ed. 538 (1916).

4. Candidates for Office.
If an officer of an election is not a candidate at the time of the election and is not voted for, he is qualified to hold the election, though he may have been a candidate a few days before. McCraw v. Harralson, 44 Tenn. 34 (1867).

Collateral References. 25 Am. Jur. 2d Elections §§ 39-51.
29 C.J.S. Elections §§ 55-65.
Elections ⇐ 46-58.

2-4-102. Appointment of election officials and inspectors. — (a)(1) Not more than thirty (30) days nor less than ten (10) days before each election, the county election commission shall appoint the following minimum number of election officials to hold elections at each polling place: one (1) officer

of elections, and three (3) judges. Two (2) of the judges appointed hereunder shall concurrently serve as precinct registrars, in accordance with § 2-12-202. In precincts where voting machines are used, any judge not appointed to serve as a precinct registrar shall concurrently serve as a machine operator for that polling place. Additional precinct registrars and machine operators may be appointed in accordance with § 2-4-105 as necessary to adequately staff the polling place. One (1) machine operator may be appointed to operate no more than two (2) voting machines.

(2) In any county having a metropolitan form of government and having a population in excess of one hundred thousand (100,000) according to the 1980 federal census or any subsequent federal census, the county election commission shall appoint the election officials designated in this subsection not more than forty-five (45) days nor less than ten (10) days before each election.

(b)(1) The county election commission may appoint for election day as many inspectors as it may deem necessary.

(2) If a statewide political party has no member on the county election commission and there is not at least one (1) election official appointed from its nominees under § 2-4-106 for each polling place for which it nominates officials, the county election commission shall, on request of the party's county primary board, appoint from that party's nominees under § 2-4-106 one (1) inspector for every thirty thousand (30,000) people in the county according to the 1970 federal census or any later federal census but not less than two (2) inspectors or more than ten (10).

(3) Inspectors represent the commission in its investigation of the conduct of elections. Inspectors shall report any irregularities to the county election commission and the county election commission shall promptly rule on the objections.

(4) No inspector may serve on election day who has not received the instruction provided under § 2-4-108. [Acts 1972, ch. 740, § 1; 1979, ch. 274, § 1; 1979, ch. 306, § 2; T.C.A., § 2-402; Acts 1991, ch. 131, § 1; 1997, ch. 558, § 26.]

Compiler's Notes. Acts 1997, ch. 558, § 34 provided that the act take effect upon becoming a law. The act was returned without the governor's signature and became effective under the provisions of Tenn. Const., art. III, § 18.

Amendments. The 1997 amendment rewrote (a)(1).

Effective Dates. Acts 1997, ch. 558, § 34. June 25, 1997.

Section to Section References. This section is referred to in §§ 2-4-105, 2-4-106.

NOTES TO DECISIONS

Decisions Under Prior Law

1. Number of Judges.

Where two primaries and a general election are to be held on the same machines at the same time, the proper authorities conducting each of the elections should appoint three judges for the usual duties and in addition each of the authorities should appoint one additional judge for each voting machine so that there are three judges to attend each voting machine in addition to the regular election officials. Mooney v. Phillips, 173 Tenn. 398, 118 S.W.2d 224 (1938).

2-4-103. Residence qualification of election officials. — (a) Officers of elections, judges, machine operators, precinct registrars, and assistant precinct registrars shall be registered voters at the polling place and inhabitants of the precinct for which they are appointed.

(b) Inspectors shall be registered voters at a polling place in the county and shall be inhabitants of the county.

(c) In counties having a population of less than six hundred thousand (600,000) according to the federal census of 1970 or any later federal census, the county election commission may appoint persons as precinct registrars who shall be registered voters at a polling place in the county and shall be inhabitants of the county.

(d)(1) In counties having a metropolitan form of government, the county election commission may appoint persons as precinct registrars who shall be registered voters at a polling place within each legislative district.

(2) Inspectors shall be registered voters at a polling place in the legislative district in those counties having a metropolitan form of government. [Acts 1972, ch. 740, § 1; T.C.A., § 2-403; Acts 1980, ch. 804, § 1.]

2-4-104. Judges to be of different political parties. — Not more than two (2) of the judges at a polling place may be of the same political party, if persons from different political parties are willing to serve. When primary elections are being held, at least one (1) judge shall be appointed from each party having a primary at the polling place for which the judges are being appointed. [Acts 1972, ch. 740, § 1; T.C.A., § 2-404.]

Section to Section References. This section is referred to in §§ 2-4-106, 2-6-302.

2-4-105. Election officials and inspectors — Limitation on number from same party — Exception. — (a) As nearly as practicable, no more than one half (½) of the number of election officials at a polling place and no more than one half (½) of the whole number of inspectors may be members of the same political party. In applying the rule of this section to inspectors, inspectors whose appointment is required by § 2-4-102 shall not be counted.

(b) In the event that only one (1) political party elects to hold a primary election as authorized under § 2-13-203, then only members of that political party who call the primary shall be appointed to serve at the polls as election officials as required by this title. [Acts 1972, ch. 740, § 1; 1974 ch. 448, § 1; T.C.A., § 2-405.]

Section to Section References. This section is referred to in §§ 2-4-106, 2-6-302.

2-4-106. Nominations for appointments as election officials — Appointment by commission. — (a) Each county primary board shall, and each county executive committee may, nominate persons for appointment as election officials, including precinct and assistant precinct registrars.

(b) The county election commission shall appoint such nominees as election officials to meet the requirements of §§ 2-4-102, 2-4-104 and 2-4-105, but when

there is an inadequate number of nominees, the county election commission may nominate as many additional persons as may be necessary for appointment.

(c) The nominations made pursuant to this section shall be made thirty (30) days prior to the appointment time, except that this subsection does not apply to counties with a metropolitan form of government.

(d) The county election commission of any county may refuse to appoint any person nominated hereunder if such person has been appointed to hold elections previously and the members of the county election commission of the political party for which the person was appointed are of the opinion that:

(1) Such person is incompetent to hold elections;

(2) Such person failed to serve as directed in previous elections; or

(3) Such person is otherwise, in their opinion, unfit to serve in the election.

[Acts 1972, ch. 740, § 1; 1974, ch. 642, §§ 2, 4; 1979, ch. 306, § 1; T.C.A., § 2-406.]

Section to Section References. This section is referred to in § 2-4-102.

2-4-107. Notice of appointment — Form. — The secretary of the county election commission or the administrator of elections shall notify each official of such official's appointment by mail in substantially the following form:

"To _____

You have been appointed by the County Election Commission as a _____ (state in what capacity — judge, etc.) to hold the election at precinct _____, on the day of _____, between the hours of ____ a.m. and ____ p.m. If you cannot serve, notify the administrator of elections immediately.

Date _____

_____

Secretary, County Election Commission/
Administrator of Elections"

[Acts 1972, ch. 740, § 1; T.C.A., § 2-407; Acts 1988, ch. 933, §§ 2, 3; 1997, ch. 558, § 27.]

Compiler's Notes. Acts 1997, ch. 558, § 34 provided that the act take effect upon becoming a law. The act was returned without the governor's signature and became effective under the provisions of Tenn. Const., art. III, § 18.

References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

Amendments. The 1997 amendment deleted "At least ten (10) days before the date of each election," preceding "The secretary" at the beginning of the section.

Effective Dates. Acts 1997, ch. 558, § 34. June 25, 1997.

2-4-108. Instruction of election officials — Compensation. — (a) Within thirty (30) days before each election there shall be held in each county, under the direction of the county election commission, a meeting for the purpose of instructing election officials as to their duties during an election.

(b) The officials for each polling place shall attend such meeting and shall receive, for the time spent in receiving such instructions and qualifying to serve at an election by taking the oath, the sum of ten dollars ($10.00) which

is to be paid only if they serve in the election. The compensation may be increased by resolution of the county legislative body.

(c) Notwithstanding any other provisions of this section, the county election commission may limit attendance at instructional meetings to only those persons who are inexperienced or otherwise need such training. [Acts 1972, ch. 740, § 1; T.C.A., § 2-408; Acts 1980, ch. 915, § 1; 1981, ch. 338, § 1; 1981, ch. 385, § 4; 1988, ch. 683, § 1.]

Compiler's Notes. Acts 1980, ch. 915, § 2 provided that the state's share of the cost of the 1980 amendment increasing the compensation of election officials "shall be funded from the increase in state imposed taxes which are earmarked to cities and counties and which are not designated to be used by such cities and counties for a particular purpose."

This section may be affected by § 9-1-116, concerning entitlement to funds, absent appropriation.

Section to Section References. This section is referred to in § 2-4-102.

2-4-109. Compensation paid officials for services. — Officers of elections, judges, machine operators, and inspectors shall be paid for their services on election day a minimum of fifteen dollars ($15.00). Compensation for such persons shall be paid no later than twenty (20) days after the election. The compensation may be increased by resolution of the county legislative body. [Acts 1972, ch. 740, § 1; 1977, ch. 469, § 1; T.C.A., § 2-409.]

NOTES TO DECISIONS

1. Charge Against Counties.

The expenses incident to holding the general elections are a charge against the counties. Gates v. Long, 172 Tenn. 471, 113 S.W.2d 388 (1938).

If the legislative act which directs the election does not otherwise provide, the county must bear the expense. Angel v. Hamilton County, 185 Tenn. 609, 207 S.W.2d 332 (1948).

2-4-110. Filling vacancies — Notice of appointment. — If a county election commission determines within twenty (20) days of an election that an official whom it has appointed cannot serve, the commission shall appoint a registered voter of the county to fill the vacancy and shall give the voter notice of such appointment. [Acts 1972, ch. 740, § 1; T.C.A., § 2-410; Acts 1988, ch. 933, § 4; 1997, ch. 558, § 28.]

Compiler's Notes. Acts 1997, ch. 558, § 34 provided that the act take effect upon becoming a law. The act was returned without the governor's signature and became effective under the provisions of Tenn. Const., art. III, § 18.

Amendments. The 1997 amendment substituted "twenty (20)" for "five (5)".

Effective Dates. Acts 1997, ch. 558, § 34. June 25, 1997.

2-4-111. Administration of oaths. — The officers of elections may administer oaths in the performance of their duties. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1215.]

CHAPTER 5

BALLOTS AND SUPPLIES

PART 1—PETITIONS

2-5-101. Time for filing — Required signatures — Failure to file — Filing office hours — Prohibited acts — Death or late withdrawal of candidates. — (a) Independent and primary candidates shall qualify by filing all nominating petitions, including any duplicate nominating petitions required to be filed under §§ 2-5-103 and 2-5-104, no later than twelve o'clock (12:00) noon, prevailing time, on the third Thursday in the third calendar month before an election.

(1) An independent candidate for an office in the regular November election for which a primary is required to be held at the regular August election shall qualify by filing such candidate's nominating petitions for the November election no later than twelve o'clock (12:00) noon, prevailing time, on the third Thursday in May.

(2) Independent candidates for any office to be filled in a regular August general election for which a May primary has been called under § 2-13-203 shall qualify by filing their petitions for the August election no later than twelve o'clock (12:00) noon, prevailing time, on the third Thursday in February. In the event no May primary authorized under § 2-13-203 is called, for any office to be filled in the regular August general election, then independent candidates shall qualify by filing their petitions no later than twelve o'clock (12:00) noon, prevailing time, on the third Thursday in May. In presidential election years, if a political party calls for the county primary in March, the qualifying deadline for candidates in the primary shall be twelve o'clock (12:00)

noon, prevailing time, the third Thursday in January. Independent candidates for offices which will appear on the county primary ballot shall qualify by filing their petitions at the same time primary candidates qualify. Independent candidates for offices to be filled at the regular August election which will not appear on the primary ballot shall qualify by filing their petitions no later than twelve o'clock (12:00) noon, prevailing time, on the third Thursday in the third calendar month prior to the regular August election.

(3) Candidates in municipal elections that are held in even years on the first Thursday in August, the first Tuesday after the first Monday in November, or on the first Tuesday in May shall file their nominating petitions no later than twelve o'clock (12:00) noon, prevailing time, on the third Thursday in the third calendar month before the election. Candidates in municipal elections held on other dates shall file their nominating petitions no later than twelve o'clock (12:00) noon, prevailing time, on the forty-fifth calendar day before the election. If this day falls on a Sunday, then the petition shall be filed no later than twelve o'clock (12:00) noon, prevailing time, on the immediate preceding Saturday.

(4) In counties having a population in excess of six hundred thousand (600,000) according to the federal census of 1970 or any subsequent census, candidates in municipal elections will file their nominating petitions in accordance with time and date as prescribed for the August primary and November general election. When a special election is being held in conjunction with either a municipal, August primary or November general election, the time of qualifying for candidates to the office for which the special election is being held shall conform and be governed by the same time and the same date prescribed for the municipal, August primary or November general election; but in no wise shall the time for qualifying specified by this subdivision be less than the qualifying time prescribed for the special election.

(b)(1) Nominating petitions shall be signed by the candidate and twenty-five (25) or more registered voters who are eligible to vote to fill the office.

(2) The signer of a petition must include the address of the signer's residence as shown on the signer's voter registration card in order for that person's signature to be counted. In the event that the signer of a petition includes information on a nominating petition that exceeds the information contained on such person's voter registration card, the signature shall be counted if there is no conflict between the nominating petition and the voter registration card. If no street address is shown on the signer's voter registration card, that person's signature and address as shown on the voter registration card shall be sufficient. A street address shall be sufficient, and no apartment number shall be required.

(3) A person's regular signature shall be accepted just as the person's legal signature would be accepted. For example, for the purposes of this subsection, "Joe Public" shall be accepted just as "Joseph Q. Public" would be accepted.

(c) If a candidate does not file by the deadline specified in this section, or fails to file any duplicate petition required by § 2-5-104 by the deadline specified in this section, or the candidate's petition does not contain the signatures and residential addresses of twenty-five (25) or more registered voters eligible to vote to fill the office, the candidate's name shall not be printed on any official ballot for the election.

(d) Offices in which petitions are to be filed shall be open until four o'clock (4:00) p.m. prevailing time on the final day of any qualifying period.

(e) The name of any candidate nominated by any political party by any method other than primary election, for any office to be filled in a regular August election for which a March or May primary has been called under § 2-13-203 shall be certified by the party executive committee to the county election commission or county administrator of elections by the qualifying deadline for the respective primary as provided for elsewhere in this section. If no primary is held, party nominees shall be certified no later than twelve o'clock (12:00) noon, prevailing time, on the third Thursday in May.

(f)(1) It is unlawful for any person to qualify as a candidate in a primary election with more than one (1) political party in which such person seeks the same office.

(2) It is unlawful for any person to qualify as an independent candidate and as a primary candidate for the same office in the same year.

(3) No person defeated in a primary election, or party caucus in any county having a population of not less than twenty-seven thousand five hundred (27,500) nor more than twenty-seven thousand seven hundred fifty (27,750) according to the 1990 federal census or any subsequent federal census, shall qualify as an independent for the general election.

(4) No candidate in a party primary election, or party caucus in any county having a population of not less than twenty-seven thousand five hundred (27,500) nor more than twenty-seven thousand seven hundred fifty (27,750) according to the 1990 federal census or any subsequent federal census, may appear on the ballot in a general election as the nominee of a different political party, or as an independent.

(5) No candidate, whether independent or represented by a political party, may be permitted to submit and have accepted by any election commission, more than one (1) qualifying petition, or otherwise qualify and be nominated, or have such candidate's name anywhere appear on any ballot for any election or primary, wherein such candidate is attempting to be qualified for and nominated or elected to more than one (1) state office as described in either § 2-13-202(1), (2) or (3) or in article VI of the Constitution of Tennessee or more than one (1) constitutional county office described in article VII, § 1 of the Constitution of Tennessee or any other county-wide office, voted on by voters during any primary or general election.

(6) It is unlawful for a person to qualify as a candidate for any election if such person has failed to file any required report for which a civil penalty has been imposed under chapter 10 of this title.

(g)(1) If a candidate in a primary election or nonpartisan general election, after the qualifying deadline:

(A) Dies;

(B) Withdraws because of military call up for the draft;

(C) Withdraws because of physical or mental disability, such physical or mental disability being properly documented by competent medical authority;

(D) Withdraws because such candidate is forced to change residence by the candidate's employer for a job-related reason; or

(E) Is declared ineligible or disqualified by a court or disqualified by the political party executive committee under § 2-5-204;

leaving no candidates for nomination or office, additional candidates may qualify for the election or that nomination by filing their petitions as provided by law no later than twelve o'clock (12:00) noon, prevailing time on the thirtieth day before the election.

(2) Candidates may withdraw for reasons other than those listed above; however, no additional candidates may qualify.

(h) The provisions of this section, as amended by Acts 1991, ch. 153, shall not apply to any elections held in 1991 in any county. Elections for or in such county for 1991 shall be held in accordance with the law as it existed prior to the enactment of Acts 1991, ch. 153.

(i)(1) This subsection shall be known and may be cited as the "Anti-Skullduggery Act of 1991."

(2) Notwithstanding any provision of this section to the contrary, additional candidates may qualify for an office by qualifying as provided by law no later than twelve o'clock (12:00) noon, prevailing time, on the seventh day after the original withdrawal deadline, if an incumbent of such office is a candidate for a primary or a nonpartisan general election and if such incumbent dies or properly withdraws on the last day for qualifying or prior to twelve o'clock (12:00) noon, prevailing time, on the seventh day after the qualifying deadline.

(3) If an incumbent withdraws during the period specified in subdivision (i)(2), the provisions of this subsection shall operate to:

(A) Extend the period to qualify for the primary election of each political party holding a primary for that office;

(B) Extend the period during which a political party that would have been authorized by law to nominate a candidate for the office by a means other than primary election, but did not do so prior to the withdrawal of the incumbent; and

(C) Extend the period a person may qualify for a nonpartisan general election.

(4) Any request to withdraw by such additional candidates shall be filed no later than twelve o'clock (12:00) noon, prevailing time, on the fourth day after the new qualifying deadline. [Acts 1972, ch. 740, § 1; 1973, ch. 106, §§ 1, 2; 1973, ch. 160, § 1; 1974, ch. 660, § 1; 1974, ch. 731, § 1; 1975, ch. 26, § 1; 1975, ch. 83, § 1; 1977, ch. 47, § 1; 1978, ch. 940, § 1; 1979, ch. 115, § 1; 1979, ch. 136, § 1; 1979, ch. 306, § 15; T.C.A., §§ 2-505, 2-511(c); Acts 1981, ch. 382, § 1; 1981, ch. 385, § 3; 1981, ch. 478, §§ 12, 13; 1982, ch. 871, §§ 4, 5; 1982, ch. 894, § 1; 1983, ch. 266, § 1; 1985, ch. 81, § 1; 1986, ch. 562, § 20; 1988, ch. 516, § 1; 1988, ch. 933, §§ 5, 6, 13; 1989, ch. 128, §§ 1, 3; 1989, ch. 247, § 1; 1989, ch. 590, §§ 7-9; 1990, ch. 628, § 3; 1991, ch. 153, §§ 1-6; 1991, ch. 373, § 3; 1991, ch. 414, §§ 1, 2; 1994, ch. 771, §§ 1-3; 1995, ch. 87, §§ 1, 2.]

Code Commission Notes. Qualifying deadlines, constitutionality, OAG 88-42 (2/29/88).

Compiler's Notes. Acts 1989, ch. 247, § 2 also provided that the amendment by that act shall apply only to nominating petitions filed after May 9, 1989.

References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

Cross-References. Failure to use standard time, § 4-1-401.

Section to Section References. This sec-

tion is referred to in §§ 2-5-103, 2-8-115, 2-14-106, 6-1-207, 6-1-304.

Textbooks. Tennessee Jurisprudence, 10 Tenn. Juris., Elections, § 2.

Law Reviews. Selected Tennessee Legislation of 1983 (N.L. Resener, J.A. Whitson, K.J. Miller), 50 Tenn. L. Rev. 785 (1983).

Attorney General Opinions. Application of "sore loser" provisions to counties where candidates are nominated by party caucus, OAG 95-062 (5/26/95).

Comparative Legislation. Ballots and supplies:

Ala. Code § 17-8-1 et seq.
Ark. Code § 7-5-207 et seq.
Ga. O.C.G.A. § 21-2-280 et seq.
Ky. Rev. Stat. Ann. § 117.145 et seq.
Miss. Code Ann. § 23-15-331 et seq.
Mo. Rev. Stat. § 115.225 et seq.
N.C. Gen. Stat. § 163-135 et seq.
Va. Code § 24.1-95 et seq.

Cited: Sachs v. Shelby County Election Comm'n, 525 S.W.2d 672 (Tenn. 1975).

NOTES TO DECISIONS

ANALYSIS

1. Purpose.
2. Mandatory provisions.
3. Presumption arising from presence of name on ballot.
4. Failure to certify candidate.
5. Eligibility of candidates.
6. Qualifying deadlines.

1. Purpose.

Subsection (f) is obviously concerned with preserving the integrity of the primary process itself as part of the larger public policy aim of promoting stability and trust in the election process as a whole. One of the apparent goals of subsection (f) is to prevent candidates who start one race from jumping into another race that is already in progress. Crowe v. Ferguson, 814 S.W.2d 721 (Tenn. 1991).

2. Mandatory Provisions.

Former provisions relative to time of filing were mandatory. Koella v. State ex rel. Moffett, 218 Tenn. 629, 405 S.W.2d 184 (1966).

3. Presumption Arising from Presence of Name on Ballot.

Although there was no direct evidence that all of the required steps were taken to qualify either candidate in the primary which was held within 60 days after the broadcast, testimony that the names of both candidates were upon the ballots used in the primary raised the strong legal presumption that public officials performed their duty in placing the candidates' names upon the official ballots pursuant to law and after compliance with all legal requirements, and the broadcasting station defendants were immune from liability for defamatory statements of the candidate under the federal equal time provision. Lamb v. Sutton, 164 F. Supp. 928 (M.D. Tenn. 1958), aff'd, 274 F.2d 705 (6th Cir.), cert. denied, 363 U.S. 830, 80 S. Ct. 1601, 4 L. Ed. 2d 1524 (1960).

4. Failure to Certify Candidate.

Where a political party failed to certify to the county election commission the name of its candidate within the time prescribed, it could not thereafter renominate the same candidate under the provisions of § 2-13-204. State ex rel. Cassity v. Turner, 601 S.W.2d 710 (Tenn. 1980).

5. Eligibility of Candidates.

Subsection (f) does not prohibit persons who are unsuccessful candidates in a party primary from subsequently running in a nonpartisan general election for a different office. Crowe v. Ferguson, 814 S.W.2d 721 (Tenn. 1991).

Subdivisions (f)(3) and (4) prohibit an unsuccessful candidate in a party primary from appearing on the ballot in a subsequent partisan general election as an independent candidate or as a candidate of a different political party. Crowe v. Ferguson, 814 S.W.2d 721 (Tenn. 1991).

Where the county commissioner's election was a nonpartisan race without a primary, individuals were eligible as candidates for county commissioner, even though they had been defeated in the May 1990 Democratic primary elections for different offices. Crowe v. Ferguson, 814 S.W.2d 721 (Tenn. 1991).

6. Qualifying Deadlines.

If a candidate misses a qualifying deadline due to her reasonable and justifiable reliance upon an official opinion, relief from the mandatory deadline is appropriate, provided filing takes place with all reasonable dispatch after it is discovered the opinion is incorrect. Crowe v. Ferguson, 814 S.W.2d 721 (Tenn. 1991).

Candidate for county commissioner in August general election should not be held to the strict filing restriction of subsection (g) in view of the fact that she reasonably and justifiably relied upon an official opinion that she could not run in the first place. Crowe v. Ferguson, 814 S.W.2d 721 (Tenn. 1991).

Collateral References. 26 Am. Jur. 2d Elections §§ 156, 168-173, 202-224.

29 C.J.S. Elections §§ 113, 152-173.

Constitutionality of election laws as regards nominations by petition or otherwise than by statutory convention or primary election, with respect to right to have name upon official ballot. 146 A.L.R. 668.

Elections ⇐ 160-196.

2-5-102. Nominating petitions — Form — Requirements. — (a) Nominating petitions shall be in substantially the following form:

"We the undersigned registered voters of the city of _____, (for municipal elections) in the county of _____, State of Tennessee, (and members of the _____ Party), hereby nominate (for primaries)

_____ _____,
(name) (address)

_____ County as a candidate (for nomination) for the office of (for primaries)

_____, _____
(office) (division, part or district number)

to be voted in the election to be held on the ____ day of _____, ____. We request that such candidate's name be printed on the official ballot.

This petition was issued by _____, _____.
(signature of administrator of elections, deputy or election commissioner) (date)

TO BE COMPLETED BY CANDIDATE

I hereby direct that my name appear on the official ballot as follows:

_____

PRINT NAME

_____ _____ _____
(residential address of candidate) (zip) (telephone)

_____ _____ _____
(business address of candidate) (zip) (telephone)

FOR JUDICIAL CANDIDATES ONLY:

By my signature, I hereby certify that I am licensed to practice law in this state. _____
(signature of candidate)

SUPREME COURT REGISTRATION No. _____

NOMINATING SIGNATURES

(Must be registered voters who are eligible to vote to fill this office)

Signature of Voter	Address of Residence as Shown on Voter Registration
_____	_____
_____	_____
_____	_____

(b)(1) All nominating petitions required for nomination and election to all congressional, state, county, municipal and political party executive committee offices shall be furnished only by the county election commission office. At the time of issuance of the nominating petitions, the administrator of elections, deputy or a county election commissioner shall type or handwrite in ink at the top of the cover page and each succeeding page of the form the name of the candidate, the office sought by the candidate, including any division, part, district or other identifying number for the office sought, and shall sign and date the form. Additional pages to be attached to a nominating petition may be obtained at a later date; provided, that each additional page must also have the name of the candidate, the office being sought and any identifying number for the office typed or handwritten at the top by the administrator, deputy or election commissioner along with the candidate's signature and the date.

(2) Nominating petitions for offices listed in § 2-13-202 may also be obtained from the office of the coordinator of elections. An employee of the coordinator's office has the same responsibilities as the administrator, deputy and election commissioners in subdivision (b)(1).

(3) The items to be completed under subdivisions (b)(1) and (2) may not be altered, and a petition on which any of these items has been altered may not be accepted in the office in which it is required to be filed in this state. Neither shall any original nominating petition be accepted on which any of the items required to be completed under subdivisions (b)(1) and (2) have been photocopied.

(4) If a county election commission finds it necessary to photocopy the nominating petition, the county election commission shall indicate in the upper right hand corner of each page that the document was photocopied by the county election commission prior to disbursing the form to a candidate. Such information shall be typed, stamped or otherwise permanently affixed to the form.

(5) Nominating petitions shall not be issued by any administrator, deputy, county election commissioner or employee of the coordinator's office more than ninety (90) days before the qualifying deadline for the office for which the petition is issued. [Acts 1972, ch. 740, § 1; T.C.A., § 2-506; Acts 1991, ch. 198, § 1; 1992, ch. 757, § 1; 1997, ch. 558, § 4.]

Compiler's Notes. Acts 1997, ch. 558, § 34 provided that the act take effect upon becoming a law. The act was returned without the governor's signature and became effective under the provisions of Tenn. Const., art. III, § 18.

References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

Amendments. The 1997 amendment added (b)(5).

Effective Dates. Acts 1997, ch. 558, § 34. June 25, 1997.

Cross-References. Signer of nominating petition must include address, § 2-1-107.

2-5-103. Candidates for statewide elections. — (a) Each independent or primary candidate for an office elected by the voters of the entire state shall file the candidate's original nominating petition in the office of the state election commission and a certified duplicate with the coordinator of elections

and with the chair of the party's state executive committee in the case of primary candidates.

(b) The chair of the state election commission shall, no later than twelve (12:00) noon prevailing time on the first Thursday after the deadlines set in § 2-5-101, certify to the chairs of the county election commissions the names of all candidates who have qualified under this section to have their names on the ballots for general or primary elections. [Acts 1972, ch. 740, § 1; 1978, ch. 754, § 2; T.C.A., § 2-507.]

Section to Section References. This section is referred to in §§ 2-5-101, 2-5-104.

2-5-104. Candidates for other than statewide elections. — (a) Each independent or primary candidate, other than those filing under § 2-5-103, and those filing under subsection (b), shall file the candidate's original nominating petition with the chair or the administrator of elections of the county election commission in the county in which the candidate is a resident and shall file certified duplicates of the nominating petition with the chairs or administrators of the county election commissions in all counties wholly or partially within the area served by the office which the candidate seeks.

(b)(1) Each independent or primary candidate for the office of representative to the United States congress shall file the candidate's nominating petitions as a candidate for an office elected by the voters of the entire state would file the candidate's nominating petitions under the provisions of § 2-5-103.

(2) However, any independent and primary candidate for the office of representative to the United States congress from a district located entirely in one (1) county shall file the candidate's nominating petitions under the provisions of this section. [Acts 1972, ch. 740, § 1; 1973, ch. 31, § 1; 1977, ch. 480, § 1; 1978, ch. 754, § 2; 1979, ch. 115, § 2; T.C.A., § 2-508; Acts 1982, ch. 746, §§ 1, 2.]

Compiler's Notes. References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

Section to Section References. This section is referred to in §§ 2-5-101, 2-14-202.

Attorney General Opinions. Applicability to municipal elections for cities located in more than one county, OAG 96-129 (11/12/96).

2-5-105. Certification of political party nominees. — Political party nominees are qualified by certification of their names as nominees under chapter 8 of this title or §§ 2-13-101 — 2-13-205. [Acts 1972, ch. 740, § 1; T.C.A., § 2-503.]

2-5-106. Certification of attorney on nominating petition. — (a) Any person seeking election to a judicial office that is required by law to be held by an attorney shall certify on the person's nominating petition for such office that such person is licensed to practice law in this state, and shall place on such petition the person's supreme court registration number.

(b) Any person failing to comply with this section shall be disqualified from having the person's name placed on the election ballot for such judicial office. [Acts 1989, ch. 590, § 10.]

2-5-107 — 2-5-150. [Reserved.]

2-5-151. Petitions for recall, referendum or initiative. — (a) Any governmental entity having a charter provision for a petition for recall, referendum or initiative or any person acting pursuant to such charter provision shall meet the requirements of this section.

(b) Before a petition may be circulated, at least one (1) registered voter of the city or county shall file with the county election commission:

(1) The proper form of the petition; and

(2) The text of the question posed in the petition.

(c) The county election commission shall certify whether the petition is in proper form within thirty (30) days after the filing of the documentation required by subsection (b). The individual(s) filing the petition shall have fifteen (15) days to cure any defects in the documentation required by subsection (b) by filing revised documentation in proper form with the county election commission. The county election commission shall determine within five (5) days whether or not the revised documentation shall be certified for final approval.

(d) Petitions shall be signed by at least fifteen percent (15%) of those registered to vote in the municipality or county. The disqualification of one (1) or more signatures shall not render a petition invalid, but shall disqualify such signatures from being counted towards the statutory minimum number of signatures required in this section.

(e) Upon filing, each completed petition shall contain the following:

(1) The full text of the question attached to each petition;

(2) The genuine signature and address of registered voters only, pursuant to the requirements of § 2-1-107;

(3) The printed name of each signatory; and

(4) The date of signature.

(f)(1) Completed petitions shall be filed with the county election commission within seventy-five (75) days after final certification by the county election commission as required by subsection (c).

(2) In addition, a petition for recall, referendum or initiative shall be filed at least sixty (60) days before a general municipal or county election may be held on the question contained in such petition. The question contained in a petition filed less than sixty (60) days before an upcoming general municipal or county election will be placed on the ballot of the following general municipal or county election.

(g) Any person may request either in person or in writing that the county election commission remove such person's name from a petition. Such request must be made within eight (8) days of filing of the completed petition and before final certification by the county election commission of the petition.

(h) The county election commission shall certify whether or not the completed petition meets all applicable requirements within thirty (30) days of filing of the completed petition.

(i) Upon certification by the county election commission pursuant to subsection (h), the election commission shall publish the question contained in the petition pursuant to § 2-12-111.

(j) This section shall control notwithstanding any statutory provision or charter provision of a municipality or county to the contrary; provided, that any contrary charter provision of a municipality or county which is enacted after July 1, 1997, shall control with respect only to the requirements set forth in subsection (d) relating to the statutory minimum number of signatures required in a petition, and to the provisions of subsection (f)(1) relating to the seventy-five-day deadline for filing of a petition after final certification by the county election commission.

(k) This section shall control any petition with signatures filed with the county election commission on or after June 25, 1997. [Acts 1997, ch. 558, § 33.]

Compiler's Notes. Acts 1997, ch. 558, § 34 provided that the act take effect upon becoming a law. The act was returned without the governor's signature and became effective under the provisions of Tenn. Const., art. III, § 18.

Effective Dates. Acts 1997, ch. 558, § 34. June 25, 1997.

Part 2—Ballots and Supplies

2-5-201. Printing of ballots. — All ballots used in elections shall be printed and made as provided in this chapter except to the extent that other sections of this title expressly provide otherwise. [Acts 1972, ch. 740, § 1; T.C.A., § 2-501.]

Cross-References. English deemed official and legal language, § 4-1-404.

Section to Section References. This chapter is referred to in § 2-6-503.

This part is referred to in § 2-6-310.

NOTES TO DECISIONS

Decisions Under Prior Law

Analysis

1. Application of Dortch ballot law.
2. Constitutionality.
3. Effect of subsequent legislation.

1. Application of Dortch Ballot Law.

As originally enacted the Dortch ballot law was limited in its application to cities and counties of a certain population, but in 1921 its provisions were extended to the whole state. State ex rel. Brumit v. Grindstaff, 144 Tenn. 554, 234 S.W. 510 (1921).

2. Constitutionality.

The Dortch ballot law was not unconstitutional because of the educational qualifications required, or because it was class legislation, or because it infracted U.S. Const., amend. 14, or because the commissioners and registrars were appointed otherwise than by the people or the county court. Cook v. State, 90 Tenn. 407, 16 S.W. 471, 13 L.R.A. 183 (1891); State v. Old, 95 Tenn. 723, 34 S.W. 690, 31 L.R.A. 837 (1896); Moore v. Sharp, 98 Tenn. 491, 41 S.W. 587 (1897); Peterson v. State, 104 Tenn. 127, 56 S.W. 834 (1900); Condon v. Maloney, 108 Tenn. 82, 65 S.W. 871 (1901), appeal dismissed, 189 U.S. 64, 23 S. Ct. 579, 47 L. Ed. 709 (1903); Turner v. State, 111 Tenn. 593, 69 S.W. 774 (1902); Murphy v. State, 114 Tenn. 531, 86 S.W. 711 (1904); Hall v. State, 124 Tenn. 235, 137 S.W. 500 (1911); Scott v. Marley, 124 Tenn. 388, 137 S.W. 492 (1911); Fleming v. City of Memphis, 126 Tenn. 331, 148 S.W. 1057, 42 L.R.A. (n.s.) 493, 1913D Ann. Cas. 1306 (1912).

3. Effect of Subsequent Legislation.

Suggestion that the original Dortch ballot law (Acts 1890 (1st E.S.), ch. 24) was repealed by a subsequent law was held without merit. McMinn County v. Allen, 119 Tenn. 395, 105 S.W. 67 (1907).

Collateral References. 26 Am. Jur. 2d Elections §§ 202-224, 254.
29 C.J.S. Elections §§ 153, 155.

2-5-202. Separate general and primary election ballots. — Each county election commission shall have printed separate general and primary election ballots on which shall be only the names of candidates who have qualified and who are to be voted on at the polling place in which the ballots are to be used. [Acts 1972, ch. 740, § 1; T.C.A., § 2-502.]

2-5-203. Independent candidates. — Candidates who are not to be placed on ballots as nominees of a political party shall be known as "independent candidates." [Acts 1972, ch. 740, § 1; T.C.A., § 2-504.]

2-5-204. Placing of names on ballots — Withdrawal or disqualification of candidate — Death of candidate. — (a) Each qualified candidate's name shall be placed on the ballot as it appears on the candidate's nominating petitions unless the candidate dies before the ballots are printed, or unless the candidate requests in writing that the candidate's name not appear on the ballot and files the request with each of the officers with whom the candidate filed nominating petitions or to whom the candidate's nomination was certified as a political party nominee, or unless the executive committee with which a primary candidate filed the original petition determines that the candidate is not qualified under § 2-13-104.

(b)(1) A candidate's request to withdraw shall be filed no later than twelve o'clock (12:00) noon prevailing time on the seventh day after the qualifying deadline for the election.

(2) An executive committee's determination shall be filed with the chair or administrator of elections of each county election commission on whose ballots the candidate's name would otherwise appear no later than twelve o'clock (12:00) noon prevailing time on the seventh day after the qualifying deadline for the election.

(c) If the candidate's name on the ballot would be misleading, the county election commission may require further identifying information on the ballot.

(d) No titles may be printed with the candidate's name.

(e) If a candidate dies after the ballots are printed, the decedent's name shall be covered on voting machine ballots and struck out or covered over on paper ballots. The county election commission in each county where the decedent was a candidate shall take reasonable steps to inform voters that the decedent is no longer a candidate. Votes cast for deceased candidates shall not be counted. [Acts 1972, ch. 740, § 1; 1978, ch. 754, § 2; T.C.A., § 2-509; Acts 1988, ch. 933, § 14; 1989, ch. 128, § 2.]

Compiler's Notes. References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

Section to Section References. This section is referred to in § 2-5-101.

NOTES TO DECISIONS

1. Withdrawal of Request.

Candidate who, pursuant to this section, requests that his name not appear on the ballot may not withdraw his request and have his name restored to the ballot. State ex rel. Ozment v. Rand, 567 S.W.2d 759 (Tenn. 1978).

2-5-205. Presidential preference primary — Printing of names on ballot — Withdrawal of name. — (a) The names of candidates for president of the United States shall be printed on the ballot for the presidential preference primary only if they are:

(1) The names of persons who the secretary of state, in the secretary of state's sole discretion, has determined are generally advocated or recognized as candidates in national news media throughout the United States. The secretary of state shall submit the names to the state election commission no later than the first Tuesday in January of the year in which the election will be held. If a candidate who has been certified by the secretary of state wishes to be a candidate in the presidential primary of a party other than that for which the secretary of state certified the candidate, the candidate shall signify the candidate's political party preference to the state election commission no later than twelve (12:00) noon, prevailing time, on the second Tuesday in January of the year in which the election will be held, and the candidate's name shall be certified only for the ballot of the candidate's chosen party, as the case may be.

(2) The names of persons for whom nominating petitions, signed by at least two thousand five hundred (2,500) registered voters of the party whose nomination is sought and by the candidate, are filed not later than twelve o'clock (12:00) noon, prevailing time, on the first Tuesday in January of the year in which the election will be held. The nominating petitions shall be filed with the state election commission and certified duplicates with the coordinator of elections and with the chair of the candidate's party's state executive committee. No candidate may enter the presidential primary of more than one (1) statewide political party.

(b) The secretary of state shall advise each of the prospective candidates by the most expeditious means available that, unless a candidate withdraws the candidate's name by twelve o'clock (12:00) noon, prevailing time, on the second Tuesday in January of the year in which the election will be held, the candidate's name will appear on the ballot of the candidate's party in the presidential preference primary. If such a person executes and files with the state election commission an affidavit stating without qualification that the candidate is not and does not intend to become a candidate for president in the forthcoming presidential election, the candidate's name shall not be on the ballot.

(c) The secretary of state shall certify to the county election commissions on the second Thursday in January the names which this section requires to be on the ballot for each political party. [Acts 1972, ch. 740, § 1; 1976, ch. 439, § 1; 1977, ch. 316, § 1; 1978, ch. 754, § 2; T.C.A., § 2-510; Acts 1986, ch. 562, §§ 1-4; 1987, ch. 409, §§ 1-5.]

Cross-References. Presidential preference primaries, date of election, failure to have candidate's name on ballot, § 2-13-205.

Presidential preference primary and convention delegates, ch. 13, part 3 of this title.

Section to Section References. This section is referred to in § 2-13-205.

NOTES TO DECISIONS

1. Names on Ballots.

Appellant's action to require the Tennessee secretary of state to place his name on the ballot for the 1984 democratic presidential preference primary became moot after the primary and was properly dismissed by the trial court. LaRouche v. Crowell, 709 S.W.2d 585 (Tenn. Ct. App. 1985), cert. denied, 475 U.S. 1047, 106 S. Ct. 1265, 89 L. Ed. 2d 574 (1986).

2-5-206. Forms of ballots on voting machines. — (a) Voting machine ballot labels and names of candidates shall be printed in black ink with office titles printed in black or red ink on clear material of such size as will fit the ballot frame and in as plain, clear type as the space will reasonably permit.

(b) All voting machine ballots shall be arranged as follows:

(1) In primary elections, the title of the offices shall be placed vertically on the left or right side of the ballot, and there shall be a vertical column for each political party, and the names of the candidates shall be placed opposite the title of the office for which they are to be selected, in alphabetical order according to the initials of their surname, beginning with the first initial. Each column shall be designated by the name of the political party for that column;

(2) In general elections, the title of the offices shall be placed vertically on the left or the right side of the ballot, and there shall be a vertical column for each political party. Any candidate whose name is to be placed on the ballot by virtue of party nomination shall be listed in the political column of such candidate's party, opposite the title of the office the candidate seeks. One (1) vertical column for independent candidates shall be placed on the ballot and shall appear immediately after the political party columns. The independent candidates shall be listed in alphabetical order according to the initials of their surnames, beginning with the first initial. The independent candidate's name shall be listed opposite the title of the office the candidate seeks. This ballot format shall apply to all voting machine ballots, except in counties using Automatic Voting Machine, Inc. type machines, C.E.S., Votomatic or comparable punch card voting systems, or Shouptronic or other comparable direct recording electronic voting systems. Any county using Automatic Voting Machine, Inc. type machines shall arrange its machine ballots in the following manner, to wit: the title of offices shall be placed in vertical columns and the names of the candidates shall be placed in horizontal columns with each political party having its own columns and the independents being placed in a single column or columns after the political party columns; with such candidates' names being listed alphabetically according to the initials of their surname, beginning with the first initial. The ballot format for C.E.S., Inc., Votomatic, or other comparable punch card systems shall be governed by the rules set out by the coordinator of elections and the state election commission under § 2-9-110. The ballot format for Shouptronic or other comparable direct recording electronic voting systems shall be governed by the rules set out by the coordinator of elections and the state election commission under § 2-9-110. Such rules shall be approved by not less than four (4) members of the state election commission;

(3) If the arrangement as set out in subdivisions (b)(1) and (2) will not fit on the voting machine ballot, the county election commission may arrange the

ballot so that the voting machine will accommodate the entire ballot including, without limitation, the arrangement of material in vertical columns with the office appearing first and the candidates for such office listed vertically beneath the office, with political party nominees indicated by (D) or (R) and independent candidates by (I); and

(4) Any county using a punch card format system which places an identifying number on the punch card ballot shall place the corresponding number by each position or name displayed on the ballot pages.

(c) The county election commission of each county shall prepare a sample ballot of all candidates listed in § 2-13-202 and mail this sample ballot to the coordinator of elections for approval. No ballot shall be printed or funds expended therefor by any county until such approval has been granted. The coordinator of elections must give approval or disapproval within ten (10) days of the receipt of the sample ballot.

(d) If the coordinator of elections or the state election commission fails to correct promptly any alleged defect in any ballot, whether for voting machine, paper ballot, or otherwise, a candidate, the candidate's representative, or other party deemed to have standing may apply to the chancery court in the county wherein the allegedly defective ballot may be used, for any appropriate relief under this code or the rules of civil procedure.

(e)(1) Should there be so many candidates or questions, or both, to be voted upon in any election, as to exceed the capacity of a voting machine, paper ballots shall be provided for each polling place, to hold the entire ballot. Where paper ballots are required to list the entire ballot, the names of all candidates for any one (1) particular office shall be printed on the same paper ballot.

(2) Notwithstanding the provisions of subdivision (e)(1), in any county where a voting machine will not accommodate the entire ballot, the coordinator of elections may, with the approval of the county election commission, permit the placement of part of the ballot on paper ballots. In considering the priority in which parts of the ballot should be placed on paper ballots, the coordinator shall first permit the placement of the candidates for the court of appeals and the court of criminal appeals on paper ballots. Next, the coordinator shall permit the placement of the unopposed candidates for countywide positions on paper ballots; provided, that no candidate who is unopposed in a primary election shall be placed on paper ballots. In any county having a population of not less than one hundred forty-three thousand nine hundred (143,900) nor more than one hundred forty-four thousand (144,000) according to the 1980 federal census or any subsequent federal census, the coordinator shall permit the placement of candidates in nonpartisan elections for county commission on paper ballots.

(f) The machine shall be so adjusted that when one (1) or more voting pointers equaling the total number of persons to be elected to an office shall have been operated, all other voting pointers connected with that office shall be locked. The machines shall be so adjusted that no voter may vote in more than one (1) party's primary election. [Acts 1972, ch. 740, § 1; 1975, ch. 353, §§ 1, 2; T.C.A., § 2-512; Acts 1982, ch. 871, § 3; 1989, ch. 274, §§ 3, 4; 1989, ch. 573, § 1; 1989, ch. 574, § 1; 1990, ch. 628, § 4; 1990, ch. 797, § 1; 1997, ch. 331, § 1.]

Amendments. The 1997 amendment, in (b), added (3) and redesignated former (3) as present (4).

Effective Dates. Acts 1997, ch. 331, § 3. May 30, 1997.

Cross-References. Arrangement of material on ballots, § 2-5-208.

Voting machines, ch. 9 of this title.

Section to Section References. This section is referred to in § 2-7-131.

2-5-207. Form of paper ballots. — (a) The state election commission shall establish a uniform maximum and minimum width for all paper ballots. Paper ballots shall be of such length and width as the county election commission deems necessary to contain the offices, names of the candidates, and questions required to be printed, with a stub containing a number.

(b) On the back of paper ballots shall be conspicuously printed the words, "Official Ballot for (General) (_____ Party Primary) Election," followed by the designation of the polling place for which the ballot is prepared, the date of the election, and the names of the members of the county election commission holding the election. The size of the print may not be less than ten (10) point.

(c) All paper ballots for use in a polling place shall be fastened together in convenient numbers in books so that each ballot may be detached and removed separately. Each stub shall be attached to the ballot so that when the ballot is folded, the stub can be detached without injury to the ballot and without exposing its contents. Each stub shall be serially numbered by the printer and no two (2) ballots for use in a single precinct may have the same number. The commission shall keep a record of the numbers of the ballots supplied to each polling place.

(d)(1) On paper ballots, the titles of the offices shall be printed vertically on the left side of the ballot. There shall be a sufficient number of columns to list all political party nominees, independents and uncontested races, each political party and the independents having a column of its own. Any candidate whose name is to be placed on the ballot by virtue of party nomination shall be listed in the political column of the candidate's party, opposite the title of the office the candidate seeks. The independent candidate's name shall also be placed opposite the title of the office such candidate seeks. One (1) column will be left blank for each race, for the purpose of write-in candidates.

(2) Whenever primary elections are being held to select nominees, the names of the candidates shall be listed in alphabetical order, according to the initials of their surname, beginning with the first initial, in the column of their respective political party.

(e) The county election commission of each county shall prepare a sample ballot of all candidates listed in § 2-13-202 and mail this sample ballot to the coordinator of elections for approval. No ballot shall be printed or funds expended therefor by any county until such approval has been granted.

(f) The coordinator of elections shall determine distinguishable colors to be used in the printing of the ballot envelopes for early voting and absentee voting. Both envelopes shall include a place for the voter's precinct and district number and a statement for the administrator of elections to sign stating that the voter's signature has been verified and appears to be valid. The absentee voting ballot envelope need not contain a certificate for an attesting official. [Acts 1972, ch. 740, § 1; 1975, ch. 353, § 3; T.C.A., § 2-513; Acts 1988, ch. 933, § 7; 1994, ch. 859, § 8.]

Compiler's Notes. References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

Cross-References. Absentee voting, ch. 6, part 2 of this title.

Early voting, ch. 6, part 1 of this title.

NOTES TO DECISIONS

1. Size of Ballots.

Where ballots voted at a country election were, when voted, of the size prescribed by statute, they could not be rejected because they were clipped after they were voted. Cross v. Keathley, 119 Tenn. 567, 105 S.W. 854 (1907).

Collateral References. Official ballots or ballots conforming to requirements, failure to make available as affecting validity of election of public officer. 165 A.L.R. 1263.

2-5-208. Arrangement of material on ballots. — (a) The requirements of this section apply to all ballots.

(b) Immediately following the title of each office shall be printed the words "Vote for one (1)," "Vote for two (2)," according to the number to be elected.

(c)(1) The order of the titles of the offices to be filled or for which nominees are to be chosen shall be substantially as follows:

(A) Presidential and vice presidential electors;

(B) Governor;

(C) United States senate;

(D) Public service commissioner;

(E) United States house of representatives;

(F) Tennessee senate;

(G) Tennessee house of representatives;

(H) Supreme court judge;

(I) Court of appeals judge;

(J) Court of criminal appeals judge;

(K) Circuit court judge;

(L) Chancellor;

(M) Criminal court judge;

(N) District attorney general;

(O) County executive offices, including popularly elected county executives and mayors of metropolitan county governments;

(P) County legislative offices, including members of the county legislative bodies;

(Q) Assessor of property;

(R) County trustee;

(S) General sessions judge;

(T) Sheriff;

(U) Clerks of courts;

(V) County clerk;

(W) Register;

(X) Elective county department offices, including road superintendents or commissioners, school boards and purchasing agents;

(Y) Municipal executive offices;

(Z) Municipal legislative offices;

(AA) Municipal judicial offices; and

(BB) Offices which do not fall into any classification listed above.

(2) If several offices to be filled are within a single classification, they shall be arranged in alphabetical order.

(d)(1) On general election ballots, the name of each political party having nominees on the ballot shall be listed at the top of the columns, with the listing of the candidates' names underneath. The names of independent candidates for the same office shall be listed in the independent column alphabetically, according to the initials of their surnames, beginning with the first initial. If the ballot arrangement established in this section will not fit on a voting machine ballot, the county election commission may arrange the ballot so that the voting machine will accommodate the entire ballot.

(2) On nonpartisan general election ballots and on the political party's primary ballot, the names of all candidates for the same office shall be arranged alphabetically according to the initials of their surnames, beginning with the first initial.

(e) No number may be prefixed before or affixed after the names of candidates for any office so as to designate by number the order in which candidates' names are on the ballot for any office. The limitation set out in this subsection does not prohibit the printing of numerals on the face of punch cards or ballots used with the microvote electronic voting system.

(f)(1) Whenever a question is submitted to the vote of the people, it shall be printed upon the ballot before or at the top right of the list of candidates, followed by the words "Yes" and "No," so that the voter can vote a preference by making a cross mark (X) opposite the proper word; provided, that whenever the question of a state constitutional amendment is submitted to the vote of the people pursuant to Tenn. Const., art. XI, § 3, para. 1, it shall be printed upon the ballot directly after the list of candidates for governor followed by the words "Yes" and "No" so that the voter can vote a preference by making a cross mark (X) opposite the proper word. Any question submitted to the people shall be worded in such a manner that a "yes" vote would indicate support for the measure and a "no" vote would indicate opposition.

(2) If the full statement of a question is more than three hundred (300) words in length, the question shall be preceded by a brief summary of the proposal written in a clear and coherent manner using words with common everyday meanings. Such summary shall not exceed two hundred (200) words in length. The summary shall be written by the attorney general and reporter for questions submitted to the voters of the entire state or of more than one (1) county or by the county attorney of the county in which the question is to be voted upon for questions to be submitted to the voters of one (1) county or any part of a county. The summary for questions submitted to the voters of a municipality shall be written by the city attorney of the municipality in which the question is to be voted upon.

(g) The ballot for each political party's presidential preference primary shall be headed "Candidates of the Party for President of the United States." Beneath the heading shall be "I declare my preference for candidate for the office of President of the United States to be:" followed by the names of the candidates.

(h) The names of presidential candidates shall be arranged according to political parties, and followed by the words, (giving the name) for president and (giving the name) for vice president. Names of electors need not appear on the ballot.

(i) When there are so many candidates for an office that their names will not all fit either horizontally or vertically on the ballot with the name of the office, the names shall be listed in alphabetical rotation from left to right in each necessary row in the following manner:

"[ ] ADAMS	[ ] BLACK	[ ] CONWAY
[ ] SMITH	[ ] THOMAS	[ ] THOMS
[ ] VADEN"		

(j) Each state primary board shall prescribe a color for its party's primary ballots which shall be uniform throughout the state and different from every other party's.

(k) At the time of qualification for judge of the supreme court, the candidate shall state on the qualifying petition the grand division in which the candidate resides and the particular seat on the supreme court for which the candidate seeks election. The commissioners of elections shall cause the names of the candidates to be arranged on the ballot so as to denote the grand division of the state for which they are seeking to be elected or whether they are candidates from the state at large by prefixing to the names of the candidates the words "eastern," "western" or "middle" division or "the state at large." [Acts 1972, ch. 740, § 1; 1974, ch. 708, § 1; 1975, ch. 353, § 4; impl. am. Acts 1978, ch. 934, §§ 7, 22, 36; Acts 1978, ch. 934, § 29; T.C.A., §§ 2-308, 2-514; Acts 1981, ch. 110, § 1; 1981, ch. 246, § 1; 1981, ch. 300, § 1; 1983, ch. 20, § 1; 1988, ch. 672, § 3; 1990, ch. 628, § 5; 1995, ch. 305, § 56; 1996, ch. 574, § 1; 1997, ch. 331, § 2; 1997, ch. 558, § 5.]

Compiler's Notes. Acts 1997, ch. 558, § 34 provided that the act take effect upon becoming a law. The act was returned without the governor's signature and became effective under the provisions of Tenn. Const., art. III, § 18.

Amendments. The 1996 amendment inserted "or ballots used with the microvote electronic voting system" at the end of the last sentence in (e).

The 1997 amendment by ch. 331 added the last sentence in (d)(1).

The 1997 amendment by ch. 558 rewrote (h), which read: "The names of presidential electors shall be arranged in groups, according to political parties, and preceded by the words, "Electors for (giving the name) candidate for president and for (giving the name) candidate for vice president" so that the voter can vote for the entire group of electors chosen by any political party by making a cross mark (X) or operating a single lever on a voting machine opposite the words at the head of the group of electors, which words reveal the name of the candidates for president and vice president of the particular political party whom such group of electors is pledged to support."

Effective Dates. Acts 1996, ch. 574, § 2. February 29, 1996.

Acts 1997, ch. 331, § 3. May 30, 1997.

Acts 1997, ch. 558, § 34. June 25, 1997.

Section to Section References. This section is referred to in §§ 5-1-209, 7-21-205.

Textbooks. Tennessee Jurisprudence, 10 Tenn. Juris., Elections, § 12.

Law Reviews. Selected Tennessee Legislation of 1983 (N.L. Resener, J.A. Whitson, K.J. Miller), 50 Tenn. L. Rev. 785 (1983).

Cited: MacBride v. Hassler, 541 S.W.2d 591 (Tenn. 1976); Dehoff v. Attorney Gen., 564 S.W.2d 361 (Tenn. 1978).

NOTES TO DECISIONS

ANALYSIS

1. Proposal.
2. Question.

1. Proposal.

There was no legislative intent to construe

"full statement" in subsection (f) as meaning the same as "proposal." Rodgers v. White, 528 S.W.2d 810 (Tenn. 1975).

"Proposal" in subsection (f) means the complete proposition, to be approved or rejected by the people. Rodgers v. White, 528 S.W.2d 810 (Tenn. 1975).

2. Question.

"Question" in subsection (f) refers to the question that is placed upon the ballot. Rodgers v. White, 528 S.W.2d 810 (Tenn. 1975).

In an election as required by § 67-6-706, a summary of the resolution constituted such a statement of the question that the voter could intelligently vote his preference and comply with the statutes. Pidgeon-Thomas Iron Co. v. Shelby County, 217 Tenn. 288, 397 S.W.2d 375 (1965).

2-5-209. Number of paper ballots for each polling place — Number reserved for emergency use. — (a) Each county election commission shall provide, for each polling place at which it is holding a general election without voting machines, a number of general election paper ballots equal to one hundred four percent (104%) of the number of registered voters at the polling place. Each commission shall provide, for each polling place at which it is holding a general election using voting machines, a number of general election paper ballots equal to four percent (4%) or more of the number of registered voters at the polling place.

(b) Each county election commission shall provide, for each polling place at which it is holding a primary without voting machines, a number of primary paper ballots for each party equal to one hundred four percent (104%) or more of the number of voters who voted in the party's last primary at the polling place. Each commission shall provide, for each polling place at which it is holding a primary using voting machines, a number of primary paper ballots for each party equal to four percent (4%) or more of the number of voters who voted in the party's last primary at the polling place. Each commission shall provide, for each polling place at which it is holding the first primary of a new political party, as many paper ballots as it judges necessary for that party's primary.

(c) Each county election commission shall reserve in its office for emergency use under § 2-7-108 a number of paper ballots for each precinct equal to five percent (5%) of the number of voters used in figuring the number of paper ballots to be printed for the precinct.

(d) Notwithstanding any provision of this section to the contrary, no county which uses or has a C.E.S., Inc., Votomatic or other comparable punch card voting system shall be required to provide paper ballots at any polling place during any election or primary. Any such county shall, in lieu of such ballots, provide an adequate number of write-in envelopes for use in the event a voter wishes to cast a write-in vote. Any voter desiring to cast a write-in vote shall follow the procedure specified in § 2-7-117. [Acts 1972, ch. 740, § 1; 1974, ch. 441, § 1; T.C.A., § 2-515; Acts 1988, ch. 672, § 2.]

Section to Section References. This section is referred to in § 2-7-108.

NOTES TO DECISIONS

1. Number of Ballots Furnished.

The general assembly has in effect established a policy of law as to the number of ballots to be sent to each voting place. Shoaf v. Bringle, 192 Tenn. 695, 241 S.W.2d 832 (1951).

2-5-210. Instruction cards. — The coordinator of elections shall provide the county election commission with instruction cards for each polling place in large, clear type. The instruction cards shall contain full instructions for the guidance of voters in obtaining ballots or admission to voting machines, in casting their votes, in obtaining assistance, and in obtaining new ballots in place of those accidentally spoiled or in moving from an inoperative machine to a functioning one. [Acts 1972, ch. 740, § 1; T.C.A., § 2-516.]

2-5-211. Sample ballots. — (a) The county election commission shall provide two (2) sample ballots for each polling place, arranged in the manner of the paper ballots for the polling place where voting machines are not used, but arranged in the form of a diagram showing the part of the face of the voting machine in use at that election where voting machines are used. Sample ballots may be either full or reduced size and shall contain suitable illustrated instructions for voting; provided, that in any county in which the votomatic punch card system is used, the county election commission may use copies of the guide page ballot as sample ballots.

(b) The county election commission shall, at least five (5) days before the beginning of an early voting period and at least five (5) days before an election, publish a sample ballot in a newspaper of general circulation. Where voting machines are used, the sample ballot shall be the machine sample ballot. The sample ballot shall contain the names of all candidates and all offices and a statement of all questions on which voters may vote. [Acts 1972, ch. 740, § 1; T.C.A., § 2-517; Acts 1981, ch. 240, § 1; 1995, ch. 88, § 11.]

2-5-212. [Repealed.]

Compiler's Notes. Former § 2-5-212 (Acts 1972, ch. 740, § 1; T.C.A., § 2-518), concerning the requirement of a model of a machine at polls for voters' instruction, was repealed by Acts 1981, ch. 478, § 3. For current law, see §§ 2-5-210 and 2-5-213.

2-5-213. Instruction facilities for voters. — The county election commission shall, where voting machines are used, provide adequate facilities for the instruction of voters prior to each election. The commission shall have in one (1) or more convenient public places a voting machine with samples of ballot labels affixed for the purpose of instructing voters in the operation of the machine. The samples of ballot labels may not contain the names of or names similar to those of candidates in the election. [Acts 1972, ch. 740, § 1; T.C.A., § 2-519.]

2-5-214. Ballot boxes. — (a) The county election commission shall furnish for each polling place and for absentee voting at the commission office, locks and standard ballot boxes made of metal or such other material deemed as safe, durable, and secure by the coordinator of elections and the state election commission.

(b) The coordinator of elections shall prescribe the dimensions for such boxes, making allowance for the differences in numbers of voters using paper ballots at the various polling places.

(c) The county election commission shall prescribe and provide the type of lock and seals to be used. [Acts 1972, ch. 740, § 1; T.C.A., § 2-520; Acts 1985, ch. 78, § 1; 1993, ch. 518, §§ 15, 21; 1994, ch. 859, § 9.]

Cross-References. Sealed absentee ballots, § 2-6-311.

Section to Section References. This section is referred to in § 2-6-311.

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

1. Separate Boxes for Women.

A joint resolution by the general assembly purporting to empower the election boards to provide separate ballot boxes for women conferred no additional power on the election officers, but may be considered as an expression of legislative opinion and advice that the election officers already had the power to take such steps. Vertrees v. State Bd. of Elections, 141 Tenn. 645, 214 S.W. 737 (1919).

Election officers have power to provide separate ballot boxes for women in order to prevent fraud, independent of the joint resolution of the general assembly recommending and directing such course. Vertrees v. State Bd. of Elections, 141 Tenn. 645, 214 S.W. 737 (1919).

2-5-215. Bound duplicate registration records. — The county election commission shall provide for each polling place at all elections the bound duplicate registration records of all persons registered at the polling place. [Acts 1972, ch. 740, § 1; T.C.A., § 2-521.]

2-5-216. Supplies for each polling place. — (a) The county election commission shall provide for each polling place:

(1) Duplicate poll list forms on which to list the names of voters made so that writing on one (1) sheet makes an exact copy on the second sheet, and duplicate poll books;

(2) The application for ballot forms shall contain a certification by the applicant that the applicant is a registered and qualified voter in the precinct in which the applicant is offering to vote and requests a ballot to vote in the election. The application shall contain a space for the initials of the administrator of elections approving the application and for ballot numbers and shall contain a printed application number. If a primary election is being held, the application shall include a place for the voter to indicate the voter's party;

(3) Duplicate tally sheets which shall include the name of each candidate and question to be voted on at the polling place in the order in which they appear on the ballot and blanks for the names of write-in candidates. There shall be a space with each name or question for recording votes by paper ballot and, where voting machines are used, by voting machine and the total vote; and

(4) Duplicate record sheets for counting paper ballots.

(b) If a county is using a computerized voter registration system which has been approved by the coordinator of elections and the state election commission, and if the county legislative body approves by resolution the use of a computer printout instead of the duplicate registration records, the county election commission shall provide for each polling place the following:

(1)(A) A printout containing the names and addresses of all eligible voters at the polling place and a space for the signature of each voter;

(B) Notwithstanding the provisions of subdivision (b)(1)(A), in any county having a population of not less than seventy-seven thousand nine hundred (77,900) nor more than seventy-eight thousand (78,000) according to the 1990 federal census or any subsequent federal census in which a computerized voter registration system which has been approved by the coordinator of elections and the state election commission is in use, the county election commission shall provide for each polling place a printout containing the names and addresses of all eligible voters at the polling place and a space for the signature of each voter. This use of the computerized printout at each polling place instead of both the printout and the duplicate registration records requires an authorizing resolution approved by the county legislative body by a two-thirds (⅔) vote;

(2) The application for ballot forms containing the certification required in subdivision (a)(2); provided, that ballot applications need not be provided in any county which uses Votomatic or a comparable punch card voting system;

(3) Duplicate tally sheets containing the information required in subdivision (a)(3); and

(4) Duplicate record sheets for counting paper ballots. [Acts 1972, ch. 740, § 1; T.C.A., § 2-522; Acts 1989, ch. 590, § 3; 1990, ch. 953, § 1; 1990, ch. 954, § 1; 1990, ch. 956, § 1; 1990, ch. 959, § 1; 1990, ch. 1020, § 1; 1990, ch. 1084, § 1; 1991, ch. 99, § 1; 1991, ch. 302, § 1; 1992, ch. 536, §§ 1, 2.]

Code Commission Notes. Acts 1992, ch. 536, § 3 provided that any approval granted under prior law by a county legislative body prior to March 12, 1992, shall continue in full force and effect until such approval is revoked by a comparable action of a county legislative body.

Compiler's Notes. References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

Cross-References. Additional supplies, § 2-3-108.

Ballot supplies for persons with visual impairments, § 2-5-218.

Number of paper ballots for each polling place, § 2-5-209.

2-5-217. Ballot boxes paid for by state. — All ballot boxes shall be paid for by the state. [Acts 1972, ch. 740, § 1; T.C.A., § 2-523.]

Compiler's Notes. This section may be affected by § 9-1-116, concerning entitlement to funds, absent appropriation.

2-5-218. Ballot supplies for persons with visual impairments. — (a) All nominating petitions, instruction cards, application for ballot forms, and the rules and regulations regarding qualifying for public office may be made available in large print, and in recorded form for citizens of Tennessee with visual impairments. The above named documents and recordings must be available only at the main county election commission office.

(b) The state's share of the funding for the implementation of this section shall be derived from state taxes currently being shared with local governments. [Acts 1979, ch. 190, §§ 1, 2; T.C.A., § 2-524; Acts 1982, ch. 871, § 2.]

Cross-References. Assistance to blind voters, § 2-7-116.

2-5-219. Candidates nominated by write-in votes — Withdrawal of name. — (a) Notwithstanding any other provision of general law, or special act, or municipal charter to the contrary, no write-in candidate in a primary election for a position as a county or municipal official shall have such candidate's name placed upon the ballot in the election for such position unless such candidate received not less than twenty-five (25) votes.

(b) If a candidate is nominated as prescribed in subsection (a) by write-in votes, such a nominated candidate may withdraw from the nomination by filing a letter of withdrawal with the county election commission not later than ten (10) days after the primary election wherein such candidate was nominated. [Acts 1982, ch. 607, §§ 1, 2.]

2-5-220. Punch card voting systems. — All counties which use or have C.E.S., Inc., Votomatic, or other comparable punch card voting systems shall use such punch card system exclusively in any election occurring after July 1, 1988. After such date, there shall be no paper ballots used for elections in such counties. [Acts 1988, ch. 672, § 1.]

CHAPTER 6

ABSENTEE VOTING

SECTION.

PART 1—PURPOSE AND EARLY VOTING

PART 2—ABSENTEE VOTING

PART 3—GENERAL PROVISIONS

PART 4—EMERGENCY ABSENTEE VOTING

PART 5—VOTING BY MILITARY AND OVERSEAS CITIZENS

SECTION.

PART 6—VOTING AT LICENSED NURSING HOMES

PART 1—PURPOSE AND EARLY VOTING

2-6-101. Purpose of chapter and part — Construction. — (a) The purpose of this chapter is to provide a means for qualified voters to cast their votes when they would otherwise be unable to.

(b) The purpose of this part is to establish an early voting period when eligible registered voters may vote before an election at the county election commission office or another polling place appropriately designated by the county election commission.

(c) To prevent fraud in an election, strict compliance with the provisions of this chapter is required. [Acts 1972, ch. 740, § 1; T.C.A., § 2-601; Acts 1994, ch. 859, § 2; 1995, ch. 88, § 9.]

Compiler's Notes. Former chapter 6 was rearranged by Acts 1994, ch. 859, which divided the chapter into five parts, and transferred or repealed the existing sections. The following table lists the sections in former chapter 6 and indicates their new location, if any, in parts 1-5 of this chapter.

Former Sections	New Sections
2-6-101	2-6-101
2-6-102	2-6-201
2-6-103	2-6-103
2-6-104	2-6-105
2-6-105	2-6-106
2-6-106	2-6-501
2-6-107	2-6-107
2-6-108	2-6-108
2-6-109	2-6-102, 2-6-109
2-6-110	2-6-111
2-6-111	2-6-202
2-6-112	2-6-502
2-6-113	2-6-203
2-6-114	2-6-204
2-6-115	2-6-301
2-6-116	2-6-302
2-6-117	2-6-303
2-6-118	2-6-304
2-6-119	2-6-305
2-6-120	2-6-306
2-6-121	2-6-307
2-6-122	Repealed
2-6-123	2-6-308
2-6-124	Repealed
2-6-125	2-6-309
2-6-126	2-6-310
2-6-127	2-6-311
2-6-128	2-6-312
2-6-129	2-6-401
2-6-130	2-6-503

Former §§ 2-6-122 and 2-6-124 (Acts 1972, ch. 740, § 1; 1977, ch. 70, § 1; 1978, ch. 814, § 3; 1978, ch. 861, § 2; T.C.A., § 2-622; Acts 1991, ch. 184, § 4), concerning the forms for application for absentee voting by personal appearance and for certification of nonregistration, were repealed by Acts 1994, ch. 859, § 2.

Section to Section References. This part is referred to in § 2-6-201, 68-11-302.

Textbooks. Tennessee Jurisprudence, 10 Tenn. Juris., Elections, § 23.

Law Reviews. Tennessee Civil Disabilities: A Systemic Approach (Neil P. Cohen), 41 Tenn. L. Rev. 253.

Comparative Legislation. Absentee voting:

Ala. Code § 17-10-1 et seq.

Ark. Code § 7-5-401 et seq.

Ga. O.C.G.A. § 21-2-380 et seq.

Ky. Rev. Stat. Ann. § 117.085 et seq.

Miss. Code Ann. § 23-15-621 et seq.

Mo. Rev. Stat. § 115.275 et seq.

N.C. Gen. Stat. § 163-226 et seq.

Va. Code § 24.1-227 et seq.

Collateral References. 26 Am. Jur. Elections §§ 243-252.

29 C.J.S. Elections § 210.

Construction and effect of absentee voters' laws. 97 A.L.R.2d 257.

Validity of absentee voters' laws. 97 A.L.R.2d 218.

Elections ⇐ 216.1.

2-6-102. Early voting applications — Ballots — Time for voting. — (a)(1) A voter who desires to vote early shall go to the county election commission office within the posted hours not more than twenty (20) days nor less than five (5) days before the day of the election. A voter desiring to vote in the early voting period shall sign an application for a ballot.

(2) The state coordinator shall supply or approve the form of the application for a ballot.

(b) In the case of a municipal election if there is no opposition for any of the offices involved, the period for early voting is not more than ten (10) days nor less than five (5) days before the day of the election. [Acts 1972, ch. 740, § 1; T.C.A., § 2-609; Acts 1982, ch. 665, § 2; 1991, ch. 69, § 1; T.C.A., § 2-6-109; Acts 1994, ch. 859, § 2.]

Compiler's Notes. For transfer of former section in 1994, see the Compiler's Notes under § 2-6-101.

Section to Section References. This section is referred to in § 2-6-401.

2-6-103. County election commission office hours. — (a)(1) The county election commission office shall be open a minimum of three (3) consecutive hours each weekday including Saturdays between the hours of eight o'clock a.m. (8:00 a.m.) and six o'clock p.m. (6:00 p.m.) prevailing time during the period provided to apply to vote early. For a municipality with a population of less than five thousand (5,000) according to the 1990 federal census or any subsequent federal census, the municipal governing body may determine the Saturday schedule of early voting for municipal elections.

(2) If the proper notice under subsection (c) is made, a county election commission may close its office on a state holiday during the period established for early voting.

(b)(1) On at least three (3) days during the early voting period for those offices listed in § 2-13-202, or for any state or federal election, the county election commission office shall remain open between four-thirty p.m. (4:30 p.m.) and eight o'clock p.m. (8:00 p.m.), and on at least one (1) Saturday during the same period the office shall be open from eight o'clock a.m. (8:00 a.m.) to four o'clock p.m. (4:00 p.m.). The county election commission shall determine the appropriate dates for both late and regular hours at the commission office. The provisions of this subsection shall apply only to those counties with a population in excess of one hundred fifty thousand (150,000) according to the 1970 census.

(2) In counties affected by this subsection, the provisions of this subsection shall also apply to municipal elections for the principal municipality of the county. For such municipal elections, the municipal governing body and the county election commission shall jointly determine the appropriate dates for additional hours. The municipality shall be responsible for the costs of such additional hours.

(c) Notice of the office hours shall be given by the county election commission not less than twenty-five (25) days prior to the day of election by publication in a newspaper of general circulation. [Acts 1972, ch. 740, § 1; 1979, ch. 228, § 1; T.C.A., § 2-603; Acts 1985, ch. 238, §§ 1-4; 1994, ch. 859, §§ 2, 12; 1996, ch. 1028, § 1.]

Amendments. The 1996 amendment added (b)(2).

Effective Dates. Acts 1996, ch. 1028, § 2. May 15, 1996.

2-6-104. Voting machines for early voting. — (a) A county election commission may use voting machines for early voting. The county election commission shall choose one (1) of the following options for its method of early voting:

(1) Place all races on a machine ballot;

(2) Place some of the races on a machine ballot and part of the races on a paper ballot; or

(3) Place all races on a paper ballot.

(b)(1) No single mechanical lever machine may have more than nine hundred ninety-nine (999) voters using a single machine during the early voting period.

(2) No single direct recording electronic (DRE) voting system may have more than nine thousand nine hundred ninety-nine (9,999) voters using a single machine during the early voting period.

(c) The county election commission shall secure each voting machine used in early voting to prohibit tampering and shall also provide maximum security that allows no other person, except for persons designated by the election commission or the administrator of elections, to have access to the room or facility in which the voting machines, ballots and other election supplies are stored.

(d) The coordinator of elections shall, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, promulgate rules and regulations for use of voting machines for early voting. These rules and regulations shall include appropriate provisions for the security of the machines. [Acts 1994, ch. 859, § 2; 1997, ch. 558, § 18.]

Compiler's Notes. For transfer of former section in 1994, see the Compiler's Notes under § 2-6-101.

Acts 1997, ch. 558, § 34 provided that the act take effect upon becoming a law. The act was returned without the governor's signature and became effective under the provisions of Tenn. Const., art. III, § 18.

References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

Amendments. The 1997 amendment added "and shall also provide maximum security that allows no other person, except for persons designated by the election commission or the administrator of elections, to have access to the room or facility in which the voting machines, ballots and other election supplies are stored" at the end of (c).

Effective Dates. Acts 1997, ch. 558, § 34. June 25, 1997.

2-6-105. Voter assistance — Attestation. — Persons voting early are entitled to the same assistance in voting they would be entitled to if they appeared to vote on election day. The procedures under § 2-7-116 govern how assistance should be given. [Acts 1972, ch. 740, § 1; T.C.A., § 2-604; Acts 1980, ch. 638, § 9; T.C.A., § 2-6-104; Acts 1994, ch. 859, §§ 2, 12; 1995, ch. 88, § 1.]

Compiler's Notes. For transfer of former section in 1994, see the Compiler's Notes under § 2-6-101.

Cited: Payne v. Ramsey, 591 S.W.2d 434 (Tenn. 1979).

2-6-106. Voter unable to write signature or make mark. — If an applicant or voter is so disabled that the applicant or voter cannot write a signature or make a mark where required, the action of the person who offers assistance shall be witnessed by one (1) additional person. Both the person giving assistance and the witness shall sign their names and provide their addresses. [Acts 1972, ch. 740, § 1; T.C.A., § 2-605; Acts 1980, ch. 638, § 10; T.C.A., § 2-6-105; Acts 1994, ch. 859, § 2.]

Compiler's Notes. For transfer of former section in 1994, see the Compiler's Notes under § 2-6-101.

Cited: Emery v. Robertson County Election Comm'n, 586 S.W.2d 103 (Tenn. 1979).

2-6-107. Application and supplies limited. — The election commission shall furnish only one (1) application for early voting or one (1) set of early voting supplies to any voter unless the voter notifies the commission that the voter has spoiled the application or notifies the commission that the voter has not received the application or voting supplies. If so, the commission shall supply the voter with a subsequent application or supplies. The commission shall note on the records that a subsequent application or supplies have been sent. [Acts 1972, ch. 740, § 1; T.C.A., § 2-607; Acts 1993, ch. 518, § 7; 1994, ch. 859, §§ 2, 12.]

2-6-108. Attesting officials. — In each county, the county election commissioners of the minority party may appoint one (1) early voting deputy who shall receive as compensation for each day spent in such service the same pay as an election official in the county for which such person is appointed. [Acts 1972, ch. 740, § 1; 1973, ch. 305, §§ 1, 2; 1979, ch. 306, § 12; T.C.A., § 2-608; Acts 1982, ch. 566, § 1; 1988, ch. 651, § 1; 1988, ch. 933, § 8; 1994, ch. 859, §§ 2, 12; 1995, ch. 88, § 2.]

Compiler's Notes. References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

2-6-109. Verification of signature — Voting — Affidavits — Voting booths. — (a) Upon completion of the application, the administrator of elections shall compare the signature of the voter with the signature on the voter's permanent registration record, or other evidence of identification if computerized duplicate registration records are used, and shall endorse on the application that the two (2) signatures are, or are not, the same. The administrator shall make a determination whether the voter's address is different from the address on the voter's permanent registration record or if the registration is in inactive status. If the voter has changed residence, or the voter's registration is inactive, the administrator shall follow the procedures for voting pursuant to § 2-7-140. Upon determination that the voter is entitled to vote early in the election, the administrator shall hand to the voter, after recording the ballot number on the voter's permanent registration record:

(1) Instructions; and

(2) One (1) early voting ballot or one (1) primary early voting ballot or both.

(3) [Deleted by 1995 amendment.]

In a computerized county, the administrator may record the ballot number on the computer-generated duplicate registration record or the voter's application to vote.

(b) The voter shall show the unmarked ballot to the early voting official, mark the ballot in secret at the place provided in the commission office, either fold the ballot or place it in a secrecy sleeve provided by the election commission in order to preserve the secrecy of the ballot, and return to the early voting official.

(c)(1) The early voting official shall direct the voter to the correct general election early voting ballot box and/or party primary early voting ballot box according to the election and precinct in which the voter voted. The voter shall deposit the ballot in the appropriate ballot box or boxes.

(2) Except in cases in which computerized duplicate registration records are used, the attesting official shall, in the presence of the voter, note on the voter's duplicate permanent registration record that the voter has voted early in the election and in every case, including those counties in which computerized duplicate registration records are used, record the voter's name on the early voting poll book for each election in which the voter voted.

(3) In those counties in which computerized duplicate registration records are used, the attesting official shall update the voter's computerized voter history by making the appropriate data entry.

(d) A county election commission may use any voting machine authorized for use under chapter 9 of this title, for early voting.

(e) The county election commission must provide a place where the voter may mark the ballot in complete secrecy and privacy. [Acts 1972, ch. 740, § 1; 1979, ch. 316, § 2; T.C.A., § 2-609; Acts 1982, ch. 665, § 2; 1988, ch. 993, §§ 1, 2; 1989, ch. 591, § 113; 1991, ch. 69, § 1; 1994, ch. 859, §§ 2, 12; 1995, ch. 88, §§ 3-5; 1997, ch. 550, § 6; 1997, ch. 558, § 15.]

Compiler's Notes. For transfer of former subsection (a) in 1994, see the Compiler's Notes under § 2-6-101.

Acts 1997, ch. 558, § 34 provided that the act take effect upon becoming a law. The act was returned without the governor's signature and became effective under the provisions of Tenn. Const., art. III, § 18.

References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

Amendments. The 1997 amendment by ch. 550 added the second and third sentences in (a).

The 1997 amendment by ch. 558 rewrote (e).

Effective Dates. Acts 1997, ch. 550, § 11. June 23, 1997.

Acts 1997, ch. 558, § 34. June 25, 1997.

Cross-References. Penalty for Class C misdemeanor, § 40-35-111.

Section to Section References. This section is referred to in § 2-6-401.

Cited: Payne v. Ramsey, 591 S.W.2d 434 (Tenn. 1979).

NOTES TO DECISIONS

Decisions Under Prior Law

1. Construction.

Former version of (b) concerning absentee ballots was to be construed in accordance with § 2-6-101. Foust v. May, 660 S.W.2d 487 (Tenn. 1983).

2-6-110. Early voting application — Uniform forms. — The coordinator of elections shall adopt a uniform form for each county election commission for an application for early voting. [Acts 1994, ch. 859, § 2.]

2-6-111. Filling out application to vote early. — The administrator of elections shall fill out the application to vote early except for the applicant's signature or mark. [Acts 1972, ch. 740, § 1; T.C.A., §§ 2-610, 2-6-110; Acts 1994, ch. 859, §§ 2, 12; 1995, ch. 88, § 6.]

Compiler's Notes. For transfer of former section in 1994, see the Compiler's Notes under § 2-6-101.

References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

Cross-References. Form of affidavit, § 2-6-109.

Form of application, § 2-6-110.

2-6-112 — 2-6-130. [Transferred or repealed.]

Compiler's Notes. For transfer or repeal of these sections in 1994, see the Compiler's Notes under § 2-6-101.

PART 2—ABSENTEE VOTING

2-6-201. Methods of voting absentee. — A registered voter in any of the following circumstances may vote absentee by mail in the procedures outlined in this part:

(1) PERSONS OUTSIDE OF COUNTY. If the voter will be outside the county where the voter is registered during the early voting period and on election day during all the hours the polls are open for any reason other than the fact that the voter will be imprisoned;

(2) STUDENTS AND SPOUSES OUTSIDE OF COUNTY. If a voter is enrolled as a full-time student in an accredited college, university or similar accredited institution of learning in this state which is outside the county where the voter is registered. This provision also applies to the spouse of the student who resides with the student.

(3)(A) PERMANENT ABSENTEE VOTING REGISTER. The county election commission shall establish a permanent absentee voting register for any person who is, because of sickness, hospitalization or physical disability unable to appear at either the commission office or at the person's polling place for the purpose of voting. To be eligible for placement on the register, a voter shall file a statement by the person's licensed physician with the county election commission stating, under the penalty of perjury, that in the physician's professional medical judgment, the patient (voter) is medically unable to appear at the polling place to vote and is medically unable to go to the commission office for the purpose of early voting. The voter shall file the physician's statement and the application not less than five (5) days before the election. The administrator of elections shall attach the physician's statement to the voter's permanent registration record. Without any further request, the administrator shall send to each person placed on the perma-

nent absentee voting register an application for an absentee ballot for each election in which the person may vote;

(B) RESIDENTS OF CERTAIN INSTITUTIONS. In the case of individuals who are full-time residents of any licensed nursing home, home for the aged or similar licensed institution providing relatively permanent domiciliary care, other than a penal institution, outside the voter's county of residence, the procedure for voting shall substantially follow the provisions established in subdivision (3)(A) for voters on the permanent absentee voting register, or the voter may vote under the procedures established in subdivision (1) for voters outside of the county.

(4) JURORS. If an individual expects to be unable to appear during the early voting period or at the polling place on election day because the person is serving as a juror for a federal or state court;

(5) PERSONS OVER 65 — PERSONS HOSPITALIZED, ILL OR DISABLED.

(A) A person sixty-five (65) years of age or older when the person requests to vote absentee;

(B) The person is a handicapped voter as defined in § 2-3-109, and the voter's polling place is inaccessible;

(C) The person is hospitalized, ill or physically disabled, and because of such condition, the person is unable to appear at the person's polling place on election day; or

(D) The person is a caretaker of a hospitalized, ill or disabled person.

(6) CANDIDATES FOR OFFICE. Without stating any reason therefor, if the voter is a candidate for office in the election for which the voter seeks to cast an absentee ballot;

(7) ELECTION OFFICIALS — ELECTION COMMISSION MEMBERS OR EMPLOYEES. If the person is an election official or a member or employee of the election commission on election day.

(8) OBSERVANCE OF A RELIGIOUS HOLIDAY. If the voter cannot appear during the early voting period or at the polling place because of observance of a religious holiday. [Acts 1972, ch. 740, § 1; 1973, ch. 399, § 1; 1975, ch. 133, § 1; 1975, ch. 381, § 1; 1978, ch. 814, §§ 1, 2; 1978, ch. 861, §§ 1, 4; 1979, ch. 316, § 1; T.C.A., § 2-602; Acts 1980, ch. 638, §§ 4-6, 8; 1983, ch. 450, § 3; 1985, ch. 90, § 1; 1986, ch. 763, § 1; 1989, ch. 455, § 1; 1990, ch. 731, § 1; 1991, ch. 70, § 1; 1991, ch. 71, §§ 1, 2; 1991, ch. 184, § 3; 1993, ch. 518, §§ 8-10, 21; T.C.A., § 2-6-102; Acts 1994, ch. 859, § 2; 1997, ch. 558, §§ 11, 20.]

Compiler's Notes. As to licenses issued on or after July 1, 1989, the distinction between "operator's" and "chauffeur's" licenses no longer exists, and all driver licenses will be issued in one of the classes in § 55-50-102. See also § 55-50-305.

Acts 1997, ch. 558, § 34 provided that the act take effect upon becoming a law. The act was returned without the governor's signature and became effective under the provisions of Tenn. Const., art. III, § 18.

References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

Amendments. The 1997 amendment substituted "five (5)" for "seven (7)" in the third sentence in (3)(A) and rewrote (3)(B).

Effective Dates. Acts 1997, ch. 558, § 34. June 25, 1997.

Cross-References. Absentee voting procedure required in runoff election following primary for municipal office, § 2-3-206.

Law Reviews. Selected Tennessee Legislation of 1983 (N.L. Resener, J.A. Whitson, K.J. Miller), 50 Tenn. L. Rev. 785 (1983).

Comparative Legislation. Absentee voting:

Ala. Code § 17-10-1 et seq.
Ark. Code § 7-5-401 et seq.
Ga. O.C.G.A. § 21-2-380 et seq.
Ky. Rev. Stat. Ann. § 117.075 et seq.
Miss. Code Ann. § 23-15-449; 23-15-621 et seq.
Mo. Rev. Stat. § 115.275 et seq.
N.C. Gen. Stat. § 163-226 et seq.
Va. Code § 24.2-700 et seq.

NOTES TO DECISIONS

ANALYSIS

1. Constitutionality.
2. Strict compliance.
3. Violations.
4. Absence from state or country.
5. Physician's statement.

1. Constitutionality.

Provisions of this section expressly prohibiting incarcerated persons from utilizing the absentee ballot denied those incarcerated persons who had not been convicted of an infamous crime and who were otherwise entitled to vote equal protection of the laws guaranteed by the fourteenth amendment of the United States Constitution. Tate v. Collins, 496 F. Supp. 205 (W.D. Tenn. 1980).

2. Strict Compliance.

The provisions for absentee voting must be strictly observed. Lanier v. Revell, 605 S.W.2d 821 (Tenn. 1980).

In determining how strictly absentee ballot provisions should be construed, court looked to extrinsic evidence to support applications for absentee ballots, and held technical omission did not invalidate the ballots where deputy compared the signatures on the applications, found them to be the same, yet failed to so indicate on the application; the procedural safeguard was not the marking on the application but the comparing of signatures, and this had been done. Foust v. May, 660 S.W.2d 487 (Tenn. 1983).

3. Violations.

Violation of the absentee voting statutes presents the opportunity for fraud, whether committed or intended and where there is proof of actual fraud only, or a violation of statutory safeguards only, or a combination of the two, the issue is whether or not those acts, viewed cumulatively, compel the conclusion that the election did not express the free and fair will of the qualified voters. Emery v. Robertson County Election Comm'n, 586 S.W.2d 103 (Tenn. 1979).

4. Absence from State or Country.

The statutory requirement that a voter be outside either the state or country on election day in order to be afforded the benefit of absentee measures is riddled with exceptions. Tate v. Collins, 496 F. Supp. 205 (W.D. Tenn. 1980).

5. Physician's Statement.

A person may vote absentee if due to hospitalization, illness or physical disability the person will be unable to appear at his polling place on election day and it is not necessary that a declaration that the person will be unable to appear be supported by a physician's statement unless the person is attempting to be placed on a permanent register. Millar v. Thomas, 657 S.W.2d 750 (Tenn. 1983).

DECISIONS UNDER PRIOR LAW

ANALYSIS

1. Construction.
2. Reasons for absence.
3. Comparing signatures.

1. Construction.

It was the intention of the general assembly that the absentee voting law should be given a strict construction rather than a liberal construction. Hilliard v. Park, 212 Tenn. 588, 370 S.W.2d 829 (1963), overruled in part on other grounds, Southall v. Billings, 213 Tenn. 280, 375 S.W.2d 844 (1963).

The intent of the general assembly in enacting the absentee voting law was to prevent fraud in elections by the use of absentee votes and in doing so the judges of the election were specifically directed to receive no absentee ballot unless this chapter had been literally complied with. Hilliard v. Park, 212 Tenn. 588, 370 S.W.2d 829 (1963), overruled in part on other grounds, Southall v. Billings, 213 Tenn. 296, 375 S.W.2d 844 (1963).

2. Reasons for Absence.

Applicants for absentee ballots were required to state on their application the reason for expecting to be absent from the county on election day. Hilliard v. Park, 212 Tenn. 588, 370 S.W.2d 829 (1963), overruled in part on other grounds, Southall v. Billings, 213 Tenn. 280, 375 S.W.2d 844 (1963).

Where application for absentee ballot did not state one of the statutory reasons for the voter's absence, election commissioners had no jurisdiction or basis upon which to make a judicial

determination that the applicant was entitled to receive and vote an absentee ballot. Hilliard v. Park, 212 Tenn. 588, 370 S.W.2d 829 (1963), overruled in part on other grounds, Southall v. Billings, 213 Tenn. 296, 375 S.W.2d 844 (1963).

3. Comparing Signatures.

In determining how strictly absentee ballot provisions should be construed, court looked to extrinsic evidence to support applications for absentee ballots, and held technical omission did not invalidate the ballots where deputy compared the signatures on the applications, found them to be the same, yet failed to so indicate on the application; the procedural safeguard was not the marking on the application but the comparing of signatures, and this had been done. Foust v. May, 660 S.W.2d 487 (Tenn. 1983).

2-6-202. Voting absentee — Applications — Ballots. — (a)(1) A voter who desires to vote absentee shall request an absentee ballot not more than ninety (90) and not later than seven (7) days before the election;

(2) A voter who will be outside of the state on election day and during the period established for early voting may complete an application to vote absentee at the voter's county election commission office;

(3) A voter may also request from the county election commission office an application to vote absentee. A voter may make the request or submit an application to vote by mail or facsimile machine. For a voter to use a facsimile transmission, an election commission shall have a facsimile machine physically located in the election commission office. The request shall be in writing over the voter's signature. The request serves as an application for a ballot if the request contains the following information:

(A) The name of the registered voter;

(B) The address of the voter's residence;

(C) The voter's social security number;

(D) The address to mail the ballot outside the county; and

(E) The election the voter wishes to participate in; and the reason the voter wishes to vote absentee.

(4) This subsection does not and may not be construed to require a county election commission to purchase or obtain a facsimile machine.

(b) Upon receipt of a written request, the administrator of elections shall compare the signature of the voter with the signature on the voter's registration record in whatever form. If the signatures are the same and if the required information is provided, the administrator shall mail the voter a ballot in accordance with subsection (d). If the signatures are not the same, the administrator shall reject the application or request. If the required information is not provided, the administrator shall send the voter by mail or facsimile an application for a ballot.

(c)(1) The coordinator of elections shall either supply to a county election commission the forms for applications for ballots or approve the usage of a county's forms.

(2) The election commission shall furnish only one (1) application for absentee voting or one (1) set of absentee voting supplies to any voter unless the voter notifies the commission that the voter has spoiled the application or notifies the commission that the voter has not received the application or voting supplies. If so, the commission shall supply the voter with a subsequent application or supplies. The commission shall note on the records that a subsequent application or supplies have been sent.

(3) A person who is not an employee of an election commission commits a Class E felony if such person gives an application for an absentee ballot to any person.

(4) Unless otherwise required by federal law, the county election commission shall retain a spoiled application for a ballot for six (6) months.

(d)(1) Upon receipt of a completed application, the administrator shall verify the signature of the voter by comparing it with the signature on the voter's registration record in whatever form. The administrator shall make a determination whether the voter's address is different from the address on the voter's permanent registration record or if the registration is in inactive status. If the voter has changed residence, or the voter's registration is inactive, the administrator shall follow the procedures for voting pursuant to § 2-7-140. If the administrator determines that the voter may vote absentee, the administrator shall record the ballot number on the voter's application to vote and mail the voter the following:

(A) Instructions;

(B) One (1) absentee ballot or one (1) primary absentee ballot, or both;

(C) One (1) absentee ballot envelope for each election in which the voter will vote; and

(D) A larger envelope, unsealed, which shall bear upon its face the name and address of the county election commission to which the voter shall mail the completed materials.

(2) An administrator may not mail any of the materials with the address "general delivery."

(3) An administrator may not process an application for a ballot received after the fifth day before an election.

(e) After receiving the absentee voting supplies and completing the ballot, the voter shall sign the appropriate affidavit under penalty of perjury. The effect of the signature is to verify the information as true and correct and that the voter is eligible to vote in the election. The voter shall then mail the ballot.

(f) The election commission shall furnish only one (1) set of absentee voting supplies to any voter unless the voter notifies the commission that the voter has spoiled the supplies or notifies the commission that the voter has not received the supplies. If so, the commission shall supply the voter with a subsequent set of supplies. The commission shall note on the records that subsequent supplies have been sent. Unless otherwise required by federal law, the county election commission shall retain a spoiled ballot for six (6) months.

(g) Upon receipt by mail of the absentee ballot, the administrator shall open only the outer envelope and compare the voter's signature on the administrator with the voter's signature on the appropriate registration record. Upon determining that the voter is entitled to vote, the administrator shall note on the voter's absentee ballot envelope that the voter's signature has been verified. This signature verification is the final verification necessary before the counting board counts the ballots. The administrator shall also record that the voter has voted absentee in the election and in every case, including those counties in which computerized duplicate registration records are used, shall record the voter's name on the absentee poll book for each election in which the voter voted. In those counties in which computerized duplicate registration

records are used, the administrator shall update the voter's computerized voter history by making the appropriate data entry. The administrator shall then immediately deposit the absentee ballot envelope in the general election absentee ballot box or in the party's primary absentee ballot box as the case may be. [Acts 1972, ch. 740, § 1; 1975, ch. 336, § 1; 1979, ch. 316, § 4; T.C.A., § 2-611; Acts 1980, ch. 638, §§ 1-3; 1983, ch. 174, § 1; 1983, ch. 450, § 4; 1988, ch. 933, §§ 9, 12, 15; 1988, ch. 993, §§ 3-5; 1989, ch. 455, §§ 2, 3; 1989, ch. 590, § 6; 1991, ch. 69, § 2; 1993, ch. 518, §§ 5, 6, 21; T.C.A., § 2-6-111; Acts 1994, ch. 859, § 2; 1997, ch. 550, § 7; 1997, ch. 558, § 10.]

Code Commission Notes. The 16th state representative district is located in Knox County.

Compiler's Notes. June 25, 1997. Acts 1997, ch. 558, § 34 provided that the act take effect upon becoming a law. The act was returned without the governor's signature and became effective under the provisions of Tenn. Const., art. III, § 18.

References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

Amendments. The 1997 amendment by ch. 550 added the second sentence in (d).

The 1997 amendment by ch. 558 substituted "ninety (90)" for "sixty (60)" in (a)(1).

Effective Dates. Acts 1997, ch. 550, § 11. June 23, 1997.

Acts 1997, ch. 558, § 34. June 25, 1997.

Cross-References. Application for early and absentee voting, § 2-6-308.

Section to Section References. This section is referred to in §§ 2-6-201, 2-6-502, 2-6-503.

Law Reviews. Selected Tennessee Legislation of 1983 (N.L. Resener, J.A. Whitson, K.J. Miller), 50 Tenn. L. Rev. 785 (1983).

Attorney General Opinions. Distribution of application request form by nonemployee of commission permitted, OAG 95-003 (1/6/95).

Provision of official application by nonemployee of commission prohibited, OAG 95-003 (1/6/95).

Cited: Payne v. Ramsey, 591 S.W.2d 434 (Tenn. 1979).

NOTES TO DECISIONS

Decisions Under Prior Law

Analysis

1. Failure to comply — Effect.
2. Comparing signatures.

1. Failure to Comply — Effect.

While it is true that the provisions of 1950 Code Supp., § 2253.4 were mandatory, there was a difference in the effect to be given thereto when the question as to compliance was raised before the election and when such question was raised afterward, and when it appeared that there had been a valid expression of the people's will and one of the candidates elected, a declaration that the election was void for failure to comply with the statute was unwarranted. Mathis v. Young, 200 Tenn. 168, 291 S.E.2d 592 (1956).

2. Comparing Signatures.

In determining how strictly absentee ballot provisions should be construed, court looked to extrinsic evidence to support applications for absentee ballots, and held technical omission did not invalidate the ballots where deputy compared the signatures on the applications, found them to be the same, yet failed to so indicate on the application; the procedural safeguard was not the marking on the application but the comparing of signatures, and this had been done. Foust v. May, 660 S.W.2d 487 (Tenn. 1983).

2-6-203. Filling out application to vote by mail and voter's affidavit. — The voter may have anyone the voter chooses write the voter's request for an absentee ballot or for an absentee voting by mail application or write out the voter's absentee voting by mail application except for the voter's signature or mark. [Acts 1972, ch. 740, § 1; T.C.A., §§ 2-613, 2-6-113; Acts 1994, ch. 859, § 2.]

Cross-References. Form of affidavit, § 2-6-309.
Form of application, § 2-6-308.

2-6-204. Rejected applications and ballots. — (a)(1) If a voter fails to provide required information on an absentee voting by mail application, the registrar shall mark the application "Rejected" and return it to the voter immediately by mail with a red circle marked around the space provided for the required information. The voter may then return the same application after supplying the required information.

(2) If a voter refuses to provide required information on any absentee voting application, the registrar shall mark the application "Rejected" and write the reason for rejection on the application. Notice of rejection shall immediately be given in writing to the applicant.

(3) If the registrar determines that an applicant is ineligible to vote absentee, the registrar shall mark the application "Rejected" and write the reason for rejection on the application. Notice of rejection shall immediately be given in writing to the applicant.

(b) If upon receipt of any absentee ballot the registrar determines that the ballot is not entitled to be cast under this title, the registrar shall mark the absentee ballot envelope "Rejected," write the reason for the rejection on the envelope, and sign it. The absentee ballot envelope, unopened, shall be placed in a container of rejected absentee ballots for the election. Notice of the rejection shall immediately be given in writing to the voter. [Acts 1972, ch. 740, § 1; T.C.A., §§ 2-614, 2-6-114; Acts 1994, ch. 859, § 2.]

Compiler's Notes. References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

Part 3—General Provisions

2-6-301. Duplicate registration form filed in binder — Computerized reports — List posted. — (a) Except in those counties which use computerized duplicate registration records, upon issuance of an absentee ballot, the administrator of elections shall remove the voter's permanent registration record from the binder of the polling place and put it in an absentee voting binder in alphabetical order. Upon issuance of an absentee ballot, the voter may not thereafter vote in the election except by absentee ballot. In those counties in which computerized duplicate registration records are used, the attesting official shall update the voter's computerized voter history by making the appropriate data entry.

(b) All absentee voting applications shall be filed alphabetically by election day in a binder and kept in the county election commission office as a public record through election day. As an alternative, a county election commission may maintain, on a daily basis, absentee voting applications as part of a computer-generated report. Such report is a public record.

(c) The county election commission shall furnish each polling place with a certified copy of a complete alphabetical list of its absentee voters for each election, and the copy shall be displayed at the polling place throughout the voting hours on election day. [Acts 1972, ch. 740, § 1; T.C.A., § 2-615; Acts

1981, ch. 241, § 1; 1981, ch. 335, § 1; 1988, ch. 993, § 6; T.C.A., § 2-6-115; Acts 1994, ch. 859, § 2; 1995, ch. 69, § 1.]

Compiler's Notes. References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

NOTES TO DECISIONS

1. Failure to Publish List.

Failure to publish a complete and accurate list of absentee voters pursuant to this section did not void the absentee votes when the normal date of publication for the newspaper which published the list was weekly and fell on election day and earlier publication was impossible. Payne v. Ramsey, 591 S.W.2d 434 (Tenn. 1979).

2-6-302. Central absentee ballot counting board. — (a)(1) The county election commission shall appoint registered voters of the county to constitute a central absentee ballot counting board to count the ballots cast under this chapter.

(2) The board shall consist of one (1) officer of elections and three (3) judges appointed subject to § 2-4-104. To count the ballots properly and with reasonable speed the commission may, if necessary, appoint additional judges subject to § 2-4-105.

(3) The board shall be assisted by the administrator of elections or other personnel of the county election commission.

(4) The officer and judges shall be compensated at the same rate as other election officials.

(5) The counting board shall be located at a location designated by the county election commission. Notice of the location shall be published in conjunction with the notice of election required by § 2-12-111(c) and shall not be changed except in the event of an emergency.

(b) If the county election commission determines that there are fewer than one hundred (100) absentee ballots to be counted, the county election commission may act as the central absentee ballot counting board without additional compensation. [Acts 1972, ch. 740, § 1; T.C.A., § 2-616; Acts 1992, ch. 895, § 2; T.C.A., § 2-6-116; Acts 1994, ch. 859, § 2.]

Compiler's Notes. References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

Section to Section References. This section is referred to in § 2-7-131.

2-6-303. Delivery of poll books and other records to board — Process of ballots. — (a)(1) At four o'clock p.m. (4:00 p.m.) prevailing time, or at such earlier time after the polls open as the county election commission may direct, on election day, the county election commission shall deliver the locked and sealed absentee ballot boxes and their keys to the counting board in the commission office.

(2) The county election commission shall also deliver to the counting board the poll books prepared by precinct by the administrator of elections as the absentee ballots were received, the binder of rejected absentee ballots by

precinct, the absentee voting binder of duplicate permanent registration records by precinct, and any other supplies necessary or useful in the performance of the counting board's duties. However, in those counties in which computerized duplicate registration records are used, the administrator shall be relieved of the duty to deliver the absentee voting binder of duplicate permanent registration records by precincts. In counties in which computerized duplicate permanent registration records are used, the county election commission shall deliver to the counting board a printed list, arranged by precinct, of those voters who voted or requested an absentee ballot.

(b) Any absentee ballot received by mail by the county election commission before the closing of the polls shall be processed as were absentee ballots received before election day. For ballots received after the ballot boxes are turned over to the counting board, the administrator shall not record the voters' names on the poll books or note that they voted on their duplicate permanent registration records but shall deliver the ballots to the counting board immediately after determining whether the ballots are entitled to be cast. [Acts 1972, ch. 740, § 1; T.C.A., § 2-617; Acts 1981, ch. 385, § 5; 1988, ch. 993, § 7; 1993, ch. 518, §§ 13, 21; T.C.A., § 2-6-117; Acts 1994, ch. 859, § 2.]

Compiler's Notes. References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

Cross-References. Failure to use standard time, § 4-1-401.

Inspection of ballot boxes before election, § 2-7-109.

Sealed absentee ballots, § 2-6-311.

NOTES TO DECISIONS

1. In General.

The case law of this state recognizes that statutory violations alone may be sufficient to invalidate an election, especially where they thwart those statutory provisions designed to: (1) prevent undue influence or intimidation of the free and fair expression of the will of the electors; or (2) ensure that only those who meet the statutory requirements for eligibility to vote, cast ballots. But not every irregularity, or even a combination of irregularities, will necessitate the invalidation of an election. Forbes v. Bell, 816 S.W.2d 716 (Tenn. 1991).

Courts should be appropriately reluctant to take the step of declaring an election invalid. Forbes v. Bell, 816 S.W.2d 716 (Tenn. 1991).

If complaint had been properly drawn, the purging by the trial court of a specific number of paper ballots in a particular precinct might well have been appropriate. But in the complaint, the contestant failed to demonstrate that a purge of those ballots would have changed the result of the election or rendered its outcome uncertain. Therefore, the court had no choice but to conclude that the chancellor correctly dismissed the complaint for failure to state a claim. Forbes v. Bell, 816 S.W.2d 716 (Tenn. 1991).

The allegations of complaint were insufficient to show, district-wide, that election was so permeated by fraud or illegality as to render the results incurably uncertain or to thwart the will of the electorate. Forbes v. Bell, 816 S.W.2d 716 (Tenn. 1991).

2-6-304. Procedure of counting board. — (a)(1) The absentee ballot counting board shall unlock and open each ballot box in the presence of a majority of the judges and break the seals upon verification that the numbers are the same. All of the sealed absentee ballot envelopes with attached affidavits and early voting ballots shall be removed from the respective ballot boxes. If there is no challenge to a ballot, the counting board shall tear the affidavit from the absentee ballot envelope leaving the envelope sealed. All affidavits so removed shall be gathered together and placed in envelopes provided for that purpose for each election being held.

(2) A majority of the counting board officials shall certify the envelopes for each precinct in substantially the following form:

Affidavits removed from sealed absentee ballots of _____ absent voters who voted in the _____ precinct in the _____ election on the _____ day of _____, 19 __, in _____ County, State of Tennessee. We hereby certify that we have sealed this envelope before opening any of the sealed absentee ballot envelopes containing ballots.

Name and Title	Name and Title
Name and Title	Name and Title

(b) If any absentee ballot is rejected for any reason by the administrator of elections or by the counting board, such absentee ballot envelope shall not be opened nor its affidavit removed, but it shall be marked "Rejected" across its face with the reasons for rejection written on it and signed by each official who rejected it. It shall then be placed in the container of rejected absentee ballots. A list shall be made of such rejected ballots, and the administrator shall notify the voters by mail of the rejection.

(c) The counting board official shall then open the sealed absentee ballot envelopes, remove the absentee ballots and count and record the absentee ballot votes and the early voting ballot votes. In no event may the votes for any candidate be totaled until after all polls in the county are closed.

(d) When a counting board receives ballots which the county election commission received on election day before the close of the polls, it shall write on the voter's duplicate permanent registration record that the voter has voted absentee in the election and record the voter's name on the absentee poll book. At the close of the polls the counting board shall make a certificate for such ballots substantially in the form of the certificate required by subsection (a).

(e) If a county election commission authorizes the use of a mechanical or electronic voting machine for early voting, the commission shall remove the vote totals according to rules promulgated by the coordinator of elections. Votes must be removed from the machines in such a manner so that no vote totals can be associated with any candidate at the time of removal. In addition, the election commission shall be required to provide notice to all candidates and political parties of the place and time when the vote totals will be removed from those voting machines. In no event may the votes for any candidate be totaled until after all polls in the county are closed.

(f) Not later than thirty (30) days after an election, the chair of the county election commission shall certify the results of absentee balloting to the state election coordinator. Failure to so certify shall be grounds for removal from office under the provisions of title 8, chapter 47. [Acts 1972, ch. 740, § 1; 1978, ch. 718, § 1; T.C.A., § 2-618; Acts 1988, ch. 993, § 8; 1993, ch. 518, §§ 14, 21; T.C.A., § 2-6-118; Acts 1994, ch. 859, § 2; 1995, ch. 88, §§ 7, 8, 10.]

Compiler's Notes. References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

Cross-References. Sealed absentee ballots, § 2-6-311.

Cited: Emery v. Robertson County Election Comm'n, 586 S.W.2d 103 (Tenn. 1979).

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

1. In general.
2. Challenging ballots.

1. In General.

Where trial court in election contest did not follow procedure provided by law in counting absentee ballots, judgment of trial court would not be reversed on ground that persons participating in the count knew for whom each vote was cast since evidence showed that procedure followed was the only rational way count could have been handled to preserve record for appeal and no voter complained of procedure followed. Dixon v. McClary, 209 Tenn. 81, 349 S.W.2d 140 (1961).

2. Challenging Ballots.

Injunction would not issue at insistence of candidate for school superintendent for purpose of enjoining election commissioners from transmitting absentee ballots to voting precincts and for impounding all such ballots in their hands upon allegation that large numbers of voters were fraudulently induced to vote by absentee ballot by such commissioners for purpose of aiding candidate's opponent, and proper procedure for candidate would have been to appear at precincts and challenge such ballots when they were cast. Brown v. Thurman, 201 Tenn. 474, 300 S.W.2d 883 (1957).

2-6-305. Election laws applicable. — The provisions of chapter 7 of this title with respect to challenge and poll watchers apply to the central absentee ballot counting board. A poll watcher may not leave and reenter the absentee ballot counting after the challenge process has been completed and the counting board begins to count the votes without the permission of the administrator of elections or the administrator's designee. [Acts 1972, ch. 740, § 1; T.C.A., §§ 2-619, 2-6-119; Acts 1994, ch. 859, § 2.]

Compiler's Notes. References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

2-6-306. Absentee voter dying prior to election day — Disposition of ballot. — If an absentee voter has voted before an election and such absentee voter dies before election day, the county election commission shall count such voter's ballot or vote. The casting of a proper ballot by a person who dies before the day of the election does not invalidate the election. [Acts 1972, ch. 740, § 1; T.C.A., § 2-620; Acts 1993, ch. 518, §§ 16, 21; T.C.A., § 2-6-120; Acts 1994, ch. 859, § 2.]

2-6-307. Disposition of registration records after election. — Except in those counties which use computerized duplicate registration records, the administrator of elections shall take the duplicate permanent registration records from the early voting duplicate permanent registration binders and put them in the regular duplicate permanent registration books within two (2) weeks after the election, unless an election contest has been initiated. Temporary registration records shall be filed together with the records of the election. [Acts 1972, ch. 740, § 1; T.C.A., § 2-621; Acts 1988, ch. 993, § 9; T.C.A., § 2-6-121; Acts 1994, ch. 859, § 2.]

Compiler's Notes. References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

2-6-308. Early and absentee voting applications — Uniform forms. — The coordinator of elections shall adopt uniform forms for each county election commission for an application for early voting and absentee voting. [Acts 1972, ch. 740, § 1; 1977, ch. 213, § 1; 1978, ch. 814, § 4; 1978, ch. 861, § 3; T.C.A., §§ 2-623, 2-6-123; Acts 1994, ch. 859, § 2.]

Cross-References. Absentee voting by mail by armed forces personnel, § 2-6-502. Filling out application, § 2-6-203. Special write-in absentee ballots, § 2-6-503.

2-6-309. Absentee ballot envelope — Requirements — Voter's affidavit form. — (a) The absentee ballot envelope shall have a sealing flap and shall be a plain envelope without markings except the words "Absentee Ballot Envelope" or "_____. Primary Absentee Ballot Envelope" printed on the face and such instructions for the use of the envelope if it has become prematurely sealed as the coordinator of elections prescribes. The coordinator of elections shall determine distinguishable colors to be used in the printing of the ballot envelopes for early voting and absentee voting. Both envelopes shall include a place for the voter's precinct and district number and a statement for the administrator to sign stating that the voter's signature has been verified and appears to be valid. The absentee voting ballot envelope need not contain a certificate for an attesting official.

(b) It shall have also a detachable flap which shall contain the words "Do Not Detach" and an affidavit in substantially the following form:

"VOTER'S AFFIDAVIT

State of _____
County of _____

I, _____, do solemnly swear that I am a resident of Precinct _____, Ward or District _____ of _____ County, State of Tennessee, and am a registered voter in the _____ election to be held on the _____ day of _____, 19_____.

I further swear that this envelope contains the absentee ballot marked by me in secret indicating my choice at that election, and that I am not registered in any other state or county for this election and I am otherwise entitled to vote absentee in this election.

_____
Signature of Affiant

Witnesses if assisted

(Person who assisted)

Name _____ Address _____
Name _____ Address _____

CERTIFICATE OF ATTESTING OFFICIAL

Sworn to and subscribed before me this _____ day of ____, 19_____.
I hereby certify that the affiant whose name appears above exhibited the

enclosed absentee ballot to me unmarked, marked the ballot in secret (with assistance) and enclosed and sealed it in this envelope without anyone (other than the assistant) seeing how the affiant voted, and the affiant was not solicited or advised by me to vote for or against any candidate or issue in the election.

_____

(Title)"

[Acts 1972, ch. 740, § 1; 1979, ch. 316, § 6; T.C.A., §§ 2-625, 2-6-125; Acts 1994, ch. 859, § 2.]

Compiler's Notes. References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

2-6-310. Ballot requirements. — (a) Ballots to be used under this chapter shall be prepared by the county election commission. The ballots shall conform to all the requirements of chapter 5, part 2 of this title with respect to paper ballots except as provided otherwise in this chapter.

(b) Ballots to be used under this chapter shall be printed from immediately after the deadline established for withdrawal of candidates but not less than thirty (30) days before the day of the election. In individual cases, the county election commission shall be excused from compliance with the requirement of this subsection that ballots be printed at least thirty (30) days before the day of the election whenever application of constitutional or statutory provisions of law concerning the filling of vacancies in public office renders such compliance impossible or impractical. No person shall be denied an opportunity to cast an absentee ballot as a result of noncompliance by such commission with such thirty (30) day requirement. [Acts 1972, ch. 740, § 1; T.C.A., § 2-626; Acts 1981, ch. 220, § 1; 1986, ch. 661, §§ 1, 2; T.C.A., § 2-6-126; Acts 1994, ch. 859, § 2.]

2-6-311. Absentee ballot boxes — Requirements. — (a) Absentee ballot boxes shall meet the requirements for standard ballot boxes under § 2-5-214, have at least two (2) hasps for locks, and be equipped with baffles so that ballots cannot be removed without unlocking the box.

(b) The ballot boxes shall be locked at the beginning of absentee voting with one (1) lock from a county election commissioner of one (1) party and another lock provided by a commissioner of another party. The commissioners shall retain the keys personally. The boxes may not be unlocked except when the votes are to be counted.

(c) In addition to the locks required in subsection (b), the county election commission shall place two (2) numbered seals on each ballot box at the beginning of absentee voting with one (1) seal placed by a county election commissioner of each party. Such seal numbers shall be recorded by the administrator of elections and certified in duplicate by one (1) commissioner of each party, and the original shall be forwarded by mail immediately to the office of the coordinator of elections and the duplicate shall be filed in the election commission office. The seals may not be broken except when the votes are to be counted. If a seal or seals are broken, the administrator shall

immediately attach new numbered seals and certify in writing to the coordinator of elections the numbers and a description of the circumstances necessitating this action. [Acts 1972, ch. 740, § 1; T.C.A., § 2-627; Acts 1984, ch. 636, § 2; 1993, ch. 518, §§ 12, 21; T.C.A., § 2-6-127; Acts 1994, ch. 859, § 2.]

Compiler's Notes. References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

2-6-312. Official forms at expense of state. — The coordinator of elections shall prepare and furnish all applications, envelopes, instructions and other official forms for use under this chapter at the expense of the state. With the approval of the coordinator of elections, a county election commission may use its own computer-generated forms. [Acts 1972, ch. 740, § 1; T.C.A., §§ 2-628, 2-6-128; Acts 1994, ch. 859, § 2.]

Compiler's Notes. This section may be affected by § 9-1-116, concerning entitlement to funds, absent appropriation.

PART 4—EMERGENCY ABSENTEE VOTING

2-6-401. Emergency absentee ballots. — (a)(1) The county election commission may designate emergency registrars who shall have the responsibility of supplying ballots to and receiving ballots from persons who have been hospitalized in their county of residence within twenty (20) days of an election when such persons will be unable to vote in person on election day.

(2) The county election commission may appoint the hospital administrator to act as an emergency registrar for any person who is a patient in that hospital due to an emergency; provided, that no such appointment shall be made more than fifteen (15) days before the election.

(3) Any ballots cast in accordance with this section shall be witnessed by a voter registered in the county and by a notary public.

(b) A registered voter eligible to request the services of an emergency registrar shall make such a request not more than twenty (20) days before the election and no later than the opening of the polls on election day. Upon receiving a bona fide request for the services of an emergency registrar, the county election commission shall direct an emergency registrar to provide the following materials to such person:

(1) An application;

(2) A paper ballot or ballots;

(3) A duplicate of the person's permanent voter registration; and

(4) An envelope in which to seal the ballot.

(c) In addition to those persons or that category of persons otherwise authorized to vote absentee under this chapter, a voter shall upon a showing of reasonable proof to the administrator of elections or the administrator's deputy be eligible to vote absentee by personal appearance at the commission office, not more than five (5) days nor later than the day prior to the election if:

(1) Due to the death of a relative of a voter which would result in the voter's absence from the state or county on election day; or

(2) If the voter receives a subpoena or service of process requiring the voter's presence on election day.

(d) The procedure for voting shall substantially follow the provisions for voting absentee by personal appearance set out in §§ 2-6-102 and 2-6-109. [Acts 1977, ch. 306, § 1; T.C.A., § 2-629; Acts 1981, ch. 478, §§ 14, 15; 1983, ch. 230, § 1; T.C.A., § 2-6-129; Acts 1994, ch. 859, § 5.]

Compiler's Notes. References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

Law Reviews. Selected Tennessee Legislation of 1983 (N. L. Resener, J. A. Whitson, K. J. Miller), 50 Tenn L. Rev. 785 (1983).

Part 5—Voting by Military and Overseas Citizens

2-6-501. Voting or registering by mail outside United States or by armed forces — Envelopes. — For persons voting absentee by mail or registering by mail from outside the territorial limits of the United States and for all armed forces personnel, there shall be printed across the face of each envelope in which a ballot or any registration material is to be sent two (2) parallel horizontal red bars, each one-fourth inch (¼") wide, extending from one side of the envelope to the other side, with an intervening space of one-fourth inch (¼"), the top bar to be one and one-fourth inches (1¼") from the top of the envelope, and with the words "Official Election Balloting Material-Via Air Mail," or similar language, between the bars. There shall be printed on the upper right-hand corner of each such envelope, in a box, the words "Free of United States Postage, Including Air Mail." There shall be printed in the upper left-hand corner of each envelope an appropriate inscription for return address of sender. The printing on the face of each envelope shall be in red. The envelopes shall be printed on as lightweight paper as possible consistent with the secrecy of the official ballot. [Acts 1972, ch. 740, § 1; T.C.A., §§ 2-606, 2-6-106; Acts 1994, ch. 859, § 6.]

Comparative Legislation. Voting by military and overseas citizens:
Ala. Code § 17-10-3.
Ark. Code § 7-5-406.
Ga. O.C.G.A. § 21-2-381.
Ky. Rev. Stat. Ann. § 117.079; § 117.085.
Miss. Code Ann. § 23-15-671 et seq.
N.C. Gen. Stat. § 163-246 et seq.
Va. Code § 24.2-419.

NOTES TO DECISIONS

1. In General.

The case law of this state recognizes that statutory violations alone may be sufficient to invalidate an election, especially where they thwart those statutory provisions designed to: (1) prevent undue influence or intimidation of the free and fair expression of the will of the electors; or (2) ensure that only those who meet the statutory requirements for eligibility to vote, cast ballots. But not every irregularity, or even a combination of irregularities, will necessitate the invalidation of an election. Forbes v. Bell, 816 S.W.2d 716 (Tenn. 1991).

Courts should be appropriately reluctant to take the step of declaring an election invalid. Forbes v. Bell, 816 S.W.2d 716 (Tenn. 1991).

If complaint had been properly drawn, the purging by the trial court of a specific number of paper ballots in a particular precinct might well have been appropriate. But in the complaint, the contestant failed to demonstrate that a purge of those ballots would have changed the result of the election or rendered its outcome uncertain. Therefore, the court had no choice but to conclude that the chancellor correctly dismissed the complaint for failure to

state a claim. Forbes v. Bell, 816 S.W.2d 716 (Tenn. 1991).

The allegations of complaint were insufficient to show, district-wide, that election was so permeated by fraud or illegality as to render the results incurably uncertain or to thwart the will of the electorate. Forbes v. Bell, 816 S.W.2d 716 (Tenn. 1991).

2-6-502. Armed forces personnel — Persons temporarily outside United States — Procedure. — (a) Any application to vote absentee by mail from armed forces personnel anywhere outside the county where the voter is registered or from qualified voters temporarily staying outside the territorial limits of the United States and of the District of Columbia shall be processed under this section if it does not meet the requirements of § 2-6-202 as an absentee voting application or if the applicant is not a registered voter. A certificate of nonregistration is not required of a person voting under this section.

(b) An application for an absentee ballot or temporary registration or both from any person authorized to vote absentee by mail under subsection (a) may be in any form but shall contain the applicant's name, date of birth, and residence in the county in which the applicant proposes to vote and shall contain the address to which the absentee ballot is to be mailed. If the election is a primary election, the applicant shall state such applicant's political party preference. The county election commission shall accept the federal postcard application, as provided for in the "Uniformed and Overseas Citizens Absentee Voting Act, Public Law 99-410," 42 U.S.C. 1973ff et seq., for temporary registration and for an absentee ballot. An application or ballot affidavit shall be signed by the voter, under the penalty of perjury, thereby verifying all the information on the same is true and correct and that the voter is eligible to vote in the election.

(c) An application must be received in the county election commission office of the county in which the applicant is a resident not later than five (5) days before the election and not earlier than January 1 of the year in which the election is to be held; provided, that in the event an election is to be held less than ninety (90) days after January 1 of any calendar year, applications under this section may be received not earlier than ninety (90) days before the election in which the applicant desires to vote.

(d) An application for an absentee ballot under this section shall be treated as an application for temporary registration if the applicant is not already a registered voter where such applicant applies to vote. The applicant shall be granted temporary registration if such applicant is a qualified voter under § 2-2-102. Temporary registration under this section is not subject to the deadline set in § 2-2-109. A person applying to vote absentee under the provisions of this section in a primary election may request in such person's application for an absentee ballot that an absentee ballot for the succeeding general election be sent to the person when such ballots become available for distribution; provided, that if a voter voting hereunder moves from the location where the voter is to be sent a primary ballot between the primary and general elections, such voter shall notify the county election commission of such move and advise the commission where the general election ballot is to be sent.

(e) Upon determining whether the applicant is entitled to register or vote or both in the election, the administrator of elections shall proceed under the

general provisions of this chapter for voting absentee by mail. If the applicant is registered temporarily, the applicant's application shall be placed in alphabetical order in the absentee voting binder of duplicate permanent registration records of absentee voters for the applicant's polling place, and a notation shall be placed in the binder of absentee voting applications that the applicant has applied to vote absentee by mail.

(f) Ballots received under this section shall be processed as other absentee ballots from persons voting absentee by mail.

(g) A United States citizen who was born abroad and who is eligible to vote and who has never lived in the United States may register temporarily and vote in the county where a parent would be eligible to temporarily register and vote pursuant to this section. [Acts 1972, ch. 740, § 1; T.C.A., § 2-612; Acts 1983, ch. 107, §§ 1, 2; 1988, ch. 933, § 10; T.C.A., § 2-6-112; Acts 1994, ch. 859, § 6; 1997, ch. 558, § 14.]

Compiler's Notes. Acts 1997, ch. 558, § 34 provided that the act take effect upon becoming a law. The act was returned without the governor's signature and became effective under the provisions of Tenn. Const., art. III, § 18.

References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

Amendments. The 1997 amendment substituted "five (5)" for "seven (7)" in (c).

Effective Dates. Acts 1997, ch. 558, § 34. June 25, 1997.

Collateral References. Voting by persons in military service. 140 A.L.R. 1100; 147 A.L.R. 1443; 148 A.L.R. 1402; 149 A.L.R. 1466; 150 A.L.R. 1460; 151 A.L.R. 1464; 152 A.L.R. 1459; 153 A.L.R. 1434; 154 A.L.R. 1459; 155 A.L.R. 1459; 34 A.L.R.2d 1193.

Law Reviews. Selected Tennessee Legislation of 1983 (N.L. Resener, J.A. Whitson, K.J. Miller), 50 Tenn. L. Rev. 785 (1983).

2-6-503. Special write-in absentee ballots. — (a) Not later than forty-five (45) days before an election, the registrar shall mail a ballot to each member of the armed forces and each citizen temporarily outside the United States who is entitled to vote and who has submitted a valid application for a ballot. The ballot shall be in one of the following forms:

(1) An official absentee ballot that complies with the requirements of chapter 5, part 2 of this title and this chapter; or

(2) A write-in ballot that is substantially identical to an absentee ballot described in subdivision (a)(1), except that no candidates' names shall be listed anywhere on the ballot. In addition to this write-in ballot, the registrar shall include a complete list of all candidates who have qualified for the offices listed on the write-in ballot.

(b) Compliance with the time requirements of subsection (a) is not required for a municipal election, special election or an election on a question if the appropriate qualifying or filing deadline does not reasonably allow compliance. In such event, the registrar shall mail a ballot not later than thirty (30) days before the election. [Acts 1987, ch. 142, § 1; 1990, ch. 628, § 6; T.C.A., § 2-6-130; Acts 1994, ch. 859, § 6.]

Compiler's Notes. References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

Cross-References. Application for early and absentee voting, § 2-6-308.

PART 6—VOTING AT LICENSED NURSING HOMES

2-6-601. Methods of voting at licensed nursing homes. — In the case of individuals who are full-time residents of any licensed nursing home, home for the aged or similar licensed institution providing relatively permanent domiciliary care, other than a penal institution, in the county of the voter's residence, the county election commission of each county shall send one (1) absentee voting deputy representing the majority party and one (1) absentee voting deputy representing the minority party to the institution for the purpose of processing, assisting the voter who may be entitled to assistance under § 2-6-105 or § 2-6-106, and attesting absentee ballot applications and ballots. Both absentee voting deputies shall attest the voter's ballot. The procedure for voting shall substantially follow the provisions for early voting established by part 1 of this chapter and shall be provided to each facility stated above. The procedure for voting in this section shall be the only method by which individuals who are full-time residents of any licensed nursing home, home for the aged or similar licensed institution providing relatively permanent domiciliary care, other than a penal institution, may vote in an election. [Acts 1997, ch. 558, § 12.]

Compiler's Notes. Acts 1997, ch. 558, § 34 provided that the act take effect upon becoming a law. The act was returned without the governor's signature and became effective under the provisions of Tenn. Const., art. III, § 18.

References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

Effective Dates. Acts 1997, ch. 558, § 34. June 25, 1997.

CHAPTER 7

PROCEDURE AT THE POLLING PLACE

2-7-101. Officer of elections. — (a) The officer of elections is in charge of and responsible for the conduct of all the elections being held at the polling place where such officer is the officer of elections. The officer is subject to the direction of the county election commission in the performance of such duties.

(b) The officer of elections shall:

(1) Maintain order at the polling place;

(2) Assure that voting machines and voting compartments are arranged in such a way that the secrecy of the ballot is preserved and that no voter, on entering the polling place, comes near the voting machines or ballot boxes before the voter's eligibility to vote has been determined;

(3) Keep each voting compartment provided with proper supplies for marking the ballots;

(4) Have persons who are waiting to vote stand in line so that no person who is waiting is standing nearer than ten feet (10′) to any voting machine or ballot box;

(5) Report the breakdown of any voting machine to the voting machine technician; and

(6) Ensure that each other election official performs such official's duties. [Acts 1972, ch. 740, § 1; T.C.A., § 2-701.]

Section to Section References. This chapter is referred to in §§ 2-6-305, 2-6-307.

This part is referred to in § 68-11-302.

Comparative Legislation. Conduct of elections:

Ala. Code § 17-7-1 et seq.
Ark. Code § 7-5-301 et seq.
Ga. O.C.G.A. § 21-2-400 et seq.
Ky. Rev. Stat. Ann. § 117.015 et seq.
Miss. Code Ann. § 23-15-541 et seq.
Mo. Rev. Stat. § 115.407 et seq.
N.C. Gen. Stat. § 163-135 et seq.
Va. Code § 24.1-95 et seq.

Cited: Payne v. Ramsey, 591 S.W.2d 434 (Tenn. 1979).

Collateral References. 26 Am. Jur. 2d Elections §§ 225-290.

29 C.J.S. Elections §§ 190-220.

Elections ⇐ 197-234.

2-7-102. Judges. — During the time for voting, the judges shall distribute paper ballots, decide challenges to voters, serve in place of other election officials as directed by the officer of elections, and assist the officer of elections in such ways as the officer may direct. [Acts 1972, ch. 740, § 1; T.C.A., § 2-702.]

Cited: Taylor v. Armentrout, 632 S.W.2d 107 (Tenn. 1981).

2-7-103. Persons allowed in polling place. — (a) No person may be admitted to a polling place while the procedures required by this chapter are being carried out except election officials, voters, persons properly assisting voters, the press, poll watchers appointed under § 2-7-104 and others bearing written authorization from the county election commission.

(b) Candidates may be present after the polls close.

(c) No police or other law enforcement officer may come nearer to the entrance to a polling place than ten feet (10') or enter the polling place except at the request of the officer of elections or the county election commission or to make an arrest or to vote.

(d) No person may go into a voting machine or a voting booth while it is occupied by a voter except as expressly authorized by this title.

(e) In addition to persons authorized to be admitted to the polling place in subsection (a), a child under seventeen (17) years of age may accompany the child's parent or legal guardian into the polling place. Such child may also enter the voting machine or voting booth with such parent or guardian to observe the voting process. [Acts 1972, ch. 740, § 1; T.C.A., § 2-703; Acts 1995, ch. 393, § 1.]

Cited: Freeman v. Burson, 802 S.W.2d 210 (Tenn. 1990), rev'd 504 U.S. 191, 112 S. Ct. 1846, 119 L. Ed. 2d 5 (1992).

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

1. Interference by Peace Officers.

Officer of election who removed ballot box from place of election and returned it to county commissioner of elections because of refusal of peace officers to leave the room where the ballot box was located did not "designedly" deprive voters of their right of suffrage within the meaning of a statute making such deprivation a misdemeanor. Pemberton v. State, 187 Tenn. 497, 216 S.W.2d 13 (1948).

2-7-104. Poll watchers. — (a) Each political party and any organization of citizens interested in a question on the ballot or interested in preserving the purity of elections and in guarding against abuse of the elective franchise may appoint poll watchers. The county election commission may require organizations to produce evidence that they are entitled to appoint watchers. Each candidate in primary elections and each independent candidate in general elections may appoint one (1) or more poll watchers for each polling place; provided, however, at any given time, each such candidate shall have not more than one (1) such poll watcher on duty at each polling place. All appointments of watchers shall be in writing and signed by the persons or organizations authorized to make the appointment. All poll watcher names shall be submitted to the county election commission no later than twelve o'clock noon (12:00) of the day before the election.

(b) Each political party which has candidates in the election and each citizens' organization may have two (2) watchers at each polling place. One (1) of the watchers representing a party may be appointed by the chair of the county executive committee of the party and the other by a majority of the candidates of that party running exclusively within the county in which the watchers are appointed. If the candidates of a party fail to appoint the

watchers by twelve o'clock noon (12:00) on the third day before the election, the chair of the county executive committee of the party may appoint both watchers representing the chair's party. In addition, each candidate in a general election may appoint one (1) or more poll watchers for each polling place; provided, however, at any given time, each such candidate shall have not more than one (1) such poll watcher on duty at each polling place.

(c) Upon arrival at the polling place, a watcher shall display such watcher's appointment to the officer of elections and sign the register of watchers. Poll watchers may be present during all proceedings at the polling place governed by this chapter. They may watch and inspect the performance in and around the polling place of all duties under this title. A watcher may, through the judges, challenge any person who offers to vote in the election. A watcher may also inspect all ballots while being called and counted and all tally sheets and poll lists during preparation and certification. A poll watcher who wishes to protest any aspect of the conduct of the election shall present such protest to the officer of elections or to the county election commission or to an inspector. The officer of elections or county election commission shall rule promptly upon the presentation of any protest and take any necessary corrective action.

(d) No watcher may interfere with any voter in the preparation or casting of such voter's ballot or prevent the election officials' performance of their duties. No watcher may observe the giving of assistance in voting to a voter who is entitled to assistance. Watchers shall wear poll watcher badges with their names and their organization's name but no campaign material advocating voting for candidates or positions on questions.

(e) Poll watchers observing the duties of the absentee counting board shall not leave the room, or place of counting, after the actual counting of the ballots has begun. [Acts 1972, ch. 740, § 1; 1978, ch. 754, § 3; T.C.A., § 2-704; Acts 1981, ch. 478, § 16; 1988, ch. 933, § 11; 1997, ch. 558, §§ 19, 31, 32.]

Compiler's Notes. Acts 1997, ch. 558, § 34 provided that the act take effect upon becoming a law. The act was returned without the governor's signature and became effective under the provisions of Tenn. Const., art. III, § 18.

Amendments. The 1997 amendment, in the third sentence of (a) and the last sentence of (b), substituted "or more poll watchers for each polling place;" for "poll watcher for each polling place" and added the proviso at the end; and added (e).

Effective Dates. Acts 1997, ch. 558, § 34. June 25, 1997.

Section to Section References. This section is referred to in § 2-7-103.

2-7-105. Election officials — Vacancies — Administration of oath — Compensation. — (a) The election officials of each polling place shall meet at the polling place at least one-half (½) hour before the time for opening the polls for the election.

(b)(1) If any election official fails to appear at the polling place, the officer of elections or, in such officer's absence, a majority of the election officials attending shall select other persons to fill the vacancies. The persons selected shall be registered voters of the county for which they are to serve. Any person selected to fill a vacancy shall be, to the extent practicable, of the same political party as the person in whose place such person was selected.

(2) The officer of elections or, in such officer's absence, the oldest election official in age who has taken the oath shall administer the oath of § 2-1-111 to

the persons filling vacancies and to any other official who has not taken the oath.

(3) The officer of elections shall notify the county election commission of all vacancies.

(4) Persons appointed to vacancies shall be compensated at the same rate as others performing the job to which they are appointed. [Acts 1972, ch. 740, § 1; T.C.A., § 2-705; Acts 1997, ch. 558, § 29.]

Compiler's Notes. June 25, 1997. Acts 1997, ch. 558, § 34 provided that the act take effect upon becoming a law. The act was returned without the governor's signature and became effective under the provisions of Tenn. Const., art. III, § 18.

Amendments. The 1997 amendment rewrote (b)(1).

Effective Dates. Acts 1997, ch. 558, § 34. June 25, 1997.

2-7-106. Failure of all officials to appear — Appointment of replacements to election commission — Voting pending appointment. — If the county election commission receives notice that no election officials are at the polling place, the commission shall promptly appoint new officials who shall conduct the election. Until the polling place is open for voting, any voter who is eligible to vote there may vote at the county election commission office; ballots cast under this sentence shall be counted by the county election commission. [Acts 1972, ch. 740, § 1; T.C.A., § 2-706.]

Cited: Taylor v. Armentrout, 632 S.W.2d 107 (Tenn. 1981).

2-7-107. Delivery of election supplies. — The officer of elections shall deliver to the polling place on the day of the election the duplicate permanent registration records, paper ballots, sample ballots, voting machine keys, ballot boxes and keys, and all other supplies needed for the conduct of the election. [Acts 1972, ch. 740, § 1; T.C.A., § 2-707.]

2-7-108. Lost, stolen or destroyed ballots — Replacement — Wrong voting machines delivered — Written report of circumstances. — (a) If the ballots for a polling place are lost, stolen or destroyed or are not delivered to the polling place or the supply of paper ballots is insufficient for any reason, the officer of elections shall notify the county election commission immediately after learning of this fact. The commission shall provide replacements for the missing or destroyed ballots by delivering the ballots reserved under § 2-5-209 and by having such additional ballots prepared as may be necessary.

(b) If paper ballots or voting machines or both are delivered to the wrong polling place, the officer of elections shall notify the county election commission upon discovery of the error. The commission shall immediately have the proper ballots or voting machines delivered. Pending the arrival of the correct voting machines, the officer of elections shall proceed under § 2-7-119 as if the machines were out of order.

(c) At the close of the polls, the officer of elections shall make a written report of the circumstances causing the officer's action under this section to the county election commission which may make additions to the report and shall

then transmit it to the grand jury of the county. [Acts 1972, ch. 740, § 1; T.C.A., § 2-708.]

Section to Section References. This section is referred to in §§ 2-5-209, 2-7-119.

2-7-109. Ballot boxes — Locked during voting. — The officer of elections shall show the ballot box to the judges who shall verify that it is empty, and the officer shall then lock the ballot box before the polling place is open for voting. The ballot box shall remain locked until the votes are to be counted after voting has ended. [Acts 1972, ch. 740, § 1; T.C.A., § 2-709.]

NOTES TO DECISIONS

1. In General.

The case law of this state recognizes that statutory violations alone may be sufficient to invalidate an election, especially where they thwart those statutory provisions designed to: (1) prevent undue influence or intimidation of the free and fair expression of the will of the electors; or (2) ensure that only those who meet the statutory requirements for eligibility to vote, cast ballots. But not every irregularity, or even a combination of irregularities, will necessitate the invalidation of an election. Forbes v. Bell, 816 S.W.2d 716 (Tenn. 1991).

Courts should be appropriately reluctant to take the step of declaring an election invalid. Forbes v. Bell, 816 S.W.2d 716 (Tenn. 1991).

If complaint had been properly drawn, the purging by the trial court of a specific number of paper ballots in a particular precinct might well have been appropriate. But in the complaint, the contestant failed to demonstrate that a purge of those ballots would have changed the result of the election or rendered its outcome uncertain. Therefore, the court had no choice but to conclude that the chancellor correctly dismissed the complaint for failure to state a claim. Forbes v. Bell, 816 S.W.2d 716 (Tenn. 1991).

The allegations of complaint were insufficient to show, district-wide, that election was so permeated by fraud or illegality as to render the results incurably uncertain or to thwart the will of the electorate. Forbes v. Bell, 816 S.W.2d 716 (Tenn. 1991).

2-7-110. Examination and final preparation of machines. — (a) The officer shall give the sealed voting machine keys to the judges to prepare the machines for voting. The envelope containing the keys may not be opened until the judges have examined it to see that it has not been opened and that the number registered on the protective counter and the number on the seal with which the machine is sealed correspond with the numbers written on the envelope containing the keys.

(b) If the envelope has been torn open, or if the numbers do not correspond, or if any other discrepancy is found, the judges shall immediately inform the voting machine technician of the facts. The voting machine technician or the technician's assistant shall promptly examine the machine and certify whether it is properly arranged.

(c) If the number on the seal and the protective counter are found to agree with the numbers on the envelope, the judges shall then open the door concealing the counters and carefully examine every counter to see that it registers zero (000) and shall also allow the watchers to examine them. The judges shall then sign a certificate showing the delivery of the keys in a sealed envelope, the number on the seal, the number registered on the protective counter, that all the counters are set at zero (000), and that the ballot labels are properly placed in the machine.

(d) If any counter is found not to register at zero (000) and if it is impracticable for the voting machine technician to arrive in time to adjust the

counters before the time set for opening the polls, the judges shall immediately make a written statement of the designating letter and number, if any, of such counter, together with the number registered thereon, and shall sign and post the statement on the wall of the polling place where it shall remain throughout the election day. In filling out the tally sheets, they shall subtract such number from the number then registered on such counter. [Acts 1972, ch. 740, § 1; T.C.A., § 2-710.]

2-7-111. Posting of sample ballots and instructions — Arrangement of polling place — Restrictions. — (a) The officer of elections shall have the sample ballots, voting instructions, and other materials which are to be posted, placed in conspicuous positions inside the polling place for the use of voters. The officer shall measure off one hundred feet (100′) from the entrances to the building in which the election is to be held and place boundary signs at that distance. However, in any county having a population of:

not less than	nor more than
13,600	13,610
16,360	16,450
24,590	24,600
28,690	28,750
41,800	41,900
50,175	50,275
54,375	54,475
56,000	56,100
67,500	67,600
77,700	77,800
85,725	85,825

all according to the 1980 federal census or any subsequent federal census the officer shall measure off three hundred feet (300′) from the entrances to the building in which the election is to be held and place boundary signs at that distance.

(b)(1) Within the appropriate boundary as established in subsection (a), and the building in which the polling place is located, the display of campaign posters, signs or other campaign materials, distribution of campaign materials, and solicitation of votes for or against any person or political party or position on a question are prohibited. No campaign posters, signs or other campaign literature may be displayed on or in any building in which a polling place is located.

(2) Except in a county with a population of not less than eight hundred twenty-five thousand (825,000) nor more than eight hundred thirty thousand (830,000) according to the 1990 federal census or any subsequent federal census, a solicitation or collection for any cause is prohibited. This does not include the normal activities that may occur at such polling place such as a church, school, grocery, etc.

(3) Nothing in this section shall be construed to prohibit any person from wearing a button, cap, hat, pin, shirt, or other article of clothing outside the established boundary but on the property where the polling place is located.

(c) The officer of elections shall have each official wear a badge with that official's name and official title.

(d) With the exception of counties having a metropolitan form of government, any county having a population over six hundred thousand (600,000) according to the 1970 federal census or any subsequent federal census, and counties having a population of between two hundred fifty thousand (250,000) and two hundred sixty thousand (260,000) by the 1970 census, any county may, by private act, extend the one hundred foot (100') boundary provided in this section. [Acts 1972, ch. 740, § 1; T.C.A., § 2-711; Acts 1980, ch. 543, §§ 1, 2; 1987, ch. 362, §§ 1, 2, 4; 1993, ch. 465, §§ 1, 2; 1993, ch. 518, §§ 11, 21; 1994, ch. 582, § 1.]

Compiler's Notes. This section was held unconstitutional in Freeman v. Burson, 802 S.W.2d 210 (Tenn. 1990). See heading "Constitutionality" under Notes to Decisions. However, the decision by the Tennessee supreme court was reversed on appeal by the United States supreme court on May 26, 1992. See Burson v. Freeman, — U.S. —, 112 S. Ct. 1846, 119 L. Ed 2d 5 (1992).

Cross-References. Violation of this section a misdemeanor, § 2-19-119.

Section to Section References. This section is referred to in §§ 2-3-108, 2-19-119.

NOTES TO DECISIONS

1. Constitutionality.

The exercise of free speech rights conflicts with another fundamental right, the right to cast a ballot in an election free from the taint of intimidation and fraud. Some restricted zone around polling places is necessary to protect that fundamental right. Given the conflict between these two rights, requiring solicitors to stand 100 feet from the entrances to polling places does not constitute an unconstitutional compromise. Freeman v. Burson, 802 S.W.2d 210 (Tenn. 1990).

A state has a compelling interest in protecting voters from confusion and undue influence. Freeman v. Burson, 802 S.W.2d 210 (Tenn. 1990).

The state supreme court held that the state showed a compelling interest in banning solicitation of voters or distribution of campaign materials within the polling place itself, but that this section was not narrowly tailored to advance the state's interest; however, the U.S. Supreme Court, reversing, held that this statute was constitutional. The state supreme court found that the statute prohibited all campaign activity from an arc of 100 feet from every entrance to the polling places, and in many instances, this arc would extend onto public streets and sidewalks, and that the state did not show a compelling interest in the 100 foot radius; and that, therefore, this section and § 2-19-119, which fixes criminal penalties for violations of this section, were constitutionally invalid. Freeman v. Burson, 802 S.W.2d 210 (Tenn. 1990), rev'd, 504 U.S. 191, 112 S. Ct. 1846, 119 L. Ed. 2d 5 (1992).

This section is content based because it regulates a specific subject matter, the solicitation of votes and the display or distribution of campaign materials, and a certain category of speakers, campaign workers. Freeman v. Burson, 802 S.W.2d 210 (Tenn. 1990), rev'd on other grounds, 504 U.S. 191, 112 S. Ct. 1846, 119 L. Ed. 2d 5 (1992).

2-7-112. Procedure for voting. — (a)(1) A voter shall sign an application for ballot, indicate the primary in which the voter desires to vote, if any, and present it to a registrar. The application for ballot shall include thereon a space for the voter's current residence address, and the voter shall write or print such address on the application when the voter signs it. The registrar shall compare the signature and information on the application with the signature and information on the duplicate permanent registration record. The registrar shall make a determination whether the voter's address is different from the address on the voter's permanent registration record or if the registration is in inactive status. If the voter has changed residence, or the voter's registration is inactive, the registrar shall follow the procedures for voting pursuant to

§ 2-7-140. If, upon comparison of the signature and other identification, it is found that the applicant is entitled to vote, the registrar shall initial the application and shall note on the reverse side of the voter's duplicate permanent registration record the date of the election, the number of the voter's ballot application, and the elections in which the voter votes. If the applicant's signature is illegible, the registrar shall print the name on the application. The registrar shall give the voter the ballot application which is the voter's identification for a paper ballot or ballots or for admission to a voting machine. The voter shall then sign the duplicate poll lists without leaving any lines blank on any poll list sheet.

(2) In any computerized county, the county election commission shall have the option of using an application for a ballot as provided in this section, or using the computerized voter signature list. A computerized voter signature list shall include the voter's name, current residence address, social security number or registration number, birth date and spaces for the voter's signature, elections voted, ballot number and precinct registrar's initials. The following procedures shall be followed in the case of computerized voter signature lists: The voter shall sign the signature list and indicate the election(s) the voter desires to vote in and verify the voter's address in the presence of the precinct registrar. The registrar shall compare the voter's signature and information on the signature list with other evidence of identification supplied by the voter. If, upon comparison of the signature and other evidence of identification, it is found that the applicant is entitled to vote, the registrar shall initial the signature list. If the applicant's signature is illegible, the registrar shall print the name of the applicant on the voter list. If a voter is unable to present any evidence of identification specified in subsection (c), the voter shall be required to execute an affidavit of identity on a form provided by the county election commission.

(3) If the identity of the applicant does not compare with the permanent registration records or the applicant otherwise appears ineligible to vote, the registrar shall tell the applicant that the applicant is not eligible to vote. If the applicant still claims to be eligible, the registrar shall challenge the voter and act thereafter on the decision of the judges. The applications for ballots of those persons whose votes are rejected shall be filed in numerical order.

(b) If a voter is disabled so as to be unable to write a signature or make a mark, the registrar shall write the voter's name where needed and shall indicate that this has been done by putting the registrar's initials immediately after the name.

(c) "Evidence of identification" shall be a valid voter's registration certificate, Tennessee driver license, social security card, credit card bearing applicant's signature or other document bearing applicant's signature. [Acts 1972, ch. 740, § 1; 1977, ch. 365, § 1; T.C.A., § 2-712; Acts 1984, ch. 935, §§ 4-6; 1989, ch. 590, §§ 4, 5; 1990, ch. 727, § 3; 1997, ch. 550, § 8.]

Code Commission Notes. Voter identification, constitutionality, OAG 87-186 (12/14/87).

Amendments. The 1997 amendment added the fourth sentence in (a)(1).

Effective Dates. Acts 1997, ch. 550, § 11. June 23, 1997.

Cross-References. Electors privileged from arrest while voting and on way to and from polling place, Tenn. Const., art. IV, § 3.

Textbooks. Tennessee Jurisprudence, 10 Tenn. Juris., Elections, §§ 6, 11.

NOTES TO DECISIONS

1. Effect of Challenge.

If a voter is challenged on the ground that he is not a registered voter at that polling place, and the voter does not protest and assert that he is qualified to vote there, he is bound by the challenge even if the officials are incorrect. Taylor v. Armentrout, 632 S.W.2d 107 (Tenn. 1981).

DECISIONS UNDER PRIOR LAW

ANALYSIS

1. Purpose of making registration books available to judges.
2. Challenging certificate of registration.

1. Purpose of Making Registration Books Available to Judges.

The purpose of §§ 2024 and 2025 of the Code of 1932 making registration books, originals, or copies, available to the judges holding the election was to prevent repeat voting. Fox v. State, 171 Tenn. 226, 101 S.W.2d 1110 (1937).

2. Challenging Certificate of Registration.

The certificate of registration could be successfully challenged before the judges of election, where it was shown by proof to their satisfaction to have been obtained by fraud or perjury, or where the voter had removed, and such certificate was obtained by fraud in fact or in law, where the holder thereof was not a qualified voter. State ex rel. Lyle v. Willett, 117 Tenn. 334, 97 S.W. 299 (1906).

2-7-113. Voting by machine. — (a) When the voter is to vote by voting machine, the voter shall then present the ballot application to the machine operator, enter the machine, and vote by marking the ballot and operating the machine.

(b) The machine operator shall file the ballot applications in order of presentation and shall permit the voter to operate the machine for those elections in which the voter is entitled to vote.

(c) The machine operator shall, upon demand of any voter before the voter enters the machine, tell the voter the order of the offices on the ballot and fully instruct the voter on how to operate the machine. [Acts 1972, ch. 740, § 1; T.C.A., § 2-713.]

2-7-114. Voting by paper ballots. — (a) When the voter is to vote by paper ballot, the voter shall then present the ballot application to the judge who is in charge of paper ballots. The judge shall write the ballot number of each ballot the voter is entitled to on the ballot application, give the ballot or ballots to the voter, and give the ballot application to the judge who is assigned to deposit ballots in the ballot box. The judge shall, upon demand of any voter at the time the voter receives the ballot, tell the voter the order of the offices on the ballot.

(b)(1) The voter shall then go to a place where the voter may mark the ballot in complete secrecy and privacy and shall prepare the ballot by making in the appropriate place a cross (X) or other mark opposite the name of the candidate of the voter's choice for each office to be filled, or by filling in the name of the candidate of the voter's choice in the blank space provided, and by making a cross (X) or other mark opposite the answer the voter desires to give on each question. Before leaving the place of secrecy and privacy, the voter shall fold the ballot so that the votes cannot be seen but so that the information printed on the back of the ballot and the numbered stub are plainly visible.

(2) Any voter who fills in or writes in the name of a candidate whose name is not printed on the ballot shall not be required to make a cross (X) or other mark next to such person's name in order for the vote to be counted.

(c) The voter shall state the voter's name and present the folded ballot to the judge assigned to receive and deposit the ballots. The judge shall compare the ballot number on the stub with the ballot number on the voter's ballot application. If the ballot numbers are the same, the judge shall tear off and destroy the stub and deposit the ballot in the ballot box unless the voter is successfully challenged. The judge shall file all ballot applications in the order in which they are received. [Acts 1972, ch. 740, § 1; T.C.A., § 2-714; Acts 1981, ch. 478, § 17; 1997, ch. 558, § 16.]

Compiler's Notes. Acts 1997, ch. 558, § 34 provided that the act take effect upon becoming a law. The act was returned without the governor's signature and became effective under the provisions of Tenn. Const., art. III, § 18.

Amendments. The 1997 amendment, in (b)(1), substituted "a place where the voter may mark the ballot in complete secrecy and privacy" for "one (1) of the voting compartments" in the first sentence and substituted "place of secrecy and privacy" for "voting compartment" in the second sentence.

Effective Dates. Acts 1997, ch. 558, § 34. June 25, 1997.

Section to Section References. This section is referred to in § 2-2-106.

Textbooks. Tennessee Jurisprudence, 10 Tenn. Juris., Elections, § 12.

NOTES TO DECISIONS

ANALYSIS

1. In general.
2. Validity of ballot.
3. —Intention of voter.

1. In General.

The case law of this state recognizes that statutory violations alone may be sufficient to invalidate an election, especially where they thwart those statutory provisions designed to: (1) prevent undue influence or intimidation of the free and fair expression of the will of the electors; or (2) ensure that only those who meet the statutory requirements for eligibility to vote, cast ballots. But not every irregularity, or even a combination of irregularities, will necessitate the invalidation of an election. Forbes v. Bell, 816 S.W.2d 716 (Tenn. 1991).

Courts should be appropriately reluctant to take the step of declaring an election invalid. Forbes v. Bell, 816 S.W.2d 716 (Tenn. 1991).

2. Validity of Ballot.

It is apparent that the general assembly contemplated that persons marking ballots might not do so in literal compliance with the provisions of the statutes. The last sentence of § 2-7-133(b) indicates a legislative intent that a ballot which is not perfectly marked may still be counted if the intent of the voter can be ascertained therefrom. Hall v. Pate, 611 S.W.2d 577 (Tenn. 1981).

If complaint had been properly drawn, the purging by the trial court of a specific number of paper ballots in a particular precinct might well have been appropriate. But in the complaint, the contestant failed to demonstrate that a purge of those ballots would have changed the result of the election or rendered its outcome uncertain. Therefore, the court had no choice but to conclude that the chancellor correctly dismissed the complaint for failure to state a claim. Forbes v. Bell, 816 S.W.2d 716 (Tenn. 1991).

The allegations of complaint were insufficient to show, district-wide, that election was so permeated by fraud or illegality as to render the results incurably uncertain or to thwart the will of the electorate. Forbes v. Bell, 816 S.W.2d 716 (Tenn. 1991).

3. —Intention of Voter.

Even though a voter did not make a mark opposite the written-in name, his acts of obtaining a paper ballot and writing the name of appellee strongly indicated his intention to vote for a write-in candidate. Hall v. Pate, 611 S.W.2d 577 (Tenn. 1981).

DECISIONS UNDER PRIOR LAW

ANALYSIS

1. Validity of ballot.
2. Procedure in receiving ballot.

1. Validity of Ballot.

The requirement that a voter designate the candidate of his choice by a cross (X) is not mandatory in the sense that a voter who uses a different mark, such as a check mark, will be deprived of his vote, where the intention is clear. Menees v. Ewing, 141 Tenn. 399, 210 S.W. 648 (1918).

Ballots marked opposite blank space reserved for write-in candidate were not as a matter of law required to be counted for candidate whose name appeared immediately above such blank space. Reeder v. Holt, 220 Tenn. 428, 418 S.W.2d 249 (1967).

If a voter makes his choice clear and obvious his vote should be counted but if it is impossible to determine the voter's choice for any office from the face of the ballot his vote should not be counted. Reeder v. Holt, 220 Tenn. 428, 418 S.W.2d 249 (1967).

The question of whether disputed ballots should have been counted by election judges was a question to be determined from what appeared on the face of each ballot and not on evidence aliunde. Reeder v. Holt, 220 Tenn. 428, 418 S.W.2d 249 (1967).

2. Procedure in Receiving Ballot.

The returning officer is the officer holding the election, and he shall receive the ballot in the presence of the judges, who shall pass upon the qualifications of the voter. Taylor v. Carr, 125 Tenn. 235, 141 S.W. 745, 1913C Ann. Cas. 155 (1911).

2-7-115. Residence requirements — Primary election voting requirements. — (a) A voter may vote only in the precinct where the voter resides and is registered, but if a registered voter has, at any time prior to voting, changed residence to another place inside the county, the voter must vote pursuant to the provisions of § 2-7-140. If a registered voter has, within ninety (90) days before an election, changed residence to another place inside Tennessee but outside the county where the voter is registered, the voter may vote in the polling place where the voter is registered. If the voter has, within ninety (90) days before an election, changed name by marriage or otherwise, the voter may vote in the polling place where the voter is registered or is entitled to vote under § 2-7-140.

(b) A registered voter is entitled to vote in a primary election for offices for which the voter is qualified to vote at the polling place where the voter is registered if:

(1) The voter is a bona fide member of and affiliated with the political party in whose primary the voter seeks to vote; or

(2) At the time the voter seeks to vote, the voter declares allegiance to the political party in whose primary the voter seeks to vote and states that the voter intends to affiliate with that party. [Acts 1972, ch. 740, § 1; 1974, ch. 801, § 1; T.C.A., § 2-715; Acts 1997, ch. 550, § 9.]

Amendments. The 1997 amendment rewrote (a).

Effective Dates. Acts 1997, ch. 550, § 11. June 23, 1997.

Cross-References. General assembly authorized to require voters to vote in the precinct where they reside, Tenn. Const., art. IV, § 1.

Primary elections, ch. 13 of this title.

Residents of an area ceded to the federal government entitled to registration, § 2-2-104.

Section to Section References. This section is referred to in § 2-7-126.

Law Reviews. Tennessee Civil Disabilities: A Systemic Approach (Neil P. Cohen), 41 Tenn. L. Rev. 253.

Cited: Taylor v. Armentrout, 632 S.W.2d 107 (Tenn. 1981).

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

1. Purpose of statute.
2. Application to primaries.
3. Federal inmates and employees.

1. Purpose of Statute.

The intention of the statute is that each voter shall cast his vote within his own civil district, where a voting place is provided for the district, and in cities or towns where the civil district may be divided into wards, that he shall vote in his own ward, except in cases especially provided for, and a violation of the statute is a misdemeanor. Green v. State, 1 Shannon's Cases 456 (1875).

2. Application to Primaries.

Since § 11329 of the Code of 1932 was brought forward into such Code under the heading "Offenses Against Nomination Conventions, Primaries and Final Elections" and since there were other provisions of such Code relating to final elections and compulsory primaries, it was apparent that the legislature intended that the provisions of that section extend to voluntary primaries as well as compulsory primaries and final elections even though the original act may have been enacted before the compulsory primary law and before county primaries were common. State v. Matthews, 173 Tenn. 302, 117 S.W.2d 2 (1938).

3. Federal Inmates and Employees.

The inmates and employees working and eating in a federal soldiers' home, regularly and irregularly, but residing with their families on the outside, could vote, if otherwise qualified. State ex rel. Lyle v. Willett, 117 Tenn. 334, 97 S.W. 299 (1906).

Collateral References. Voting rights of persons mentally incapacitated. 80 A.L.R.3d 1116.

2-7-116. Assistance to disabled, illiterate or blind voters — Certified record. — (a)(1) A voter who claims, by reason of illiteracy or physical disability other than blindness, to be unable to mark the ballot to vote as the voter wishes and who, in the judgment of the officer of elections, is so disabled or illiterate, may:

(A) Where voting machines are used:

(i) Use a paper ballot; or

(ii) If the voter cannot mark a paper ballot as the voter wishes, have a ballot marked on a voting machine or on a paper ballot subject to the provisions of § 2-7-117 by the voter's spouse, father, mother, brother, sister, son, daughter or grandchild or by one (1) of the judges of the voter's choice in the presence of either a judge of a different political party or, if such judge is not available, an election official of a different political party; or

(B) Where voting machines are not used, have the ballot marked by the voter's spouse, father, mother, brother, sister, son, daughter or grandchild or by one (1) of the judges of the voter's choice in the presence of either a judge of a different political party or, if such judge is not available, an election official of a different political party.

(2) The officer of elections shall keep a record of each such declaration, including the name of the voter and of the person marking the ballot and, if marked by a judge, the name of the judge or other official in whose presence the ballot was marked. The record shall be certified and kept with the poll books on forms to be provided by the coordinator of elections.

(b)(1) A voter who claims, by reason of blindness, to be unable to mark the ballot to vote as the voter wishes and who, in the judgment of the officer of elections, is blind, may:

(A) Where voting machines are used, have the ballot marked on a voting machine or on a paper ballot subject to the provisions of § 2-7-117 by any person of the voter's selection or by one (1) of the judges of the voter's choice in the presence of either a judge of a different political party or, if such judge is not available, an election official of a different political party; or

(B) Where voting machines are not used, have the ballot marked by any person of the voter's selection or by one (1) of the judges of the voter's choice in the presence of either a judge of a different political party or, if such judge is not available, an election official of a different political party.

(2) The officer of elections shall keep a record of each such declaration, including the name of the voter and of the person marking the ballot and, if marked by a judge, the name of the judge or other official in whose presence the ballot was marked. The record shall be certified and kept with the poll books on forms to be provided by the coordinator of elections.

(c) A physically disabled voter may, at the discretion of the officer of elections, be moved to the front of any line at the polling place. [Acts 1972, ch. 740, § 1; 1975, ch. 2, § 1; T.C.A., § 2-716; Acts 1997, ch. 122, § 1; 1997, ch. 558, § 8; 1997, ch. 558, §§ 8, 9.]

Compiler's Notes. Acts 1997, ch. 558, § 34 provided that the act take effect upon becoming a law. The act was returned without the governor's signature and became effective under the provisions of Tenn. Const., art. III, § 18.

Amendments. The 1997 amendment by ch. 122 added (c).

The 1997 amendment by ch. 558 substituted "son, daughter or grandchild" for "son or daughter" in (a)(1)(A)(ii) and (a)(1)(B).

Effective Dates. Acts 1997, ch. 122, § 2. April 29, 1997.

Acts 1997, ch. 558, § 34. June 25, 1997.

Cross-References. Ballot supplies for persons with visual impairments, § 2-5-218.

Section to Section References. This section is referred to in §§ 2-2-124, 2-6-105.

Textbooks. Tennessee Jurisprudence, 10 Tenn. Juris., Elections, §§ 12, 23.

NOTES TO DECISIONS

ANALYSIS

1. Constitutionality.
2. Assistance to able person.
3. Assistance to disabled and illiterate person.

1. Constitutionality.

This section, in requiring that voters who are blind or otherwise disabled reveal their vote to two election judges under certain circumstances in order to receive voting assistance, in effect establishes two classes of voters with respect to voting secrecy, which classification has a rational basis and is justified by a compelling state need, and this section does not violate the equal protection of laws clause of U.S. Const., amend. 14 or amend. 15, nor Tenn. Const., art. IV, § 1. Smith v. Dunn, 381 F. Supp. 822 (M.D. Tenn. 1974).

2. Assistance to Able Person.

A ballot marked for a person neither blind nor physically disabled is void, whether marked by the officer holding the election, or someone else. Moore v. Sharp, 98 Tenn. 491, 41 S.W. 587 (1897), overruled in part on other grounds, Brown v. Hows, 163 Tenn. 138, 40 S.W.2d 1017 (1931).

3. Assistance to Disabled and Illiterate Person.

A voter, unable to mark his ballot by reason of blindness or other physical disability, is entitled to the officer's assistance in marking his ballot, though the voter is illiterate, or unable to read and write. Moore v. Sharp, 98 Tenn. 491, 41 S.W. 587 (1897), overruled in part on other grounds, Brown v. Hows, 163 Tenn. 138, 40 S.W.2d 1017 (1931).

DECISIONS UNDER PRIOR LAW

1. Ballot Marked by Unauthorized Person.

If a blind man, without fault on his part, allows his ballot to be marked by an unauthorized person, believing him to be the officer holding the election, and casts it, his ballot is not thereby rendered void, and it should not be rejected. Moore v. Sharp, 98 Tenn. 491, 41 S.W. 587 (1897), overruled in part on other grounds, Brown v. Hows, 163 Tenn. 138, 40 S.W.2d 1017 (1931).

Collateral References. Voting rights of persons mentally incapacitated. 80 A.L.R.3d 1116.

2-7-117. Write-in procedure where voting machines are used. — (a) Where voting machines are used, any voter desiring to cast a ballot for a candidate whose name is not on the voting machine ballot may request a paper ballot to be furnished by the ballot judge. This request must be made before operating a voting machine, and a voter after receiving a paper ballot may not enter a voting machine.

(b) The procedure for casting a write-in ballot in counties which use or have a C.E.S., Inc., Votomatic or other comparable punch card voting system shall be governed by rules and regulations promulgated by the coordinator of elections and the state election commission relative to the use of punch card voting systems. [Acts 1972, ch. 740, § 1; T.C.A., § 2-717; Acts 1988, ch. 672, § 4.]

Section to Section References. This section is referred to in §§ 2-5-209, 2-7-116.

Collateral References. Validity of write-in vote where candidate's surname only is written in on ballot. 86 A.L.R.2d 1025.

2-7-118. Time limit for voting — Removal of voter. — (a) No voter who is voting without assistance may remain in a voting machine booth more than two (2) minutes or occupy a voting compartment more than five (5) minutes if other voters are waiting or more than ten (10) minutes in any event.

(b) If a voter refuses to leave after such time elapses, the officer of elections shall have the voter removed. [Acts 1972, ch. 740, § 1; T.C.A., § 2-718.]

NOTES TO DECISIONS

1. In General.

The case law of this state recognizes that statutory violations alone may be sufficient to invalidate an election, especially where they thwart those statutory provisions designed to: (1) prevent undue influence or intimidation of the free and fair expression of the will of the electors; or (2) ensure that only those who meet the statutory requirements for eligibility to vote, cast ballots. But not every irregularity, or even a combination of irregularities, will necessitate the invalidation of an election. Forbes v. Bell, 816 S.W.2d 716 (Tenn. 1991).

Courts should be appropriately reluctant to take the step of declaring an election invalid. Forbes v. Bell, 816 S.W.2d 716 (Tenn. 1991).

2-7-119. Machine out of order — Procedure. — (a) If a voting machine being used in an election becomes out of order, it shall be repaired if possible or another machine substituted as promptly as possible.

(b) If repair or substitution cannot be made and other machines at the polling place cannot handle the voters, the paper ballots provided for the

polling place shall be used and, if necessary, ballots shall be provided under § 2-7-108.

(c) If a voting machine becomes out of order while it is being used, the crosses (X) shall be cleared from its face by the names of candidates and by questions. The voter may then vote on another machine or by paper ballot as the judges decide. [Acts 1972, ch. 740, § 1; T.C.A., § 2-719.]

Section to Section References. This section is referred to in § 2-7-108.

2-7-120. Spoiled ballots. — If any voter spoils a paper ballot, the voter may obtain others, one (1) at a time, not exceeding three (3) in all, upon returning each spoiled one. The spoiled ballots shall be placed in an envelope marked "Spoiled Ballots." [Acts 1972, ch. 740, § 1; T.C.A., § 2-720.]

2-7-121. Rejected ballots. — No person may take any ballot from the polling place before the close of the polls. If a voter refuses to give the paper ballot to the judge to be deposited in the ballot box after marking it, the officer of elections shall require that the ballot be surrendered to the officer and shall deposit it in a sealed envelope marked "Rejected" with the person's name, the reason for rejection, and the officer's signature. [Acts 1972, ch. 740, § 1; T.C.A., § 2-721.]

2-7-122. Management of machine during voting. — (a) The voting machine operator shall inspect the face of the machine after every voter has voted to ascertain that the ballot labels are in their proper places and that the machine has not been injured or tampered with. The operator shall remove any campaign literature left in the machine booth.

(b) During the election the door or other compartment of the machine may not be unlocked or opened or the counters exposed except by the voting machine technician or other authorized person, a statement of which shall be made and signed by the voting machine technician or authorized person and attached to the returns. [Acts 1972, ch. 740, § 1; T.C.A., § 2-722.]

2-7-123. Challenges to right to vote — Oath of challenged voter. — If any person's right to vote is challenged by any other person present at the polling place, the judges shall present the challenge to the person and decide the challenge after administering the following oath to the challenged voter: "I swear (affirm) that I will give true answers to questions asked about my right to vote in the election I have applied to vote in." A person who refuses to take the oath may not vote. [Acts 1972, ch. 740, § 1; T.C.A., § 2-723.]

Section to Section References. Sections 2-7-123 — 2-7-125 are referred to in § 2-7-126.

Cited: Taylor v. Armentrout, 632 S.W.2d 107 (Tenn. 1981).

2-7-124. Challenges — Grounds and procedure. — (a) A person offering to vote may be challenged only on the grounds that the person:

(1) Is not a registered voter in Tennessee;

(2) Is not a resident of the precinct where the person seeks to vote;

(3) Is not the registered voter under whose name the person has applied to vote;

(4) Has already voted in the election; or

(5) Has become ineligible to vote in the election being conducted at the polling place since the person registered.

(b) The judges may ask any question which is material to deciding the challenge and may put under oath and ask questions of such persons as they deem necessary to their decision. The judges shall ask the administrator of elections to check the original permanent registration records if the voter claims to be registered but has no duplicate permanent registration record. [Acts 1972, ch. 740, § 1; T.C.A., § 2-724; Acts 1997, ch. 550, § 10.]

Compiler's Notes. References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

Amendments. The 1997 amendment rewrote (a).

Effective Dates. Acts 1997, ch. 550, § 11. June 23, 1997.

Cited: Taylor v. Armentrout, 632 S.W.2d 107 (Tenn. 1981).

2-7-125. Challenged voter — Voting procedure. — (a) If the judges determine unanimously that the person is not entitled to vote, the person shall vote by paper ballot and the person's ballot shall be deposited in a sealed envelope marked "Rejected" with the person's name, the reason for rejection, and the signatures of the judges written on it.

(b) If the judges do not agree unanimously to rejection, the person shall be permitted to vote as if unchallenged.

(c) In either case the challenge and outcome shall be noted on the back of the voter's duplicate permanent registration record and on the poll lists. [Acts 1972, ch. 740, § 1; T.C.A., § 2-725.]

Cited: Taylor v. Armentrout, 632 S.W.2d 107 (Tenn. 1981).

2-7-126. Challenge on ground of party membership. — A person offering to vote in a primary may also be challenged on the ground that the person is not qualified under § 2-7-115(b). Such a challenge shall be disposed of under the procedure of §§ 2-7-123 — 2-7-125 by the judge or judges and the other election officials of the party in whose primary the voter applied to vote, with a total of three (3) to decide the challenge. [Acts 1972, ch. 740, § 1; T.C.A., § 2-726.]

2-7-127. Closing of the polling place. — At the time set for the closing of the polling place, the officer of elections shall place one (1) of the election officials at the end of the line of persons waiting to vote. No other person may then get in line to vote. The polls shall be closed as soon as all persons in the line ahead of the election official have voted regardless of when the polls opened. [Acts 1972, ch. 740, § 1; T.C.A., § 2-727.]

2-7-128. Duties after closing the polls. — The registrars shall, immediately after the polls close, cross (X) out the remaining space on incomplete poll

list sheets so that no additional names can be written in and shall number those sheets serially and place them in the poll book binders. [Acts 1972, ch. 740, § 1; T.C.A., § 2-728.]

2-7-129. Unused paper ballots — Disposal. — Immediately after the polls close and before any ballot box or voting machine is opened to count votes, the judges shall tear all unused paper ballots in half without tearing off the numbered stubs. The portion without the stubs may then be discarded, and the portion with the stubs shall be preserved. [Acts 1972, ch. 740, § 1; T.C.A., § 2-729.]

2-7-130. Locking of machine — Canvass and proclamation of votes on voting machines. — (a)(1) The judges shall then lock and seal the voting machines against voting. The judges shall sign a certificate on the tally sheets, stating that each machine has been locked against voting and sealed, the number of voters as shown on the public counters, the numbers on the seals, and the numbers registered on the protective counters.

(2) The judges shall then open the counter compartment in the presence of the watchers and all other persons who are present, giving full view of all the counter numbers. One (1) of the judges, under the scrutiny of a judge of a different political party, in the order of the offices as their titles are arranged on the machine, shall read aloud in distinct tones the designating number and letter, if any, on each counter for each candidate's name and the result as shown by the counter numbers. The judge shall in the same manner announce the vote on each question. The counters shall not in the case of presidential electors be read consecutively along the party row or column, but shall always be read along the office columns or rows, completing the canvass for each office. The total shown beside the words "Electors for (giving the name) candidate for President and for (giving the name) candidate for Vice President" shall operate as a vote for all the candidates for presidential electors for those candidates for president and vice president.

(3) The vote as registered shall be entered on the duplicate tally sheets in ink by the precinct registrars in the same order on the space which has the same designating number and letter, if any. The minority party precinct registrar shall then read aloud the figures from the tally sheet filled in by the majority party precinct registrar for verification by the minority party judge.

(4) After proclamation of the vote on the voting machines, ample opportunity shall be given to any person present to compare the results so announced with the counter dials of the machine.

(5) The judges shall make corrections.

(b) When voting machines are employed such as those of Shoup manufacture, which achieve the effect of seals by the utilization of master keys, sealing the machines upon the close of polls shall be unnecessary. [Acts 1972, ch. 740, § 1; 1976, ch. 416, § 1; T.C.A., § 2-730.]

Section to Section References. This section is referred to in § 2-7-131.

Textbooks. Tennessee Jurisprudence, 10 Tenn. Juris., Elections, § 14.

2-7-131. Counting of ballots. — (a) After the requirements of § 2-7-130 have been met or, where voting machines are not used, after the polling place closes, the judges shall open the ballot box in the polling place in the presence of the watchers and all other persons who are present.

(b) The judges shall alternate in drawing ballots from the box and reading aloud within sight of the other judges the names of the persons who have been voted for on each ballot, and the two (2) precinct registrars shall record the votes at the same time for counting on record sheets. The completed record sheets shall be bound in the poll books.

(c) Two (2) judges of different political parties shall then compute the votes for each candidate and each position on a question and shall enter the totals for the paper ballots on the duplicate tally sheets in ink. The third judge shall verify the computation and entry of the totals.

(d) The paper ballot vote totals shall then be announced.

(e)(1) Notwithstanding the provisions of subsections (a)-(d), if paper ballots are used pursuant to § 2-5-206(e)(2), the county election commission may have such paper ballots counted by the central absentee ballot counting board pursuant to § 2-6-302, after the ballot boxes have been transported to the county election commission office.

(2) The coordinator of elections may promulgate rules and procedures to implement this subsection. [Acts 1972, ch. 740, § 1; T.C.A., § 2-731; Acts 1997, ch. 287, § 1.]

Amendments. The 1997 amendment added (e).

Effective Dates. Acts 1997, ch. 287, § 2. May 28, 1997.

Textbooks. Tennessee Jurisprudence, 10 Tenn. Juris., Elections, § 14.

NOTES TO DECISIONS

ANALYSIS

1. Right of electors to attend counting.
2. Taking ballot box from polling place.

1. Right of Electors to Attend Counting.

Electors who have a right to vote in the precinct have the right to be present at the counting of the ballots in the free, open, and public manner required by law, at the polling place appointed and registered for that purpose. United States v. Badinelli, 37 F. 138 (W.D. Tenn. 1888).

2. Taking Ballot Box from Polling Place.

Taking the ballot box from the polling place to a private room for the purpose of counting the ballots and excluding the electors was unlawful. United States v. Badinelli, 37 F. 138 (W.D. Tenn. 1888).

2-7-132. Completion of duplicate tally sheets — Certification — Final proclamation of vote. — (a) The duplicate tally sheets shall then be completed, showing the total number of votes cast for each office and question, the total number of votes cast for each candidate, including write-in candidates, and for each position on a question.

(b) The duplicate tally sheets shall be certified correct and signed by each judge and by the officer of elections and shall be placed in the poll books.

(c) A final proclamation shall then be made as to the total vote received by each candidate and for each position on questions. [Acts 1972, ch. 740, § 1; T.C.A., § 2-732.]

NOTES TO DECISIONS

1. In General.

The case law of this state recognizes that statutory violations alone may be sufficient to invalidate an election, especially where they thwart those statutory provisions designed to: (1) prevent undue influence or intimidation of the free and fair expression of the will of the electors; or (2) ensure that only those who meet the statutory requirements for eligibility to vote, cast ballots. But not every irregularity, or even a combination of irregularities, will necessitate the invalidation of an election. Forbes v. Bell, 816 S.W.2d 716 (Tenn. 1991).

Courts should be appropriately reluctant to take the step of declaring an election invalid. Forbes v. Bell, 816 S.W.2d 716 (Tenn. 1991).

2-7-133. Ballots which may be counted. — (a) Only ballots provided in accordance with this title may be counted. The judges shall write "Void" on others and sign them.

(b) If the voter marks more names than there are persons to be elected to an office, or if for any reason it is impossible to determine the voter's choice for any office to be filled or on a question, the voter's ballot shall not be counted for such office and shall be marked "Uncounted" beside the office and be signed by the judges. It shall be counted so far as it is properly marked or so far as it is possible to determine the voter's choice.

(c) If the voter marks a ballot for an office for a dead person, the ballot for that office shall not be counted and shall be marked "Uncounted" beside the office and signed by the judges.

(d) If two (2) ballots are rolled up together or are folded together, they shall not be counted. The judges shall write on them "Void" and the reason and sign them.

(e) Any ballot marked by the voter for identification shall not be counted. The judges shall write on it "Void" and the reason and sign it.

(f) Ballots which are not counted shall be kept together and shall be bundled separately from the ballots which are counted. [Acts 1972, ch. 740, § 1; T.C.A., § 2-733.]

Textbooks. Tennessee Jurisprudence, 10 Tenn. Juris., Elections, § 12.

NOTES TO DECISIONS

ANALYSIS

1. In general.
2. Legislative intent.
3. Ballots provided in accordance with title.
4. Presumption as to actions of judges.
5. Ballot marked by mistake.
6. Ballots marked opposite space for write-ins.
7. Writing name of candidate.

1. In General.

If a voter makes his choice clear and obvious his vote should be counted but if it is impossible to determine the voter's choice for any office from the face of the ballot his vote should not be counted. Reeder v. Holt, 220 Tenn. 428, 418 S.W.2d 249 (1967).

The question of whether disputed ballots should have been counted by election judges was a question to be determined from what appeared on the face of each ballot and not on evidence aliunde. Reeder v. Holt, 220 Tenn. 428, 418 S.W.2d 249 (1967).

It is apparent from the provisions of this section that the intention of the voter is paramount and should be honored if it can be reasonably ascertained. Hall v. Pate, 611 S.W.2d 577 (Tenn. 1981).

2. Legislative Intent.

It is apparent that the General Assembly contemplated that persons marking ballots might not do so in literal compliance with the provisions of the statutes. The last sentence of subsection (b) indicates a legislative intent that a ballot which is not perfectly marked may still be counted if the intent of the voter can be

ascertained therefrom. Hall v. Pate, 611 S.W.2d 577 (Tenn. 1981).

3. Ballots Provided in Accordance with Title.

Statutory provision that none but ballots provided in accordance with the provisions of this title shall be counted had reference to ballots described in former provisions similar to § 2-5-204 et seq., and not to the manner of marking ballots. Menees v. Ewing, 141 Tenn. 399, 210 S.W. 648 (1918).

4. Presumption as to Actions of Judges.

The presumption was that in failing to count ballots election judges knew the law and acted accordingly. Reeder v. Holt, 220 Tenn. 428, 418 S.W.2d 249 (1967).

5. Ballot Marked by Mistake.

Where perforations were made in ballot by mistake and were not so marked by the voters for purposes of identification, the ballots should be counted. Taylor v. Carr, 125 Tenn. 235, 141 S.W. 745 (1911).

6. Ballots Marked Opposite Space for Write-ins.

Ballots marked opposite blank space reserved for write-in candidate were not as a matter of law required to be counted for candidate whose name appeared immediately above such blank space. Reeder v. Holt, 220 Tenn. 428, 418 S.W.2d 249 (1967).

7. Writing Name of Candidate.

Even though a voter did not make a mark opposite the written-in name, his acts of obtaining a paper ballot and writing the name of appellee strongly indicated his intention to vote for a write-in candidate. Hall v. Pate, 611 S.W.2d 577 (Tenn. 1981).

2-7-134. Return of keys at close of election. — After the tally sheets have been certified, the judges shall close and lock the voting machines and enclose the keys for each voting machine in a separate sealed envelope on which they shall certify the number of the machine, the polling place where it has been used, the number on the seal, and the numbers registered on the public and protective counters. [Acts 1972, ch. 740, § 1; T.C.A., § 2-734.]

2-7-135. Lists of election officials prepared by officer of elections. — (a) The officer of elections shall prepare and certify to the county election commission a list of all election officials who served at the polling place and their official positions. The list shall be signed by each official.

(b) The officer of elections shall certify to the county election commission the names of those persons appointed as officials for the polling place before the election who failed to appear and discharge the duties of office. [Acts 1972, ch. 740, § 1; T.C.A., § 2-735.]

NOTES TO DECISIONS

1. Validity of Lists.

Where a list of the names of everyone who worked at a particular place was prepared by the chief officer in each voting place and the secretary of the county election commission then submitted these lists to the chairman of the county court the warrants based on such lists were valid as this constituted a certification of the lists by the commission. Brenner v. State, 217 Tenn. 427, 398 S.W.2d 252 (1965).

2-7-136. Public announcement of results — Certification of results on demand of any candidate or watcher. — When the certification of the tally sheets is complete, the officer of elections shall publicly announce the results and shall, on demand of any candidate or watcher present, furnish such person a certified copy of the results. The certificate shall include the names of all candidates appearing on the ballot, the number of votes received by each and the number of votes for and against each question, including separately the total number of votes cast for each by voting machine and by paper ballot. The certificate shall be signed by the officer of elections and the judges and may

be used as competent evidence in case of a contest regardless of what tribunal is hearing the contest. [Acts 1972, ch. 740, § 1; T.C.A., § 2-736.]

2-7-137. Items to be locked in ballot box after certification of the completed tally sheets. — After certification of the completed tally sheets and the performance of the other duties of this chapter, the officer of elections shall have the following items placed in the ballot box or boxes which shall then be locked:

(1) The bound bundles of paper ballots;
(2) The record of voter assistance;
(3) The envelopes containing spoiled ballots;
(4) The envelopes containing rejected ballots;
(5) The poll books;
(6) The bound applications for ballots;
(7) The portions of unused paper ballots containing the numbered stubs;
(8) The envelopes containing the voting machine keys; and
(9) The ballot box keys. [Acts 1972, ch. 740, § 1; T.C.A., § 2-737; Acts 1982, ch. 871, § 1.]

Cross-References. Transfer forms to be locked in ballot box, § 2-2-129.

Section to Section References. This section is referred to in § 2-7-139.

2-7-138. Delivery of locked ballot box and supplies or equipment to county election commission. — The officer of elections, accompanied by either a judge or precinct registrar of another political party, shall immediately deliver the locked ballot box or boxes and remaining election supplies or equipment except the voting machines to the county election commission. [Acts 1972, ch. 740, § 1; T.C.A., § 2-738.]

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

1. Returning of ballots a ministerial duty.
2. Delivery and preservation of ballots.
3. Ballots delivered unsealed.
4. Changing or altering of returns.
5. —Mandamus to compel.

1. Returning of Ballots a Ministerial Duty.

The commissioner of registration, under the election laws during the reconstruction period after the war between the states, was but the sheriff's substitute in the matter of holding elections and insofar as he was a returning officer he was a ministerial officer only. State ex rel. v. Wright, 57 Tenn. 237 (1872).

2. Delivery and Preservation of Ballots.

The ballots must be delivered to the commissioners of elections, sealed up, and it necessarily results that they must be kept by these officers in that form until needed upon a contest of election, and then, in case of contested elections, they should be opened only in some form fair to both sides, after due notice, and after the adoption of proper precautions to prevent spoliation or mutilation. Taylor v. Carr, 125 Tenn. 235, 141 S.W. 745, 1913C Ann. Cas. 155 (1911); Stokely v. Burke, 130 Tenn. 219, 169 S.W. 763, 1916B Ann. Cas. 488 (1914).

3. Ballots Delivered Unsealed.

Where it appears that the ballots were not sealed before being delivered to the commissioners of elections, they cannot, for that reason, be examined, unless it should be made to appear with great clearness that they had been so kept as not to be the subject of interference or change. Taylor v. Carr, 125 Tenn. 235, 141 S.W. 745, 1913C Ann. Cas. 155 (1911); Stokely v. Burke, 130 Tenn. 219, 169 S.W. 763, 1916B Ann. Cas. 488 (1914).

4. Changing or Altering of Returns.

The judges of the election having certified the returns and sealed the same as required by law have no authority thereafter to add to, change or alter them, or make a new return, and the county board of election commissioners is likewise without authority to make changes or to allow the judges or officers of any election precinct to do so. State ex rel. Robinson v. Hutcheson, 180 Tenn. 46, 171 S.W.2d 282, 168 A.L.R. 850 (1943).

5. —Mandamus to Compel.

The district election officials having performed their legal duty by canvassing and certifying the returns cannot be compelled by mandamus to accept and certify other and additional returns, nor can the county board of election commissioners be compelled by mandamus to accept an amendment which is willingly offered by the election officials upon any pretext whatsoever. State ex rel. Robinson v. Hutcheson, 180 Tenn. 46, 171 S.W.2d 282, 168 A.L.R. 850 (1943).

2-7-139. Removal of supplies from polling place prohibited. — No election supplies, ballots or equipment may be removed from a polling place from the opening of the polls until the requirements of § 2-7-137 have been met except that items which have been delivered to the wrong polling place may be transferred to the correct one. [Acts 1972, ch. 740, § 1; T.C.A., § 2-739.]

2-7-140. Procedures for certain inactive voters. — (a) Voters whose registration is in inactive status because of a failure to respond to a confirmation notice described in § 2-2-106(c) and voters who have changed their address of residence to a new address within the county of registration shall be required to vote under the procedures of this section.

(b) An inactive voter who has not moved or any registered voter of the county that has changed residence to a new address within the same voting precinct shall be required to make a written affirmation of such voter's current address and that the voter is entitled to vote before voting. This affirmation shall be made on a standard form provided by the county election commission and shall be made before the officer of elections at the voter's polling place or the appropriate election official at an early voting site. The voter may then vote using the same method as any other voter at the polling place.

(c) A registered voter of the county who has changed residence to a new address within the county of registration but outside such voter's former voting precinct shall be required to make a written affirmation of the voter's current address and that the voter is entitled to vote before voting;

(1) If a voter under this subsection appears at an early voting location and makes the proper affirmation, the election official shall allow the voter to vote the ballot for the voter's new precinct of residence using the same method as any other voter at the polling place;

(2) If a voter under this subsection appears at such voter's former polling place, the voter cannot cast any ballot at that location. An election official shall make a determination of the voter's new polling place and inform the voter of the appropriate place to vote. The voter shall be required to make a written affirmation of the voter's current address and that the voter is entitled to vote. The official at the voter's former polling location shall indicate on the affirmation that the person has not been allowed to vote at that location and shall give the voter a copy of the form to take to such voter's new polling location. Upon presenting that affirmation at the new polling location and verification that the new address is within that precinct, the voter shall be allowed to vote using the same method as any other voter at the polling place;

(3) If a voter under this subsection appears at a polling location where the voter is not currently registered, and does not have a copy of the form described in subdivision (c)(2), the election official shall make a determination as to whether that voter's new address is within the voting precinct for that polling location. If the voter now resides in that precinct, the voter shall be required to make a written affirmation of the voter's current address and that the voter is entitled to vote. The fact that this person is a registered voter must be confirmed by the county election commission before this person's vote is counted.

(d) If a voter described in subsection (a) applies for an absentee ballot, the voter shall fill out the appropriate portion of the absentee application to affirm the voter's address and that the voter is entitled to vote. This affirmation would not have to be made in front of an election official. Upon receiving a proper application, the administrator of elections shall send the voter a ballot for the precinct where the voter now resides and update the registration based upon the affirmation as necessary. [Acts 1997, ch. 550, § 2.]

Compiler's Notes. References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

Effective Dates. Acts 1997, ch. 550, § 11. June 23, 1997.

Section to Section References. This section is referred to in §§ 2-2-129, 2-7-115.

CHAPTER 8

DETERMINATION OF RESULTS

2-8-101. Meeting of county election commission following election. — (a) The county election commission shall meet at its office on the first Monday after an election or upon completion of its duties under § 2-8-104 no later than the second Monday after the election to compare the returns on the tally sheets, to certify the results as shown by the returns in writing signed by at least the majority of them, and to perform the duties prescribed by this chapter.

(b) The commission may not recount any paper ballots, including absentee ballots.

(c) Any county election commission which fails to certify any election by the deadlines set forth herein, unless such failure is determined by the state election commission to be for good cause, shall forfeit any compensation due the members for the holding of such election. The chair of the state election commission shall promptly notify the chief fiscal officer of any county of such failure to certify under the provisions of this section. [Acts 1972, ch. 740, § 1; 1979, ch. 306, § 8; T.C.A., § 2-801.]

Section to Section References. This chapter is referred to in §§ 2-5-105, 2-14-202, 2-16-101.

This section is referred to in § 2-8-106.

Comparative Legislation. Results:

Ala. Code § 17-13-1 et seq.
Ark. Code § 7-5-701 et seq.
Ga. O.C.G.A. § 21-2-490 et seq.
Ky. Rev. Stat. Ann. § 117.275 et seq.
Miss. Code Ann. § 23-15-391 et seq.
Mo. Rev. Stat. § 115.447 et seq.
N.C. Gen. Stat. § 163-168 et seq.
Va. Code § 24.1-95 et seq.

NOTES TO DECISIONS

ANALYSIS

1. Powers and duties of election commission.
2. Mandamus to compel performance of duties.

1. Powers and Duties of Election Commission.

The duties of the county election commission are only ministerial, and not judicial, and it cannot go behind the returns and examine and recount the ballots, but must preserve the ballots, under seal as delivered to it, for the use of the parties in the case of a contest. Taylor v. Carr, 125 Tenn. 235, 141 S.W. 745, 1913C Ann. Cas. 155 (1911).

The county election commission has no legal right to recount the ballots, which are in its hands for safekeeping and not for counting. Stokely v. Burke, 130 Tenn. 219, 169 S.W. 763, 1916B Ann. Cas. 488 (1914).

Where there was no apparent defacement, correction or error in the scrolls, tally sheets or returns and no ambiguity in the returns and nothing to require the exercise of discretion on the part of the election commission, the commission was not empowered to go beyond the returns and count ballots rejected by the judges and thereby change the results of the election. State ex rel. Caldwell v. McQueen, 178 Tenn. 478, 159 S.W.2d 436 (1942).

The county election commission has no authority to question the certified returns of election officials even though such returns may show an additional vote. State ex rel. Robinson v. Hutcheson, 180 Tenn. 46, 171 S.W.2d 282 (1943).

2. Mandamus to Compel Performance of Duties.

The duties of the county election commission, as a canvassing board, are ministerial in character and as such subject to the writ of mandamus. State ex rel. Caldwell v. McQueen, 178 Tenn. 478, 159 S.W.2d 436 (1942).

DECISIONS UNDER PRIOR LAW

ANALYSIS

1. Comparing at jail.
2. Comparing at private house.
3. Duty to certify.
4. Notice of contest filed on day of comparison.

1. Comparing at Jail.

The comparing of the polls at the county jail instead of the courthouse, in the absence of all fraud and misconduct, does not vitiate the returns. Puckett v. Springfield, 97 Tenn. 264, 37 S.W. 2 (1896).

2. Comparing at Private House.

Where the returns of the election were made to the courthouse, but, the county court being in session, the votes were counted or compared in a private house in the county town, there was a sufficient compliance with the requirements of the statute, and such action constitutes no ground, in the absence of fraud or misconduct in comparing the polls and counting the votes, for setting aside the election. McCraw v. Harralson, 44 Tenn. 34 (1867).

3. Duty to Certify.

Election commissioners under Public Acts 1897, ch. 13 had the same duties as those imposed on sheriff prior to Public Acts 1897 and the commissioners were required to certify result of special election for removal of county seat to chairman of county court. State ex rel. Meacham v. Hicks, 52 S.W. 691 (Tenn. Ch. App. 1899).

4. Notice of Contest Filed on Day of Comparison.

The polls could not legally be compared until Monday following an election and a contestant had all of that day to file notice of contest of the election, and this right could not be defeated by action of the sheriff in forwarding of the returns early Monday morning. Puckett v. Springfield, 97 Tenn. 264, 37 S.W. 2 (1896).

Collateral References. 26 Am. Jur. 2d Elections §§ 291-308.

29 C.J.S. Elections §§ 221-240.

Parol evidence of election officials to impeach election returns. 46 A.L.R.2d 1385.

Power of election officers to withdraw or change returns. 168 A.L.R. 855.

Statutory provisions relating to form or manner in which election returns from voting districts or precincts are to be made, failure to comply with. 106 A.L.R. 398.

Elections ⇐ 235-268.

2-8-102. Undelivered returns. — If the returns from any polling place have not been delivered to the county election commission by the first day after an election, the commission shall employ either a special messenger or a member of its staff or a member of the commission to obtain the missing returns. [Acts 1972, ch. 740, § 1; T.C.A., § 2-802.]

2-8-103. Form of returns — Sufficiency. — No return, poll list, or certificate made under the provisions of this title may be disregarded or rejected for want of form or on account of its not being strictly in accordance with the requirements of this title if it can be clearly understood. Any such return or certificate signed by a majority of the election officials at the polling place is sufficient. [Acts 1972, ch. 740, § 1; T.C.A., § 2-803.]

Textbooks. Tennessee Jurisprudence, 10 Tenn. Juris, Elections, § 7.

NOTES TO DECISIONS

ANALYSIS

1. Application of section.
2. Absence of jurat on oath of officials.

1. Application of Section.

Former provisions that the returns, poll lists, or certificates should not be invalidated by any informality, if the same could be clearly understood, was a general provision, and would equally apply to the same documents, although made returnable by a subsequent law, to different officers. State ex rel. Stewart v. Marks, 74 Tenn. 12 (1880).

Where election returns were certified by only one of three judges but were attested by two clerks and the officer of the election so that it amounted to authentication of the returns by a majority of the election officials, the situation was a proper one for the application of former similar provisions, and the returns could not be rejected even though the procedure was not strictly in accordance with statute. Peeler v. State ex rel. Beasley, 190 Tenn. 615, 231 S.W.2d 321 (1950).

2. Absence of Jurat on Oath of Officials.

Absence of jurat on oath signed by election officials was an omission of the character contemplated by former similar provisions, and was not grounds for rejection of election returns by election commission. Peeler v. State ex rel. Beasley, 190 Tenn. 615, 231 S.W.2d 321 (1950).

2-8-104. Opening of voting machines. — (a) The commission, or such persons as it may designate, shall, as soon as possible after the election, open each voting machine and compare the votes shown with the tally sheets prepared at the polling place.

(b) All candidates, their representatives, representatives of the political parties, and representatives of the press may be present at the opening of the voting machines and throughout their examination and shall be given ample opportunity to examine the tabulations.

(c) The commission shall revise any figures in the tally sheets prepared at the polling place to conform to the figures on the machines without writing on or otherwise making the original figures on the tally sheets illegible. The commission figures shall be circled in red. [Acts 1972, ch. 740, § 1; T.C.A., § 2-804.]

Section to Section References. This section is referred to in § 2-8-101.

2-8-105. Certification of tabulation and results. — After completing the comparison of the returns, the county election commission shall make and certify the official tabulation and certification of results, showing both precinct and county totals, in the following manner:

(1) In triplicate for the offices of governor, members of the general assembly, presidential and vice presidential elector, members of congress, judge, chancellor, or district attorney general;

(2) In triplicate for questions submitted to the people of the entire state;

(3) In duplicate for any other office not listed in subdivision (1) and for questions submitted to people of a part of the state; and

(4) In triplicate for all primary elections. [Acts 1972, ch. 740, § 1; 1979, ch. 306, § 10; T.C.A., § 2-805.]

Section to Section References. This section is referred to in §§ 2-8-106, 5-3-104, 6-1-204, 6-18-105, 7-81-104.

2-8-106. Mailing and filing of tabulation and certification. — (a) The commission shall seal and mail the original of the official tabulation and certification of results prepared pursuant to § 2-8-105(1) and (2) to the secretary of state and take the postmaster's receipt for it and shall mail the first copy to the governor and take the postmaster's receipt for it. The remaining copy shall be filed with the county clerk and the commission shall take the clerk's receipt for it. The aforementioned statements may be delivered personally in lieu of mailing by the deadline set forth in § 2-8-101. In the case of a general election for the office of governor, an additional copy of the returns shall be sent directly to the speaker of the senate as provided by Tenn. Const., art. III, § 2.

(b) The commission shall deliver the official tabulation and certification of results prepared pursuant to § 2-8-105(3) as follows:

(1) If the election is for a county official, the original to the coordinator of elections and take the postmaster's receipt for it, and file the copy with the county clerk, and take the clerk's receipt for it;

(2) If the election is for a municipal office, the original to the chief administrative offices of the municipality and the copy filed with the county clerk; and

(3) If a question, the original to the coordinator of elections and take the postmaster's receipt for it, and the copy to be filed in the county clerk's office and take the clerk's receipt for it.

(c) The commission shall seal and mail the original of the official tabulation and certification of results prepared pursuant to § 2-8-105(4) to the coordinator of elections and take the postmaster's receipt for it, mail a copy to the chair of the political party's state executive committee and take the postmaster's receipt for it, and deliver the remaining copy to the county clerk and take the clerk's receipt for it.

(d) The official tabulation and certification of results forms to be utilized for elections, both primary and general, for the offices listed in § 2-13-202, and for any question submitted to the voters of the entire state shall be furnished by the coordinator of elections. The county election commission shall furnish the forms for all other elections.

(e) The county election commission shall issue certificates of elections to each person elected except those to be commissioned by the governor. [Acts 1972, ch. 740, § 1; 1975, ch. 132, § 1; 1977, ch. 480, § 3; impl. am. Acts 1978, ch. 934, §§ 22, 36; T.C.A., § 2-806; Acts 1980, ch. 609, § 1.]

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

1. Return as evidence.
2. Judicial notice of return.

1. Return as Evidence.

The return of the election officer is not conclusive, but merely prima facie evidence of the right to the office, and may be rebutted by evidence. Marshall v. Kerns, 32 Tenn. 68 (1852); Dodd v. Weaver, 34 Tenn. 670 (1855); McGraw v. Harralson, 44 Tenn. 34 (1867).

2. Judicial Notice of Return.

Election returns made to the secretary of state and recorded in accordance with law may be judicially noticed in the same manner as any other official record. Hanover v. Boyd, 173 Tenn. 426, 121 S.W.2d 120 (1938).

2-8-107. Disposition and keeping of pollbooks — Computerized counties. — (a) The commission shall seal and forward all pollbooks containing the original poll list sheets to the secretary of state within ten (10) days after the election to be stored by the secretary of state for nine (9) years, and shall deposit the pollbooks containing the duplicate poll list sheets in the office of the county clerk to be stored by the county clerk for four (4) years in any secure place.

(b) In computerized counties, the commission shall seal and forward to the secretary of state a printed list of the names of all voters who participated in the election, verified as to its accuracy, on or before thirty (30) days after the election, to be stored by the secretary of state for nine (9) years, and shall deposit the list in the office of the county clerk, to be stored by such clerk for six (6) years.

(c) The election commission shall keep on file the voter signature list for six (6) years. [Acts 1972, ch. 740, § 1; impl. am. Acts 1978, ch. 934, §§ 22, 36; T.C.A., § 2-807; Acts 1990, ch. 727, § 4.]

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

1. Purpose of statute.
2. Failure to certify poll books, lists and tally sheets.
3. Certifying only result of canvass.
4. Failure to comply with statutory form.
5. Authentication of returns by majority of officials.

1. Purpose of Statute.

The purpose of former statute requiring preservation and certification of poll books was to obtain an honest return of the votes cast. Summitt v. Russell, 199 Tenn. 174, 285 S.W.2d 137 (1955).

2. Failure to Certify Poll Books, Lists and Tally Sheets.

Failure of election officials to certify poll books, lists of votes, and tally sheets did not invalidate election where the ballots were properly preserved and delivered to the election commission. Summitt v. Russell, 199 Tenn. 174, 285 S.W.2d 137 (1955).

Where election officials failed to properly certify poll books, lists of votes, and tally sheets, parties in election contest should have been permitted to introduce proof to show whether or not there was in fact miscounting of ballots. Summitt v. Russell, 199 Tenn. 174, 285 S.W.2d 137 (1955).

3. Certifying Only Result of Canvass.

Apparently it is customary to certify only the result of the canvass of votes instead of certifying and forwarding one copy or set of the poll books, and without deciding that a literal compliance with the law is not necessary to compel the board of inspectors to perform their duties if they stand upon the letter of the law, a court must be content with any return which the board of inspectors has not rejected for want of form or because not strictly in accordance with directions given. State ex rel. Stewart v. Marks, 74 Tenn. 12 (1880).

4. Failure to Comply with Statutory Form.

The general rule as to failure of election officials to comply with statutory provisions relating to the form and manner in which election returns from voting districts or precincts are to be made is that honest mistakes or mere omissions on the part of the election officers or irregularity in directory matters even though gross, if not fraudulent, will not void an election unless they affect the result or at least render it uncertain, and even if the acts of such officers are fraudulent the votes of the electors should not be invalidated if it is possible to prevent it. Summitt v. Russell, 199 Tenn. 174, 285 S.W.2d 137 (1955).

5. Authentication of Returns by Majority of Officials.

Election commissioners were not entitled to reject returns on grounds that only one of three judges certified the returns where the two clerks and the officer of the election attested the returns, as this amounted to authentication of the returns by a majority of the election officials even though by a minority of the judges, and the situation was a proper one for the application of the statute forbidding the rejection of returns that may be clearly understood though not strictly in accordance with statutory directions. Peeler v. State ex rel. Beasley, 190 Tenn. 615, 231 S.W.2d 321 (1950).

2-8-108. Preservation of paper ballots and other ballot supplies. — (a) The commission shall preserve all paper ballots for six (6) months after the election to which they were cast or offered to be cast and may then dispose of them. During the period in which they are preserved, the packages of ballots shall be kept securely locked and may be opened and the ballots examined only on court order or under chapter 18 of this title.

(b) All other election documents such as applications for all ballots, spoiled and rejected ballots, voter affidavits, records of assistance to voters, etc., shall be preserved by the county election commission for six (6) months or longer if so ordered by a court or by the coordinator of elections. [Acts 1972, ch. 740, § 1; 1979, ch. 306, § 6; T.C.A., § 2-808.]

2-8-109. Messenger to bring county returns to the secretary of state. — The secretary of state may employ a special messenger to bring the returns

filed with the county clerk if those sent by mail fail to arrive. The expenses of the messenger shall be paid out of the state treasury. [Acts 1972, ch. 740, § 1; impl. am. Acts 1978, ch. 934, §§ 22, 36; 1979, ch. 306, § 9; T.C.A., § 2-809.]

2-8-110. Public calculation and comparison of votes — Declaration of election — Certificates of election. — (a) The governor, secretary of state and attorney general and reporter shall, as soon as the returns are received, publicly calculate and compare the votes received by each person for the office of member of the general assembly, presidential and vice presidential elector, member of congress, judge, chancellor, or district attorney general, and declare the person receiving the highest number of votes elected.

(b) The secretary of state shall assure the preservation of the original certification of results executed under this section.

(c) The governor shall furnish each person elected with a certificate of election, which shall also be a commission of office, signed by the governor and the secretary of state. The certificate shall be prima facie evidence of election. A duplicate original of the certificate of election as United States senator shall be sent to the president of the United States senate. [Acts 1972, ch. 740, § 1; 1979, ch. 306, § 3; T.C.A., § 2-810; Acts 1981, ch. 478, § 18; 1995, ch. 305, § 57.]

Cross-References. Public officers commissioned, § 8-18-106.

Section to Section References. This section is referred to in § 2-17-103.

NOTES TO DECISIONS

ANALYSIS

1. Plurality election of officers.
2. Purpose and nature of commission.
3. Issuance of commission in void election.
4. Issuance of certificate an official act.
5. Power to issue certificate noncontrollable.
6. Mandamus or injunction against governor.

1. Plurality Election of Officers.

This section provides for a plurality election of officers. State ex rel. Thompson v. Carr, 166 Tenn. 58, 59 S.W.2d 509 (1933).

2. Purpose and Nature of Commission.

While it is the duty of the governor to issue commissions to judges, and they are prima facie evidence of title, and also protect third parties under judicial acts performed by persons holding them, yet the commissions may be void because issued without authority, for the title comes from the people, through the election, and not through a commission of the executive, or other formality. State ex rel. Gann v. Malone, 131 Tenn. 149, 174 S.W. 257 (1915).

3. Issuance of Commission in Void Election.

Where the election was void, and is so declared to be by competent tribunal, the governor's commission to the candidate shown to be elected by the election returns cannot have any effect. Barry v. Lauck, 45 Tenn. 588 (1868); State ex rel. v. Wright, 57 Tenn. 237 (1872); State ex rel. Gann v. Malone, 131 Tenn. 149, 174 S.W. 257 (1915).

4. Issuance of Certificate an Official Act.

Issuance of certificates of election, whether called a ministerial or an executive duty, is an official act. Bates v. Taylor, 87 Tenn. 319, 11 S.W. 266, 3 L.R.A. 316 (1889).

5. Power to Issue Certificate Noncontrollable.

The state courts have no power or jurisdiction to coerce or restrain the governor in the discharge of his official duties touching the issuance of the certificate. He has the right to determine when and how his duties, within the law, must be performed. It is his province to construe the statute for himself, and to determine for himself whether he has complied with all of its requirements. If the governor mistake the law, and prejudice individual rights, the injured person may, in proper cases, restrain the one benefited from using his advantage. Bates v. Taylor, 87 Tenn. 319, 11 S.W. 266, 3 L.R.A. 316 (1889); State ex rel. Latture v. Board of Inspectors, 114 Tenn. 516, 86 S.W. 319 (1904).

6. Mandamus or Injunction Against Governor.

Mandamus or injunction will not lie to compel governor to deliver certificate of election in election of member of congress. Bates v. Taylor, 87 Tenn. 319, 11 S.W. 266, 3 L.R.A. 316 (1889).

Mandamus will not lie against governor to compel him to compare vote or issue certificate of election as to election of member of legislature. State ex rel. Latture v. Board of Inspectors, 114 Tenn. 516, 86 S.W. 319 (1904).

2-8-111. Tie votes. — If there is a tie vote between the two (2) or more persons having the highest number of votes for an office, the state election commission shall cast the deciding vote except that:

(1) The county legislative body shall cast the deciding vote for offices filled by the votes of a single county or civil district;

(2) The municipal legislative body shall cast the deciding vote for municipal offices, or, in the alternative, the legislative body may by resolution call for a run-off election between the tied candidates;

(3) The governor shall cast the deciding vote for representatives in congress;

(4) The election shall be void if it is for senator in congress, and the governor shall immediately issue an order directing the holding of a special election for the office; and

(5) The general assembly in joint convention shall cast the deciding vote for governor. [Acts 1972, ch. 740, § 1; T.C.A., § 2-811; Acts 1981, ch. 478, §§ 4, 5; 1991, ch. 73, § 1; 1995, ch. 305, § 58.]

Attorney General Opinions. County board of education election, OAG 96-150 (12/31/96).

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

1. Elections of Former Justices of the Peace.

The method of breaking the tie between candidates for former justice of the peace not being fixed by the Constitution, and such power having been exercised by the general assembly for 142 years, the legislative authority in that respect will not be interfered with, in view of Tenn. Const., art. III, § 2 and art. VI, § 15 (repealed). Bowling v. Carnahan, 171 Tenn. 26, 100 S.W.2d 232 (1937).

2-8-112. Messenger to bring county returns to general assembly. — The general assembly may, if it becomes necessary, send a special messenger for the copy of the returns of any particular county deposited with the county clerk. The expenses of the messenger shall be paid out of the state treasury. [Acts 1972, ch. 740, § 1; impl. am. Acts 1978, ch. 934, §§ 22, 36; T.C.A., § 2-812.]

2-8-113. Primary elections — Determination of results. — (a) On the third Thursday after a primary election the state coordinator of elections shall publicly calculate and compare the votes received by each person and declare who has been nominated for office in the primary or elected to the state executive committee. The candidates who receive the highest number of votes shall be declared elected or nominated; provided, that in order for any person to receive a party nomination by write-in ballots, such person must receive a number of write-in votes equal to or greater than five percent (5%) of the total number of votes cast in the primary on the day of the election. However, this

section shall not apply where there are candidates for the office involved listed on the official ballot.

(b) The coordinator of elections may delegate the duty under subsection (a) to county primary boards with respect to offices to be elected by voters within a single county and, if requested by the state executive committee of a political party, shall delegate such duty to the county primary boards. The county primary boards shall send the results of the primary election to the state party executive committee unless the state party executive committee wishes to exercise its functions under this section as a party primary board. The state party executive committee may revoke or rescind its request that the coordinator of elections delegate such duty to the county primary boards. [Acts 1972, ch. 740, § 1; 1975, ch. 131, § 1; 1975, ch. 150, § 1; 1977, ch. 480, § 4; T.C.A., § 2-813.]

Cross-References. Primary elections, ch. 13 of this title.

Collateral References. Power of election officers to withdraw or change returns. 168 A.L.R. 855.

2-8-114. Primary elections — Tie votes. — If the coordinator of elections determines that there is a tie between the two (2) or more candidates for an office who have the highest number of votes, the tie shall be broken as prescribed in the rules of the political party. [Acts 1972, ch. 740, § 1; 1977, ch. 480, § 5; T.C.A., § 2-814.]

2-8-115. Primary elections — Certification of nominees. — The coordinator of elections shall certify the names of the nominees of political parties to the county election commission of each county in which the nominees are candidates by qualifying deadlines set in § 2-5-101. [Acts 1972, ch. 740, § 1; 1977, ch. 480, § 6; T.C.A., § 2-815.]

2-8-116. Right of candidate to receive certified copies of poll lists and tally sheets. — Each candidate has the right to have delivered to the candidate by the state election commission or the county election commission certified copies of all poll lists and tally sheets used in the counties in which the candidate ran, upon demand and payment of the regular legal fees. [Acts 1972, ch. 740, § 1; T.C.A., § 2-816.]

2-8-117. [Repealed.]

Compiler's Notes. Former § 2-8-117 (Acts 1974, ch. 708, § 1; T.C.A., § 2-308), concerning results of election for supreme court judge, was repealed by Acts 1994, ch. 942, § 22, effective September 1, 1994. For current provisions concerning election of judges, see title 17, chapter 4, part 2.

CHAPTER 9

VOTING MACHINES

2-9-101. Specifications — Contract for modification. — (a) A voting machine to be used in Tennessee must provide facilities for voting for candidates at both primary and general elections or at nonpartisan elections or at a combination of a nonpartisan and partisan primary or general election. It must permit a voter to vote for any person for any office, whether or not nominated as a candidate by a political party. It must ensure voting in absolute secrecy. It must permit a voter to vote for any candidate or on any special measure for whom or on which the voter is lawfully entitled to vote but none other. It must permit a voter to vote for the proper number of candidates for an office but no more. It must be provided with a lock or locks by which immediately after the polls are closed any movement of the voting or registering mechanism can be absolutely prevented. It may be either manually or electrically operated. An electric machine must convert to manual operation, and the alternate type of operation must be a standard function of the machine and not be designed as an emergency or temporary device only. Each voting machine shall have not less than eight (8) columns and shall be equipped with interlocks in the following manner, to wit: for the basic lever type machine, interlocks on columns 1, 4, and 7; for the 2.5 lever type machine, interlocks on columns 1, 4, and 7 and an additional main interlock adjacent to column 10; on the 3.2 eight column machine, interlocks on columns 1, 4, and 7 and an additional main interlock adjacent to column 8; on the 3.2-10.25 lever type machine, interlocks on columns 1, 4, and 7 and an additional main interlock adjacent to column 10.

(b) Any voting machine not presently equipped as above set forth shall be modified pursuant to a contract to be let by the coordinator of elections through normal purchasing procedures. The contract shall contain such provisions as the coordinator of elections, secretary of state and commissioner of finance and administration shall deem necessary and proper, and shall provide for the use of new parts only and further shall provide for the inspection of parts, labor, and equipment by a team of local machine technicians, and the costs of such inspection at the local level shall be borne by the company or firm awarded the contract.

(c) A party lever device enabling a voter to vote for all the nominees of a particular political party by operating a single lever is prohibited except that a party lever shall be provided for each political party's candidates for presidential and vice presidential electors. [Acts 1972, ch. 740, § 1; T.C.A., § 2-901; Acts 1981, ch. 461, § 1.]

Cross-References. Form of ballots on voting machines, § 2-5-206.

Section to Section References. This chapter is referred to in § 2-6-109.

Textbooks. Tennessee Jurisprudence, 10 Tenn. Juris., Elections, § 12.

Comparative Legislation. Voting machines:

Ala. Code § 17-9-1 et seq.

Ark. Code § 7-5-501 et seq.

Ga. O.C.G.A. § 21-2-310 et seq.

Ky. Rev. Stat. Ann. § 117.105 et seq.

Miss. Code Ann. § 23-15-391 et seq.

Mo. Rev. Stat. § 115.225 et seq.

N.C. Gen. Stat. § 163-160 et seq.

Va. Code § 24.1-203 et seq.

Cited: Smith v. Dunn, 381 F. Supp. 822 (M.D. Tenn. 1974).

NOTES TO DECISIONS

ANALYSIS

1. Constitutionality of chapter.
2. Scope of term "ballot."
3. More than one election at same time.

1. Constitutionality of Chapter.

The prime object of a vote by ballot is to provide for secrecy and integrity of elections and since this chapter insures this object it does not violate Tenn. Const., art. IV, § 4, which provides that elections shall be by ballot. Mooney v. Phillips, 173 Tenn. 398, 118 S.W.2d 224 (1938).

2. Scope of Term "Ballot."

The term "ballot" as used in Tenn. Const., art. IV, § 4 is not used in its literal sense but may properly include election by voting machines. Mooney v. Phillips, 173 Tenn. 398, 118 S.W.2d 224 (1938).

3. More Than One Election at Same Time.

Where voting machines were constructed so as to permit a general election and two primaries to be held on such machines independently of each other, it was proper to permit all three elections to be held on the same machines at the same time. Mooney v. Phillips, 173 Tenn. 398, 118 S.W.2d 224 (1938).

Collateral References. 26 Am. Jur. 2d Elections §§ 232, 253.

29 C.J.S. Elections § 203.

Constitutionality of statutes providing for use of voting machines. 66 A.L.R. 855.

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2-9-102. Equipment furnished for machine. — The county election commission shall have each voting machine furnished:

(1) With an electric light or a substitute for one which will give sufficient light to enable the voters while in the booth to read the ballot labels and to enable election officials to examine the counters; and

(2) With a curtain or other equipment so as to conceal the voter and his action while voting. [Acts 1972, ch. 740, § 1; T.C.A., § 2-902.]

Cited: Smith v. Dunn, 381 F. Supp. 822 (M.D. Tenn. 1974).

2-9-103. Voting machine technicians. — (a) The representatives of each political party on the county election commission shall jointly appoint a voting machine technician who is a member of their political party and who is qualified by training or experience to prepare and maintain the voting machines, and the county election commission shall appoint as many assistants as may be necessary for the proper preparation of the machines for elections and for their maintenance, storage, and care.

(b) The voting machine technicians, under the direction of the commission, shall have charge of the voting machines and shall represent the commission during the preparation of the voting machines.

(c) The voting machine technicians shall serve at the pleasure of the commissioners who appointed them. The assistants shall serve at the pleasure of the commission.

(d) The commission shall fix the compensation of the voting machine technicians and assistants commensurate with the work required.

(e) Duties imposed on the voting machine technician by this chapter shall be performed jointly by the voting machine technicians. [Acts 1972, ch. 740, § 1; T.C.A., § 2-903.]

Section to Section References. This section is referred to in § 2-12-116.

2-9-104. Custody of machines and keys. — (a) The local authority adopting voting machines shall have custody of them when they are not in use at an election and shall preserve and keep them in repair. All keys for voting machines shall be securely locked between elections by the voting machine technician. A public officer, who is entitled to the custody of the machine for any period of time, is entitled to the keys necessary for the proper use of the machines in the officer's charge.

(b) Local authorities shall provide ample police protection against tampering with or injury to the voting machines after they have been prepared for and during an election and shall provide adequate storage at all other times. [Acts 1972, ch. 740, § 1; T.C.A., § 2-904.]

Section to Section References. This section is referred to in § 2-9-107.

2-9-105. Preparation of machines for election. — (a) The county election commission shall have the proper ballot labels placed on the voting machines and shall have the machines put in proper order for voting with the registering counters set at zero (000), the counting mechanisms locked, and each machine sealed with a pre-numbered seal. The voting machine technician shall certify in writing that, before sealing each machine but after preparing it for an election, such technician has tested each voting lever and that each machine is in proper working order.

(b) Before examining the voting machines to determine whether they are properly set up, the commission shall mail notices to the chairs of the county executive committees of the political parties and to independent candidates stating where and when the machines will be examined. Each county executive committee chair and county primary board chair may designate a representative who may be present to see that the machines are properly prepared for use in the election.

(c) When the machines have been examined, the party representatives and either the commission or the voting machine technician shall make a certificate in writing which shall be filed in the county election commission office stating the number of machines, whether all of the machines are set at zero (000), the number registered on each protective counter and the number on each metal seal with which the machines are sealed.

(d) The keys for each machine shall be sealed in an envelope showing the location where the machine is to be used, the number of the machine, the number on the protective counter, and the seal number.

(e) The commission may delegate its duty to examine the machines to the voting machine technician. [Acts 1972, ch. 740, § 1; 1978, ch. 754, § 4; T.C.A., § 2-905; 1992, ch. 895, § 1.]

2-9-106. Delivery of machines to polling places. — After the machines have been prepared for the election, the voting machine technician shall have them delivered to the polling places in which they are to be used at least twelve (12) hours before the time set for the opening of the polls and set up in the proper manner for use at the election. [Acts 1972, ch. 740, § 1; T.C.A., § 2-906.]

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

1. Delivery of Machines.

When the custodian has delivered the machines to the polling places at which they are to be used at least 12 hours before the opening of the polls his statutory duty is ended. Mooney v. Phillips, 173 Tenn. 398, 118 S.W.2d 224 (1938).

2-9-107. Storage of machines. — Within twenty-four (24) hours after the close of the polls, or as soon thereafter as practicable, the voting machine technician shall have the machines returned to the storage places provided under § 2-9-104(b). [Acts 1972, ch. 740, § 1; T.C.A., 2-907.]

2-9-108. Period machines to remain locked. — Each voting machine shall remain locked against voting for ten (10) days after an election and as much longer as may be necessary or advisable because of contest over the result of the election. When another election necessitating the use of a particular voting machine is to be held within a period of thirty (30) days after an election, that voting machine may be opened after five (5) days upon the agreement of all the candidates in the earlier election whose names appeared on the ballot on that machine. A voting machine may be opened and examined upon the order of any court of competent jurisdiction at any time. [Acts 1972, ch. 740, § 1; T.C.A., § 2-908.]

2-9-109. Precincts required to use voting machines — Use of paper ballots in certain municipal elections. — (a) Precincts having more than three hundred (300) registered voters shall be equipped by the county in which they are located with voting machines for use in all elections and smaller precincts may be so equipped. If the governing body of any county does not provide voting machines as required by uthe preceding sentence, the county election commission shall equip the precincts with voting machines in accordance with §§ 2-9-112 — 2-9-114 acting instead of the governing body of the county. However, in counties having populations of not less than twelve thousand one hundred (12,100) nor more than twelve thousand two hundred (12,200), according to the federal census of 1970 or any subsequent federal census, voting machines for any precinct having fewer than one thousand

(1,000) registered voters shall not be purchased without the approval of the county commission.

(b) Any municipality with a population of five thousand (5,000) or less according to the 1980 federal census or any subsequent federal census, which is located in a county having a metropolitan form of government, may elect to use paper ballots instead of voting machines for municipal elections, when there is no opposition for any of the offices involved. Such decision shall be made known to the county election commission at the time the municipality directs the election commission to call its election. [Acts 1972, ch. 740, § 1; 1974, ch. 641, § 1; T.C.A., § 2-909; Acts 1982, ch. 661, § 1.]

Code Commission Notes. This section reflects the incorporation into this section of Acts 1974, ch. 641, § 1, which has been added as the last sentence in (a).

NOTES TO DECISIONS

1. Constitutionality.

Chapter 641 of the Public Acts of 1974 amending this section, exempting Benton County from the general laws, violates Tenn. Const., art. XI, § 8. State ex rel. O'Brien v. Massengill, 756 S.W.2d 246 (Tenn. 1988).

DECISIONS UNDER PRIOR LAW

1. Constitutionality.

The general assembly has authority to provide different methods of exercising the elective franchise and a statute authorizing local governing bodies to provide for experimental use of voting machines in certain precincts is not void as arbitrary class legislation. Mooney v. Phillips, 173 Tenn. 398, 118 S.W.2d 224 (1938).

2-9-110. Use of non-standard machines. — (a) The county election commission, with the approval of the coordinator of elections and the state election commission, may provide for the use of voting machines which do not meet the requirements of this title except under this section.

(b) Machines and procedure for such use shall provide as much protection for the purity of the ballot and against election fraud as do voting machines which otherwise meet the requirements of this title.

(c) The use of voting machines in compliance with this section and the rules of the coordinator of elections shall be as valid for all purposes in an election as if the machines had otherwise met the requirements of this title for voting machines. [Acts 1972, ch. 740, § 1; T.C.A., § 2-910.]

Section to Section References. This section is referred to in § 2-5-206.

Cited: Smith v. Dunn, 381 F. Supp. 822 (M.D. Tenn. 1974).

2-9-111. Payment for machines. — The governing body of a city, town or county may adopt voting machines and, upon the adoption and purchase of voting machines, shall provide for payment for the machines in the way it deems for the best interest of the locality and may for that purpose issue bonds, certificates of indebtedness or other obligations which shall be a charge on the city, town or county. Such bonds, certificates or other obligations may be issued with or without interest, payable at such time or times as the authorities may determine, but shall not be issued or sold at less than par. If it is proposed that bonds be issued to finance the purchase of voting machines, such bonds may not be issued unless approved in an election by a majority of the votes cast by

the voters of the city, town or county affected. [Acts 1972, ch. 740, § 1; T.C.A., § 2-911.]

2-9-112. State financing of voting machines — Agreement. — When the governing body of a county requests the coordinator of elections to have the state finance the acquisition of a specified number of voting machines under §§ 2-9-112 — 2-9-114, the governing body of the county and the coordinator of elections shall enter into an agreement to be known as a "contract, lease and option," subject to the following requirements:

(1) The original lease term shall be for a period agreed to by the governing body of the county and the coordinator of elections. The county shall have the exclusive right and option to extend the term of the lease from year to year for periods of one (1) year at a time for an agreed period. The total lease period shall in no case exceed twenty (20) years.

(2) The rentals prescribed for the original term and for each of the full number of years for which the lease may be extended shall not be less than the amounts required in each of such years to amortize the total amount of bonds issued to defray the cost of the machines.

(3) The governing body of the county shall agree, in each effective year of the lease, to maintain the voting machines.

(4) If the governing body of the county fails or neglects to pay any of the rentals prescribed, the commissioner of finance and administration shall retain the sum necessary for such payment out of any state funds distributable to the county for any purpose. No statutory requirement that any distributable, state collected, locally shared funds shall be used exclusively for a designated purpose shall be construed as preventing the commissioner of finance and administration from taking out of such fund.

(5) The contract, lease and option may contain any other reasonable provision deemed necessary and desirable by the commissioner, the coordinator of elections or the governing body of the county.

(6) Subject to all of the above, when the governing body of a county requests the coordinator of elections to have the state finance the cost of modifying its voting machines in order to comply with the specifications of this chapter, the governing body of the county and the coordinator of elections shall enter into an agreement to be known as a "voting machine loan agreement." The agreement shall be subject to all the terms and conditions as if the county were purchasing machines. The agreement shall provide that the state maintain a lien on such machines until such agreement is satisfied and that such agreements are subject to an annual interest rate of six percent (6%). [Acts 1972, ch. 740, § 1; T.C.A., § 2-912; Acts 1981, ch. 461, § 2.]

Compiler's Notes. This section may be affected by § 9-1-116, concerning entitlement to funds, absent appropriation.

Section to Section References. Sections 2-9-112 — 2-9-114 are referred to in § 2-9-109. This section is referred to in § 2-9-113.

Cited: State ex rel. O'Brien v. Massengill, 756 S.W.2d 246 (Tenn. 1988).

2-9-113. State financing of voting machines — Purchase. — (a) The commissioner of finance and administration shall purchase or otherwise acquire voting machines to carry out § 2-9-112.

(b) The coordinator of elections, subject to the approval of the commissioner, shall determine the number of machines to be purchased for the governing body of any county and enter into agreements, as provided in § 2-9-112, with the county for the financing of the machines. The coordinator of elections in determining the number of machines to be purchased for a county shall consider the following factors:

(1) The amount of state funds available for the financing of voting machines;

(2) Whether the county is making an initial acquisition of machines or is replacing old machines;

(3) The need of the county for assistance in purchasing machines; and

(4) Such other considerations as may be pertinent to carry out the purposes of this title. [Acts 1972, ch. 740, § 1; T.C.A., § 2-913.]

2-9-114. State financing of voting machines — Disposition of receipts. — All moneys paid by the county to the coordinator of elections under the contract, lease and option shall be paid into the sinking fund reserve in the manner provided by law. [Acts 1972, ch. 740, § 1; T.C.A., § 2-914.]

Cited: State ex rel. O'Brien v. Massengill, 756 S.W.2d 246 (Tenn. 1988).

2-9-115. Use of voting machines owned by another governing body. — Nothing in this chapter shall prevent voting machines owned or controlled by one governing body being used by another governing body when arrangements to do so are agreed upon by the affected governing bodies. [Acts 1972, ch. 740, § 1; T.C.A., § 2-915.]

2-9-116. Use of voting machines by groups of citizens. — (a) A county election commission may establish and implement a policy permitting the use of voting machines by a group of citizens; provided, that in any county having a metropolitan form of government, the decision to implement the policy is subject to the approval of the local governing body.

(b) [Deleted by 1995 amendment.] [Acts 1993, ch. 518, §§ 21, 22; 1995, ch. 489, § 1.]

CHAPTER 10

CAMPAIGN FINANCES

SECTION.

PART 1—FINANCIAL DISCLOSURE

PART 1—FINANCIAL DISCLOSURE

2-10-101. Short title — Application — Administration. — (a) This part shall be known and may be cited as the "Campaign Financial Disclosure Act of 1980."

(b) The provisions of this part do not apply to any candidate for public office for which the service is part time and for which the compensation is less than five hundred dollars ($500) per month; provided, that this exemption shall not be applicable to any such candidate for a public office as a chief administrative officer or to any such candidate whose expenditures exceed one thousand dollars ($1,000).

(c) Any charter provisions of municipalities regarding campaign financial disclosures of candidates for public office apply to candidates for public office, except to the extent that such provisions are in conflict with the provisions of this part.

(d) The registry of election finance shall have the jurisdiction to administer and enforce the provisions of this part concerning campaign financial disclosure. [Acts 1980, ch. 861, § 2; 1982, ch. 689, § 11; 1984, ch. 683, §§ 1, 7; 1989, ch. 585, § 9; 1997, ch. 558, § 23.]

Compiler's Notes. Acts 1997, ch. 558, § 34 provided that the act take effect upon becoming a law. The act was returned without the governor's signature and became effective under the provisions of Tenn. Const., art. III, § 18.

Amendments. The 1997 amendment substi-

tuted "five hundred dollars ($500)" for "one hundred dollars ($100)" and substituted "one thousand dollars ($1,000)" for "five hundred dollars ($500)" at the end.

Effective Dates. Acts 1997, ch. 558, § 34. June 25, 1997.

Cross-References. Disclosure statements of conflict of interests, title 8, ch. 50, part 5.

Lobbyist registration and disclosure, title 3, ch. 6.

Registry of election finance, part 2 of this chapter.

Section to Section References. This chapter is referred to in §§ 2-5-101, 8-50-502, 8-50-505.

This part is referred to in §§ 2-10-205, 2-10-207.

Textbooks. Tennessee Jurisprudence, 3 Tenn. Juris., Attorney General, § 4; 10 Tenn. Juris., Elections, § 24.

Law Reviews. Constitutional Law — Bemis Pentecostal Church v. State: The Validity of Tennessee's Campaign Disclosure Act, 18 Mem. St. U.L. Rev. 324 (1989).

Professional Responsibilities of Lobbyists (William R. Bruce), 23 Mem. St. U.L. Rev. 547 (1993).

Attorney General Opinions. Anonymous campaign contributions, OAG 97-065 (5/12/97).

Comparative Legislation. Financial disclosure:

Ala. Code § 17-22A-1 et seq.

Ark. Code § 21-8-701 et seq.

Ga. O.C.G.A. § 21-5-1 et seq.

Ky. Rev. Stat. Ann. § 61.710 et seq.

Miss. Code Ann. § 23-15-801 et seq.

N.C. Gen. State. § 163-278.6 et seq.

Va. Code § 24.1-167.

Cited: FDIC v. Tyree, 698 S.W.2d 353 (Tenn. Ct. App. 1985); FDIC v. Tennesseans ex rel. Tyree, 886 F.2d 771 (6th Cir. 1989).

NOTES TO DECISIONS

1. Constitutionality.

The Campaign Financial Disclosure Act as drafted and construed does not violate the free speech clause of the first amendment. Bemis Pentecostal Church v. State, 731 S.W.2d 897 (Tenn. 1987), appeal dismissed, 485 U.S. 930, 108 S. Ct. 1102, 99 L. Ed. 2d 264 (1988).

DECISIONS UNDER PRIOR LAW

1. Constitutionality.

The Campaign Financial Disclosure Act of 1975 did not unreasonably discriminate against nominees of political parties and in favor of independent candidates. Dobbins v. Crowell, 577 S.W.2d 190 (Tenn. 1979).

Collateral References. 26 Am. Jur. 2d Elections §§ 287-290.

29 C.J.S. Elections § 216.

Constitutionality of Corrupt Practices Acts. 69 A.L.R. 377.

Construction and application of statute regarding statement by candidate as to his expenses, or as to financial value of publicity through newspapers or other publicity sources. 103 A.L.R. 1424.

State regulation of the giving or making of political contributions or expenditures by private individuals. 94 A.L.R.3d 944.

Elections ⇐ 231.

2-10-102. Definitions. — As used in this chapter, unless the context otherwise requires:

(1) "Attorney general and reporter" means the attorney general and reporter of Tennessee;

(2) "Candidate" means an individual who has made a formal announcement of candidacy or who is qualified under the law of this state to seek nomination for election or elections to public office, or has received contributions or made expenditures except for incidental expenditures to determine if one shall be a candidate, or has given consent for a campaign committee to receive contributions or make expenditures with a view to bringing about the individual's nomination for election or election to state public office;

(3) "Contribution" means any advance, conveyance, deposit, distribution, transfer of funds, loan, loan guaranty, personal funds of a candidate, payment, gift, pledge or subscription, of money or like thing of value, and any contract,

agreement, promise or other obligation, whether or not legally enforceable, made for the purpose of influencing a measure or nomination for election or the election of any person for public office or for the purpose of defraying any expenses of an officeholder incurred in connection with the performance of the officeholder's duties, responsibilities, or constituent services. "Contribution" shall not be construed to include the following:

(A) Services, including expenses provided without compensation by a candidate or individuals volunteering a portion or all of their time, on behalf of a candidate or campaign committee;

(B) Any news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine or other periodical publication, unless such facilities are owned wholly or in part or controlled by any political party, political committee or candidate;

(C) Nonpartisan activity designed to encourage individuals to register to vote or to vote;

(D) Any written, oral or electronically transmitted communication by any membership organization or corporation to its members or stockholders, if such membership organization or corporation is not organized primarily for the purpose of influencing the nomination for election, or election, of any person to public office;

(E) The use of real or personal property and the cost of invitations, food and beverages not exceeding one hundred dollars ($100), voluntarily provided on an individual's residential premises for candidate related activities; or

(F) For a county executive committee that has annual receipts and expenditures of less than ten thousand dollars ($10,000), receipts and expenditures, including a reasonable amount for rent, by a state or county executive committee or primary board when performing the duties imposed upon them by law; provided, that such receipts and expenditures are segregated from and maintained in a fund separate and apart from any funds used by the party as a political campaign committee, it being the legislative intent that if no separate fund is maintained, all receipts and expenditures of the committee or board shall be subject to the disclosure provisions of this part;

(4) "Election" means any general, special or primary election or run-off election, held to approve or disapprove a measure or nominate or elect a candidate for public office;

(5)(A) "Expenditure" means a purchase, payment, distribution, loan, advance, deposit or gift of money or anything of value made for the purpose of influencing a measure or the nomination for election or election of any person to public office;

(B) "Expenditure" also includes the use of campaign funds by an officeholder for the furtherance of the office of the officeholder;

(6) "File" or "filed" means the date actually deposited with or received by the appropriate office or the date of the postmark if postmarked and sent by registered or certified mail of the United States postal service;

(7) "Measure" means any proposal submitted to the people of the entire state, or any political subdivision of the state, for their approval or rejection at

an election, including any proposed law, act or part of an act of the general assembly, or revision of or amendment to the constitution;

(8) "Multicandidate political campaign committee" means a political campaign committee to support or oppose two (2) or more candidates for public office or two (2) or more measures;

(9) "Person" means an individual, partnership, committee, association, corporation, labor organization or any other organization or group of persons;

(10) "Political campaign committee" means:

(A) A combination of two (2) or more individuals, including any political party governing body, whether state or local, making expenditures, to support or oppose any candidate for public office or measure, but does not include a voter registration program;

(B) Any corporation or any other organization making expenditures, except as provided in subdivision (3), to support or oppose a measure; or

(C) Any committee, club, association or other group of persons which receives contributions or makes expenditures to support or oppose any candidate for public office or measure during a calendar quarter in an aggregate amount exceeding two hundred fifty dollars ($250);

(11) "Public office" means any state public office or local public office filled by the voters;

(A) "Local public office" means any state, county, municipal, school or other district or precinct office or position, including judges and chancellors, that is filled by the voters, with the exception that "local public office" does not include any state public office as defined in subdivision (11)(B); and

(B) "State public office" means the offices of governor, public service commissioner, member of the general assembly, delegate to a Tennessee constitutional convention, district attorney general, district public defender, judge of the court of criminal appeals, judge of the court of appeals and supreme court judge;

(12) "Secretary of state" means the secretary of state or the secretary of state's designee;

(13) "Affiliated political campaign committees" means political campaign committees established, financed, maintained, or controlled by any corporation, labor organization, or any other person, including any parent, subsidiary, branch, division, department, or local unit of such corporation, labor organization, or any other person, or by any group of such persons;

(A) All committees established, financed, maintained or controlled by a single corporation and/or its subsidiaries shall be affiliated political campaign committees;

(B) All committees established, financed, maintained or controlled by a single national or international union and/or its local unions or other subordinate organizations shall be affiliated political campaign committees;

(C) All committees established, financed, maintained or controlled by an organization of national or international unions and/or all its state and the local central bodies shall be affiliated political campaign committees, but such committees shall not be affiliated with the political campaign committees established, financed, maintained or controlled by any union that is a member of the organization;

(D) All committees established, financed, maintained or controlled by a membership organization, other than political party committees, including trade or professional associations and/or related state and local entities of that organization or group shall be affiliated political campaign committees;

(E) All committees established, financed, maintained or controlled by the same person or group of persons shall be affiliated political campaign committees;

(F) Owners, officers, employees, members or other individuals associated with any corporation, labor organization, membership organization, or any other person or group of persons that has established, financed, maintained or controlled a political campaign committee shall not be considered affiliated with such political campaign committee; and

(14) "Personal funds" means:

(A) Any assets which the candidate had legal right of access to or control over at the time the candidate became a candidate and with respect to which the candidate had either:

(i) Legal and rightful title; or

(ii) An equitable interest;

(B) Salary and other earned income from bona fide employment; dividends and proceeds from the sale of the candidate's stocks or other investments; bequests to the candidate; income from trusts established before candidacy; income from trusts established by bequest after candidacy of which the candidate is the beneficiary; gifts of a personal nature which had been customarily received prior to candidacy; and

(C) That portion of assets jointly owned with the candidate's spouse which is the candidate's share under the instruments of conveyance or ownership. If no specific share is indicated by such instrument, the value of one-half of the property used shall be considered as personal funds. [Acts 1980, ch. 861, § 3; 1982, ch. 658, §§ 1-3; 1984, ch. 683, §§ 5, 7; 1990, ch. 1048, §§ 1-3; 1991, ch. 519, §§ 1, 2; 1992, ch. 988, § 8; 1995, ch. 305, § 59; 1995, ch. 531, §§ 2, 3; 1996, ch. 1005, § 1.]

Amendments. The 1996 amendment added "or for the purpose of defraying any expenses of an officeholder incurred in connection with the performance of the officeholder's duties, responsibilities, or constituent services" at the end of the first sentence in (3).

Effective Dates. Acts 1996, ch. 1005, § 4. May 13, 1996.

Cross-References. Certified mail instead of registered mail, § 1-3-111.

Section to Section References. This section is referred to in §§ 2-10-107, 2-10-203, 2-19-120, 8-50-501, 57-4-102.

Textbooks. Gibson's Suits in Chancery (7th ed., Inman), § 567.

Tennessee Jurisprudence, 10 Tenn. Juris., Elections, § 24.

Attorney General Opinions. Application of campaign contribution limits to donations to constituent service accounts, OAG 95-098 (9/1/95).

Constituent services account, OAG 96-009 (1/24/96).

Independent election expenditures, OAG 96-90 (7/24/96).

Cited: FDIC v. Tyree, 698 S.W.2d 353 (Tenn. Ct. App. 1985).

NOTES TO DECISIONS

1. Church Activities.

The financing of direct participation in a campaign, through activities in which churches would not otherwise be engaged but for an impending election, triggers this chapter. Bemis Pentecostal Church v. State, 731 S.W.2d

897 (Tenn. 1987), appeal dismissed, 485 U.S. 930, 108 S. Ct. 1102, 99 L. Ed. 2d 264 (1988).

Ongoing or standing political campaign committees would be encompassed under either subdivisions (8) or (10)(C), but the predominantly religious activities are not within the scope of the chapter and would not result in churches being considered political campaign committees for any purpose under the chapter. Bemis Pentecostal Church v. State, 731 S.W.2d 897 (Tenn. 1987), appeal dismissed, 485 U.S. 930, 108 S. Ct. 1102, 99 L. Ed. 2d 264 (1988).

Regular and continuing programs of broadcasting by churches of their religious services on radio or television or of publishing and distributing church newsletters are not and cannot be considered campaign contributions or expenditures, regardless of whether they advocate a particular election result or not in the course of such activities, as these activities are protected by the first amendment and are expressly excluded under subdivision (3)(B). Bemis Pentecostal Church v. State, 731 S.W.2d 897 (Tenn. 1987), appeal dismissed, 485 U.S. 930, 108 S. Ct. 1102, 99 L. Ed. 2d 264 (1988).

DECISIONS UNDER PRIOR LAW

1. Enforcement of Provisions.

The legislative intent was that the duty and authority to enforce the "Campaign Financial Disclosure Act of 1975" be vested solely in the attorney general of the state of Tennessee. Dobbins v. Crowell, 577 S.W.2d 190 (Tenn. 1979).

The former Campaign Financial Disclosure Act of 1975 contained no provision, express or implied, authorizing a nominee of another political party or private citizens to bring an action to enforce its provisions, and they could not do so. Dobbins v. Crowell, 577 S.W.2d 190 (Tenn. 1979).

2-10-103. Duties of county election commissions. — (a) It is the duty of each county election commission to:

(1) Accept and file any information filed pursuant to the requirements of this part and information voluntarily supplied that exceeds the requirements of this part;

(2) Make statements and other information filed with it available for public inspection and copying during regular office hours at reasonable expense;

(3) Preserve such statements and other information for a period of five (5) years from date of receipt; and

(4) Notify all candidates for local public office in a local election of the requirements for filing any statement required by this part seven (7) days before any deadline provided for herein.

(b) It is the duty of the state election commission to furnish the name and address of any candidate for statewide public office and the language of any measure submitted to the people of the entire state to the secretary of state and the registry of election finance. [Acts 1980, ch. 861, § 4; 1984, ch. 683, §§ 2, 7; 1989, ch. 585, § 10.]

Compiler's Notes. Former subsection (d) of this section was transferred in 1985 to § 2-10-109(a)(1).

Cross-References. Record and notice of inspection, § 2-10-111.

Section to Section References. This section is referred to in § 2-10-111.

Textbooks. Tennessee Jurisprudence, 3 Tenn. Juris., Attorney General, § 4.

2-10-104. Affirmation of statements before notary or other persons. — All statements required by this part shall be sworn to or affirmed before a notary public or some other person authorized by law to administer oaths as being true and correct by the person filing such statements. [Acts 1980, ch. 861, § 5.]

Textbooks. Tennessee Jurisprudence, 3 Tenn. Juris, Attorney General, § 4.

Attorney General Opinions. Administration of oaths, OAG 94-80 (7/11/94).

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

1. Amending Unsworn Statement.

The rule that the failure to verify a pleading to which an oath is required can be remedied by amendment was applicable to the statement required by former section requiring swearing or affirmation of statements, and where a candidate for city councilman failed to verify the statement required by the former section by oath but two days after election filed an amended statement duly sworn to, this was sufficient to satisfy the statute. State ex rel. Williams v. Jones, 179 Tenn. 206, 164 S.W.2d 823 (1942).

2-10-105. Filing of contribution, loan and expenditure statements — Eligible treasurers — Additional reporting requirements. — (a) Each candidate for state public office or political campaign committee in a state election shall file with the registry of election finance a statement of all contributions received and all expenditures made by or on behalf of such candidate or such committee. The statement of each candidate for state public office shall include the date of the receipt of each contribution and the statement of a political campaign committee in a state election shall include the date of each expenditure which is a contribution to a candidate. Each candidate for the office of member of the general assembly and each political campaign committee for such candidate shall file a copy of such statement with the county election commission in the county of which the candidate is a resident.

(b) Each candidate for local public office or political campaign committee for a local election shall file with each county election commission of the county where the election is held, a statement of all contributions received and all expenditures made by or on behalf of such candidate or such committee. The statement of each candidate for local public office shall include the date of the receipt of each contribution and the statement of a political campaign committee for a local election shall include the date of each expenditure which is a contribution to a candidate.

(c) The statements required by subsections (a) and (b) of each candidate, each single candidate political campaign committee or single measure political campaign committee shall be filed in the following manner:

(1) Statements for any primary election or referendum, from and including the day that the first contribution was received or the first expenditure made, whichever was earlier, through the tenth day before any such election or referendum shall be filed not later than seven (7) days before the election. The reporting period of any statement filed subsequent to a report filed under subdivision (c)(5) shall commence the day after the period covered by such prior filing. Each independent candidate for a state or local public office, which office has a primary election, shall file all primary reports required by this subsection, even though such independent candidate is not included on the ballot in such primary election;

(2) Statements for any special or general election or referendum:

(A) From and including the day that the first contribution was received or the first expenditure made whichever was earlier; or

(B) From the last day included in any prior report whichever is later through the tenth day before any such election or referendum shall be filed not later than seven (7) days before the election;

(3) Statements for any runoff election, from the last day included in any prior report through the tenth day before any such election shall be filed, not later than seven (7) days before the election;

(4) Statements from the last day of the prior report through the forty-fifth day after the primary, general, special or runoff election or referendum shall be filed not later than forty-eight (48) days after the election. When no subsequent report is required by this section or § 2-10-106 because such statement has a zero ($0) balance of contributions and expenditures, such statement shall be the final statement; and

(5) Any candidate or political campaign committee filing a statement pursuant to subsection (e), more than one (1) year before the election in which the candidate or committee expects to be involved, shall file reports with the registry of election finance or the county election commission, whichever is required by subsections (a) and (b), on February 1 immediately succeeding the filing, and annually thereafter through the year of the election. The ending date of a reporting period for such a filing is January 29 of the year of the filing. No such annual report need be made if the reporting date is within sixty (60) days of a report otherwise required by this part.

(d) Each multicandidate political campaign committee shall file reports according to § 2-10-107 quarterly, within ten (10) days following the first day of January, April, July and October respectively. Each report shall include transactions occurring since the preceding report.

(e) Each candidate and each political campaign committee shall certify the name and address of the candidate's or committee's political treasurer to the registry of election finance and/or the county election commission, where appropriate, before the candidate or committee may receive a contribution or make an expenditure in a state or local election. A state public officeholder shall also certify the name and address of such officeholder's political treasurer to the registry of election finance before the officeholder or the officeholder's political committee may accept a contribution to defray the expenses incurred in connection with the performance of the officeholder's duties or responsibilities, and a local officeholder shall so certify the name and address of such officeholder's treasurer to the appropriate county election commission. A candidate may appoint such candidate as the political treasurer. A candidate or political campaign committee shall notify the registry of election finance or county election commission of any changes in the office of its political treasurer. Any such statements filed pursuant to this part shall be cosigned by the candidate, if such candidate appoints a political treasurer other than the candidate.

(f) All records used by the candidate or political campaign committee to complete a statement required by this part shall be retained by the candidate or political campaign committee for at least one (1) year after the date of the election to which the records refer.

(g) Separate reporting shall be required for both primary elections and general elections. Cumulative reporting for both primary and general elections

for the same office in the same year is expressly prohibited. An appointment of a political treasurer pursuant to subsection (e) may be cumulative, and one (1) such appointment shall be sufficient for both a primary and general election for the same office in the same year. A successful primary candidate shall not be required to certify a political treasurer for the general election if the candidate had previously certified such political treasurer prior to the primary election.

(h) During the period beginning at twelve o'clock midnight (12:00) of the tenth day prior to a primary, general, runoff or special election or a referendum and extending through twelve o'clock midnight (12:00) of such election or referendum day, each candidate or political campaign committee shall by telegram, facsimile machine, hand delivery or overnight mail delivery file a report with the registry of election finance or the county election commission, whichever is required by subsections (a) and (b) of:

(1)(A) The full name and address of each person from whom the candidate or committee has received and accepted a contribution, loan or transfer of funds during such period and the date of the receipt of each contribution in excess of the following amounts: a committee participating in the election of a candidate for any state public office, five thousand dollars ($5,000); a committee participating in the election of a candidate for any local public office, two thousand five hundred dollars ($2,500). If the committee is participating in the election of candidates for offices with different reporting amounts, the amount shall be the lowest for any candidate in whose election the committee is participating or in which any committee is participating to which it makes or from which it receives a transfer of funds; and

(B) Such report shall include the amount and date of each such contribution or loan reported, and a brief description and valuation of each in-kind contribution. If a loan is reported, the report shall contain the name and address of the lender, of the recipient of the proceeds of the loan, and of any person who makes any type of security agreement binding such person or such person's property, directly or indirectly, for the repayment of all or any part of the loan.

(2) Each report required by this subsection shall be filed within seventy-two (72) hours after the time the contribution or loan is received. If such time falls other than during regular working hours, the report shall be filed after the opening of the office of the registry of election finance or the county election commission, whichever is required by subsections (a) and (b) on the next working day after the time at which the report is otherwise due.

(3) The registry shall develop appropriate forms for the report required by this subsection and make such forms available to the candidates and the county election commissions.

(i) Reports filed under this section shall not be cumulative. Each report shall reflect the total for its own reporting period. [Acts 1980, ch. 861, § 6; 1981, ch. 136, § 1; 1984, ch. 683, §§ 3, 7; 1989, ch. 585, §§ 11-13; 1990, ch. 1078, §§ 1, 2; 1991, ch. 519, §§ 3, 4; 1995, ch. 531, §§ 9, 11-13; 1996, ch. 1005, § 2; 1997, ch. 410, §§ 1, 2.]

Compiler's Notes. Acts 1995, ch. 531, § 17 provided that the amendments by that act shall only apply to contributions and expenditures made after January 1, 1996.

Amendments. The 1996 amendment, in (e), rewrote the first sentence, which read: "Each candidate and each political campaign committee shall certify the name and address of its political treasurer to the registry of election finance before it can receive or make an expenditure in a state election or to the county election commission before it can receive or make an expenditure in an election in the county where the election commission is located."; and added the second sentence.

The 1997 amendment substituted the present first and second sentences in (a) for "Each candidate for state public office or political campaign committee in a state election shall file with the registry of election finance a statement of all contributions received and all expenditures made by or on behalf of such candidate or such committee and the date of the receipt of each contribution and the making of each expenditure."; and rewrote (b), which read: "Each candidate for local public office or political campaign committee for a local election shall file with each county election commission of the county where the election is held, a statement of all contributions received and all expenditures made by or on behalf of such candidate or such committee and the date of the receipt of each contribution and the making of each expenditure."

Effective Dates. Acts 1996, ch. 1005, § 4. May 13, 1996.

Acts 1997, ch. 410, § 5. June 13, 1997.

Section to Section References. This section is referred to in §§ 2-10-106, 2-10-107, 2-10-114, 2-10-115, 2-10-118.

Textbooks. Tennessee Jurisprudence, 3 Tenn. Juris., Attorney General, § 4.

Attorney General Opinions. Independent election expenditures, OAG 96-90 (7/24/96).

Cited: Bemis Pentecostal Church v. State, 731 S.W.2d 897 (Tenn. 1987).

NOTES TO DECISIONS

Decisions Under Prior Law

Analysis

1. Time of filing statement.
2. Suit to determine compliance with statute.
3. —Parties.
4. —Justiciable controversy.

1. Time of Filing Statement.

Where candidate for city councilman filed the statement three days before the election, this was a substantial compliance with the provisions of the statute requiring such statement to be filed not more than 10 days nor less than five days before the election and was sufficient. State ex rel. Williams v. Jones, 179 Tenn. 206, 164 S.W.2d 823 (1942).

2. Suit to Determine Compliance with Statute.

Complainant who filed suit for declaratory judgment as "citizen, taxpayer and qualified voter" to determine whether defendant as campaign manager of certain candidates had complied with the provisions of the financial disclosure statute had no special interest in the correctness of the financial statement so as to allow him to maintain the suit. Coleman v. Henry, 184 Tenn. 550, 201 S.W.2d 686 (1947).

3. —Parties.

In a suit for declaratory judgment filed against campaign manager to determine correctness of statement filed under this section, joinder of the candidates and of the public officers with whom the statement was required to be filed was a necessity. Coleman v. Henry, 184 Tenn. 550, 201 S.W.2d 686 (1947).

4. —Justiciable Controversy.

Where suit for declaratory judgment against campaign manager was not filed until almost three months after primary in which defendant served and 24 days after defendant discharged his final duty as campaign manager, there was no justiciable controversy between the parties and no present doubt of their respective rights and obligations so as to support a declaration. Coleman v. Henry, 184 Tenn. 550, 201 S.W.2d 686 (1947).

2-10-106. Supplemental annual statements of contributions and expenditures — Funds maintained in segregated campaign accounts. — (a) If the final statement of a candidate shows an unexpended balance of contributions, continuing debts and obligations, or an expenditure deficit, the campaign treasurer shall file with the registry of election finance or the county election commission, whichever is required by § 2-10-105(a) and (b), a supplemental annual statement of contributions and expenditures. Beginning after filing the post-election report required by § 2-10-105(c)(4), subsequent supplemental statements shall be filed on an annual basis by candidates until the

account shows no unexpended balance, continuing debts and obligations, expenditures, or deficit. A candidate may close out a campaign account by transferring any remaining funds to any campaign fund subject to the requirements of this part and commence annual filing as provided by this part.

(b) Funds maintained in a separate segregated campaign account are not deemed to be the personal property of any candidate or other individual. Such funds are not subject to garnishment or any type of execution to satisfy the debts or obligations of any individual which are not campaign debts. [Acts 1980, ch. 861, § 7; 1984, ch. 683, §§ 7, 8; 1989, ch. 585, § 14; 1992, ch. 932, § 4; 1992, ch. 978, § 7.]

Section to Section References. This section is referred to in §§ 2-10-105, 2-10-107.

Textbooks. Tennessee Jurisprudence, 3 Tenn. Juris., Attorney General, § 4.

2-10-107. Content of statements — Reporting of in kind contributions. — (a) A statement filed under § 2-10-105 or § 2-10-106 shall consist of either:

(1) A statement that neither the contributions received nor the expenditures made during the period for which the statement is submitted exceeded one thousand dollars ($1,000). Any statement filed pursuant to § 2-10-106 shall indicate whether an unexpended balance of contributions, continuing debts and obligations or an expenditure deficit exists; or

(2) A statement setting forth:

(A) Under contributions, a list of all the contributions received, as follows:

(i) The statement shall list the full name and complete address of each person who contributed a total amount of more than one hundred dollars ($100) during the period for which the statement is submitted, and the amount contributed by that person. The statement of each candidate shall include the date of the receipt of each contribution and the statement of a political campaign committee shall include the date of each expenditure which is a contribution to a candidate; and

(ii) The statement shall list as a single item the total amount of contributions of one hundred dollars ($100) or less; and

(B) Under expenditures, a list of all expenditures made as follows:

(i) The statement shall list the full name and address of each person to whom a total amount of more than one hundred dollars ($100) was paid during the period for which the statement is submitted, the total amount paid to that person, and the purpose thereof; and

(ii) The statement shall list the total amount of expenditures of one hundred dollars ($100) or less each, by category, without showing the exact amount of or vouching for each such expenditure.

(b) When any candidate or political campaign committee desires to close out a campaign account, it may file a statement to such effect at any time; provided, that the statement shall on its face show no unexpended balance, continuing debts or obligations or deficit.

(c)(1) When filing a statement under § 2-10-105 or § 2-10-106, a contribution, as defined in § 2-10-102(3), for which no monetary consideration is paid or promised, hereinafter referred to as an "in kind contribution," shall be listed

separately in the disclosure statement and excluded from the lists of contributions and expenditures. The "in kind contribution" list shall include:

(A) In kind contributions of one hundred dollars ($100) or less may be listed as a single item; and

(B) In-kind contributions of more than one hundred dollars ($100) during the period for which the statement is submitted, and for each such contribution, the name and address of each person who contributed it. The statement of each candidate shall include the date of the receipt of each in-kind contribution and the statement of a political campaign committee shall include the date of each expenditure which is an in-kind contribution to a candidate.

(2) Within ninety (90) days of July 1, 1991, by rule promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, the registry of election finance shall enumerate a nonexclusive listing of examples of the various categories of contributions which constitute "in kind contributions" requiring disclosure. Upon promulgating such rule, the registry shall provide a copy of such rule to each member of the general assembly.

(d) An in kind contribution is deemed to be made and shall be reportable in the period when such contribution is made or performed and not when the cost is billed or paid. The actual cost of the in kind contribution, if known, shall be reported in the period such contribution is made or performed. If the actual cost of the in kind contribution is not known, an estimate of the cost shall be reported in the period such contribution is made or performed, and the report shall indicate that the amount reported is estimated. If the actual cost, as indicated on the bill, is different from the amount reported, such amount shall be amended or adjusted on a later report covering the period in which payment is made.

(e) A statement filed under § 2-10-105 or § 2-10-106 shall also list any unexpended balance, any deficit and any continuing financial obligations of the candidate, campaign or committee.

(f) Payments to a person as reimbursement for expenditures made by the person on behalf of the candidate or committee shall be disclosed as payments to the person who provided the item or service to the candidate or committee. [Acts 1980, ch. 861, § 8; 1984, ch. 683, § 6; 1986, ch. 780, § 2; 1989, ch. 585, §§ 15, 33; 1990, ch. 943, § 3; 1991, ch. 519, §§ 5, 6; 1995, ch. 531, §§ 14, 15; 1997, ch. 410, §§ 3, 4.]

Compiler's Notes. Acts 1995, ch. 531, § 17 provided that the amendment by that act shall only apply to contributions and expenditures made after January 1, 1996.

Amendments. The 1997 amendment rewrote (a)(2)(A)(i), which read: "The statement shall list the full name and complete address of each person who contributed a total amount of more than one hundred dollars ($100) during the period for which the statement is submitted, and the amount contributed by that person and the date of the receipt of each contribution; and"; and rewrote (c)(1)(B), which read: "In kind contributions of more than one hundred dollars ($100) during the period for which the statement is submitted, and for each such contribution, the name and address of each person who contributed it and the date of the receipt of each contribution."

Effective Dates. Acts 1997, ch. 410, § 5. June 13, 1997.

Section to Section References. This section is referred to in §§ 2-10-105, 2-10-114, 2-10-115.

Textbooks. Tennessee Jurisprudence, 3 Tenn. Juris., Attorney General, § 4.

Law Reviews. Ethical Requirements for Judicial Candidates (Joe G. Riley), 26 No. 3, Tenn. B.J. 12 (1990).

Attorney General Opinions. Independent election expenditures, OAG 96-90 (7/24/96).

Cited: Bemis Pentecostal Church v. State, 731 S.W.2d 897 (Tenn. 1987).

2-10-108. Sworn complaint on statements of candidates — Penalty for false complaint. — (a) A registered voter of Tennessee may file a sworn complaint alleging that a statement filed regarding an election for which that voter was qualified to vote does not conform to law or to the truth or that a person has failed to file a statement required by law.

(b) All sworn complaints on a statement of a candidate for state public office or a political campaign committee for such candidate must be filed in the office of the registry of election finance.

(c) All sworn complaints on a statement of a candidate for local public office or a political campaign committee for such candidate must be filed in the office of the district attorney general who represents the judicial district in which the voter resides.

(d) Any person who knowingly and willfully files a sworn complaint which is false or for the purpose of harassment is subject to the civil penalties enacted into law by Acts 1989, ch. 585, and is liable for reasonable attorneys' fees incurred by the candidate who was the subject of such complaint. [Acts 1980, ch. 861, § 9; 1989, ch. 585, § 16; 1989, ch. 591, § 113; 1990, ch. 943, § 2.]

Compiler's Notes. Acts 1989, ch. 585, referred to in this section, was codified at §§ 2-10-101, 2-10-103, 2-10-105 — 2-10-111, 2-10-201 — 2-10-209, 3-6-102 — 3-6-106, 3-6-109, 3-6-110, 4-29-212, 8-50-501, 8-50-504 and 8-50-505.

Acts 1990, ch. 943, § 2(a) deleted the classification of the prohibited activity in this section as a Class C misdemeanor as classified by Acts 1989, ch. 591, § 113.

Section to Section References. This section is referred to in § 2-10-109.

Textbooks. Tennessee Jurisprudence, 3 Tenn. Juris., Attorney General, § 4; 10 Tenn. Juris., Elections, § 24.

2-10-109. Duties of attorney general and reporter. — (a) It is the duty of the attorney general and reporter to:

(1) Advise county election commissions, primary boards and administrator of elections of their duties and responsibilities required by this part;

(2) Provide opinions upon the requirements of this part to the members of the general assembly, district attorneys general, the state and county election commissions, and such other officials who are charged with the administration of this law; and

(3) Represent the registry of election finance in any action or lawsuit in any court of this state.

(b) It is the duty of each district attorney general to:

(1) Investigate any sworn complaint filed in accordance with § 2-10-108(c); and

(2) Seek injunctions from the chancery courts of this state to enforce the provisions of this part against any campaign committee or candidate about whom a sworn complaint has been filed, if such action is justified. [Acts 1980, ch. 861, §§ 4, 10; 1989, ch. 585, §§ 17, 18.]

Compiler's Notes. Subdivision (a)(1) of this section was transferred in 1985 from § 2-10-103(d).

References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

Textbooks. Tennessee Jurisprudence, 3 Tenn. Juris., Attorney General, § 4.

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

1. Enforcement of Provisions.

The legislative intent is that the duty and authority to enforce the "Campaign Financial Disclosure Act of 1975" shall be vested solely in the attorney general of the state of Tennessee. Dobbins v. Crowell, 577 S.W.2d 190 (Tenn. 1979).

The former Campaign Financial Disclosure Act of 1975 contained no provision, express or implied, authorizing a nominee of another political party or private citizens to bring an action to enforce its provisions, and they could not do so. Dobbins v. Crowell, 577 S.W.2d 190 (Tenn. 1979).

2-10-110. Penalties. — (a) The registry of election finance or a county administrator of elections may impose a civil penalty for a violation of this part as provided in this section. The administrator may only assess penalties for violations for Class 1 offenses as established in this section.

(1) "Class 1 offense" means the late filing of any report or statement required by this part. A Class 1 offense shall be punishable by a civil penalty of not more than twenty-five dollars ($25.00) a day up to a maximum of seven hundred fifty dollars ($750).

(A) For local public offices, the administrator shall have personally served upon, or send by return receipt requested mail, an assessment letter to any candidate or committee upon the administrator's discovery that a due report has not been filed. A civil penalty of twenty-five dollars ($25.00) a day shall begin to accrue five (5) days after personal service or receipt of the letter and will continue to accrue until the report is filed or for thirty (30) days, whichever occurs first.

(B) For local public offices, the administrator may accept only a check, bank draft or other written instrument as payment for any penalty imposed. The administrator shall forward such payment to the registry of election finance within three (3) business days of its receipt. If any accrued civil penalty is not paid within thirty (30) days after service of process or receipt of notice by registered or certified mail of an assessment, the administrator shall not accept any tendered payment and shall send the case to the registry of election finance for disposition. The administrator shall accept any late report offered for filing by the candidate or committee at any time, noting thereon the date of its filing. The administrator shall notify the registry of election finance that the late report has been filed and on what date it was filed.

(C) The administrator shall notify the registry of election finance of any Class 2 violation of which the administrator has knowledge.

(D) To request a waiver, reduction or to in any way contest a penalty imposed by an administrator, a candidate for a local public office shall file a petition with the registry of election finance.

(E) For state public offices, the registry of election finance shall have personally served upon, or send by return receipt requested mail, an

assessment letter to any candidate or committee upon the registry or its appropriate staff discovering that a due report has not been filed. A civil penalty of twenty-five dollars ($25.00) a day shall begin to accrue five (5) days after personal service or receipt of the letter and will continue to accrue until the report is filed or for thirty (30) days, whichever occurs first.

(F) For any Class 2 offense, the registry of election finance through its appropriate staff shall send an assessment letter to a candidate or committee in a form sufficient to advise the candidate or committee of the factual basis of the violation, the maximum penalty and the date a response to the letter must be filed. If a disclosure report is returned to a candidate or committee for correction, a copy of the original shall be retained on file until the corrected report is returned to the registry of election finance. If the original filing was in compliance with the intent of the law and minor errors are corrected within the date set for a response, no penalty shall be assessed.

(G) To request a waiver, reduction or to in any way contest a penalty imposed by the staff of the registry of election finance, a candidate for a state public office shall file a petition with the registry of election finance. Such petition may be considered as a contested case proceeding under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(2) "Class 2 offense" means failing to file a report required by this part within thirty-five (35) days after service of process or receipt of notice by registered or certified mail of an assessment or any other violation of the requirements of this part. A Class 2 offense is punishable by a maximum penalty of not more than ten thousand dollars ($10,000) or fifteen percent (15%) of the amount in controversy, if fifteen percent (15%) of the amount in controversy is greater than ten thousand dollars ($10,000).

(A) For state and local public offices, the registry of election finance may impose a civil penalty for any Class 2 offense.

(B) To request a waiver, reduction or to in any way contest a penalty imposed by the registry of election finance, a candidate for a local public office shall file a petition with the registry of election finance. Such petition may be considered as a contested case proceeding under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(C) "Amount in controversy" means, as appropriate to the case, the greater of the total expenditures or total contributions either of which or both of which are shown on a late report subsequently filed, or the amount of an expenditure or contribution which was not reported or was incorrectly reported.

(b) Penalties imposed under this part shall be deposited into the state general fund.

(c)(1) The registry of election finance shall maintain a register of all civil penalties imposed under this part and remaining unpaid.

(2) If a civil penalty lawfully assessed and any lawfully assessed cost attendant thereto are not paid within thirty (30) days after the assessment becomes final, the candidate owing such civil penalty shall be ineligible to qualify for election to any state or local public office until such penalty and costs are paid.

(3) If a civil penalty authorized by this section is imposed, it shall be considered as a personal judgment against the candidate.

(d) A candidate for state or local public office who fails to file any statement or report required by this part shall be ineligible to qualify for election to any state or local public office until such statement or report is filed with the registry and/or the appropriate county election commission.

(e) It is the intent of the general assembly that the sanctions provided in this section shall be the civil penalties enacted into law by Acts 1989, ch. 585.

(f) For any civil penalty levied by the registry against a multicandidate political campaign committee under this section or § 2-10-308, the treasurer of such committee is personally liable for such penalty. [Acts 1980, ch. 861, § 11; 1989, ch. 585, § 19; 1989, ch. 591, § 113; 1990, ch. 943, § 2; 1991, ch. 519, §§ 7-9; 1996, ch. 1005, § 3; 1997, ch. 464, § 1.]

Compiler's Notes. Acts 1989, ch. 585, referred to in this section, was codified at §§ 2-10-101, 2-10-103, 2-10-105 — 2-10-111, 2-10-201 — 2-10-209, 3-6-102 — 3-6-106, 3-6-109, 3-6-110, 4-29-212, 8-50-501, 8-50-504 and 8-50-505.

Acts 1990, ch. 943, § 2(a) deleted the classification of the penalty in (c) as a Class C misdemeanor as classified by Acts 1989, ch. 591, § 113.

Acts 1997, ch. 464, § 2 provides that this act shall apply to any conduct that occurs on or after June 13, 1997, leading to the imposition of a penalty.

References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

Amendments. The 1996 amendment added (d) and redesignated former (d) as (e).

The 1997 amendment added (f).

Effective Dates. Acts 1996, ch. 1005, § 4. May 13, 1996.

Acts 1997, ch. 464, § 2. June 13, 1997.

Section to Section References. This section is referred to in §§ 2-10-114, 2-10-115, 2-10-118.

Textbooks. Tennessee Jurisprudence, 3 Tenn. Juris., Attorney General, § 4.

Attorney General Opinions. Constitutionality of subsections (c) and (d), OAG 96-149 (12/31/96).

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

1. Forfeiture.

The forfeiture provision means that if the violation is one preceding a primary election, the offending candidate shall forfeit his right of nomination acquired by virtue of that primary election, and nothing more; but, if the violation is one with respect to a general election, then the candidate shall not be given a certificate of election in the event that he wins. Dobbins v. Crowell, 577 S.W.2d 190 (Tenn. 1979).

2-10-111. Inspection of statements — Notice to candidate or political campaign committee. — (a)(1)(A) Whenever statements or other information is inspected as provided in § 2-10-206(3) or § 2-10-103(a)(2), the registry of election finance or county election commission, whichever is applicable, shall make a record of such inspection and provide notice, within three (3) business days from the date of the inspection, to the candidate or single candidate political campaign committee whose files, statements or records have been inspected or copied:

(B) That such inspection has taken place;

(C) The name, address, business telephone number, home telephone number, and the driver license number or other appropriate identification of the person making such inspection;

(D) For whom the inspection was made; and

(E) The date of such inspection.

(2) Any person making an inspection of such files, statements or records shall present evidence of identification and state the name of the person or organization the person represents, if any.

(b) Such record shall be available for public inspection during the normal business hours of the registry of election finance or county election commission. [Acts 1980, ch. 861, § 12; 1984, ch. 683, §§ 4, 7; 1989, ch. 585, § 20; 1990, ch. 943, §§ 5, 6; 1990, ch. 1048, § 4; 1993, ch. 49, §§ 1, 2.]

Textbooks. Tennessee Jurisprudence, 3 Tenn. Juris., Attorney General, § 4.

2-10-112. [Repealed.]

Compiler's Notes. Former § 2-10-112 (Acts 1986, ch. 780, § 1), concerning contributions from groups headquartered out of state, was repealed by Acts 1989, ch. 585, § 32.

2-10-113. December reports — Reporting period — Filing deadline. — Notwithstanding any other provision of law, rule or regulation to the contrary, if any report is required to be filed in December under the provisions of this part, the date of the reporting period for such report shall end on December 31, and the report shall be filed not later than January 31 of the following year. [Acts 1992, ch. 809, § 1.]

2-10-114. Campaign funds — Allocation of unexpended contributions — Use of funds. — (a) Any candidate for public office in this state with an unexpended balance of contributions after the election shall elect one (1) or a combination of the following for allocation of such funds within sixty (60) days of such election:

(1) The funds may be retained or transferred to any campaign fund pursuant to Tennessee reporting requirements;

(2) The funds may be returned to any or all of the candidate's contributors in accordance with a formula or plan specified in the candidate's disclosure of the allocation;

(3) The funds may be distributed to the executive committee of the candidate's political party;

(4) The funds may be deposited in the volunteer public education trust fund established under title 49, chapter 3, part 4;

(5) The funds may be distributed to any organization described in 26 U.S.C. § 170(c);

(6) The funds may be distributed to an organization which has received a determination of exemption from the United States internal revenue service pursuant to subsection (3) or (4) of 26 U.S.C. § 501(c), if such organization is currently operating under such exemption; and

(7) The funds may be used to defray any ordinary and necessary expenses incurred in connection with the office of the officeholder. Such expenses may include, but are not limited to, the cost of advertisements, membership fees, and donations to community causes.

(b) Except as provided in subsection (a), no candidate for public office shall use any campaign funds either prior to, during or after an election for such candidate's own personal financial benefit or any other nonpolitical purpose as

defined by federal internal revenue code. A violation of this subsection is a Class 2 offense as defined in § 2-10-110(a)(2).

(c) If the allocation made in accordance with subsection (a) is made after the post-election report required by § 2-10-105(c)(4), then a report of the allocation shall be filed within twelve (12) calendar days at the same office and with the same information as required in § 2-10-107 for expenditures. [Acts 1992, ch. 932, § 1.]

Attorney General Opinions. 1990 and 1992 campaigns, reporting requirements, OAG 94-034 (3/18/94).

Application to pre-1993 campaigns, scope of disclosure, OAG 94-035 (3/18/94).

2-10-115. [Reserved.]

Compiler's Notes. Acts 1992, ch. 932 and Acts 1992, ch. 978 enacted identical sections, which were originally codified as §§ 2-10-114 and 2-10-115. In light of the codification of § 2-10-114, the code commission deems § 2-10-115 unnecessary and has instructed the compiler to remove it from the code.

2-10-116. Acceptance of honorarium by public official. — (a) The acceptance of an honorarium by a public official in such person's capacity as a public official is prohibited. "Honorarium" means a payment of money or any thing of value for an appearance, speech or article, but does not include actual and necessary travel expenses, meals and lodging associated with such appearance, speech or article.

(b) Acceptance of an honorarium for an appearance, speech or article by a public official in such person's capacity as a private business person, professional or tradesperson is not prohibited. [Acts 1992, ch. 978, § 4.]

2-10-117. Contributions from political action committees within ten days of election. — No multicandidate political campaign committee other than a committee controlled by a political party on the national, state, or local level or by a caucus of such political party established by members of either house of the general assembly shall make a contribution to any candidate in a period from ten (10) days before an election until the day of the election. [Acts 1995, ch. 531, § 10.]

Compiler's Notes. Acts 1995, ch. 531, § 17 provided that that act shall only apply to contributions and expenditures made after January 1, 1996.

2-10-118. Filing by responsible party with prior assessment record. — (a) It is unlawful for a responsible party of a multicandidate political campaign committee who has a prior assessment record to intentionally fail to file a required report under this chapter, for which the party is responsible for filing, within thirty-five (35) days after service of process or receipt of notice from the registry by registered or certified mail. For the purposes of this section, "responsible party" is the treasurer of the committee appointed pursuant to § 2-10-105(e), or if no treasurer has been appointed, any person who organizes or directs the fundraising activities of a multicandidate political campaign committee. A responsible party shall be considered to have a prior assessment record for purposes of this section if during the person's service as

a responsible party to one (1) or more multicandidate political campaign committees, the committee or committees violate on two (2) or more occasions § 2-10-110 or § 2-10-308 and such violations result in the committee or committees being assessed a penalty by the registry.

(b) A violation of this section is a Class E felony. [Acts 1997, ch. 399, § 1.]

Effective Dates. Acts 1997, ch. 399, § 2. July 1, 1997.

Cross-References. Penalty for Class E felony, § 40-35-111.

PART 2—REGISTRY OF ELECTION FINANCE

2-10-201. Short title. — This part shall be known and may be cited as the "Registry of Election Finance Act of 1989." [Acts 1989, ch. 585, § 1.]

Law Reviews. Professional Responsibilities of Lobbyists (William R. Bruce), 23 Mem. St. U.L. Rev. 547 (1993).

2-10-202. Legislative intent. — It is the intent of the general assembly to provide adequate financial disclosure by public officials, candidates for public office, and lobbyists. Furthermore, it is the intent of the general assembly to establish a registry of election finance to ensure enforcement of these statutes. [Acts 1989, ch. 585, § 2.]

2-10-203. Registry of election finance — Creation — Appointments — Qualifications — Administration. — (a) There is hereby created as an independent entity of state government a Tennessee registry of election finance. The registry shall be composed of seven (7) members appointed as provided herein. Appointments shall be made to reflect the broadest possible representation of Tennessee citizens. Of the seven (7) members appointed, at least one (1) shall be a female and one (1) shall be black. However, a black female shall not satisfy the requirement of one (1) female and one (1) black. Each member shall have been a legal resident of this state for five (5) years immediately preceding selection. Members shall be at least thirty (30) years of age, registered voters in Tennessee, not announced candidates for public office, not members of a political party's state executive committee, shall not have been convicted of an election offense, and shall be persons of high ethical standards who have an active interest in promoting fair elections. Gubernatorial appointees shall be subject to confirmation by joint resolution of the general assembly. Such appointees shall have full power to serve until any vote of nonconfirmation.

(b)(1) For administrative purposes, the registry shall be attached to the department of state for all administrative matters relating to receipts, disbursements, expense accounts, budget, audit, and other related items. The autonomy of the registry and its authority are not affected hereby and the secretary of state shall have no administrative or supervisory control over the registry.

(2) No person performing staff duties for the registry of election finance, including the executive director, shall, during the period of such employment:

(A) Be allowed to hold or qualify for elective office to any state or local public office as defined by § 2-10-102;

(B) Be an officer of any political party or political committee;

(C) Permit such person's name to be used, or make contributions, in support of or in opposition to any candidate or propositions;

(D) Participate in any way in any election campaign; or

(E) Lobby, or employ or assist a lobbyist; provided, that this provision on lobbying shall not prohibit the executive director from the performance of the executive director's duties.

(c) Members of the registry shall be selected for staggered five-year terms as follows:

(1) The governor shall appoint three (3) members. One (1) member shall be appointed from a list of three (3) nominees submitted by the state executive committee of the majority party. One (1) member shall be appointed from a list of three (3) nominees submitted by the state executive committee of the minority party. One (1) other member shall be appointed by the governor. Before making this appointment, the governor shall solicit nominations from at least one (1) organization which has demonstrated a nonpartisan interest in fair elections and informed voting. The governor's solicitations and the replies shall be public records. The governor shall give due consideration to such nominations. The gubernatorial appointees shall serve initial terms of one (1) year;

(2) The senate shall appoint two (2) members with one (1) member to be chosen by the members of the senate democratic caucus and one (1) member to be chosen by the members of the senate republican caucus. The senate appointees shall serve initial terms of three (3) years; and

(3) The house of representatives shall appoint two (2) members with one (1) member to be chosen by the members of the house democratic caucus and one (1) member to be chosen by the members of the house republican caucus. The house appointees shall serve initial terms of five (5) years.

(d) Vacancies shall be filled in the same manner as the vacating member's office was originally filled.

(e) The registry shall elect a chair from among its appointed membership. The chair shall serve in that capacity for one (1) year and shall be eligible for reelection. The chair shall preside at all meetings and shall have all the powers and privileges of the other members.

(f) The registry shall fix the place and time of its regular meetings by order duly recorded in its minutes. No action shall be taken without a quorum present. Special meetings shall be called by the chair on the chair's initiative or on the written request of four (4) members. Members shall receive seven (7) days' written notice of a special meeting, and the notice shall specify the purpose, time and place of the meeting, and no other matters may be considered, without a specific waiver by all the members.

(g) The members of the registry shall receive no compensation; provided, that each member of the registry shall be eligible for reimbursement for expenses and mileage in accordance with the regulations promulgated by the commissioner of finance and administration and approved by the attorney general and reporter.

(h) No member of the registry of election finance shall, during such membership:

(1) Be allowed to hold or qualify for elective office to any state or local public office, as defined by § 2-10-102;

(2) Be an officer of any political party or political committee;

(3) Permit such member's name to be used, or make contributions, in support of or in opposition to any candidate or propositions;

(4) Participate in any way in any election campaign; or

(5) Lobby, or employ or assist a lobbyist.

(i) The prohibitions of subsection (h) shall not prohibit any incumbent member of the registry of election finance from seeking votes for reelection to the registry.

(j) The provisions of subsection (h) shall be applicable for one (1) year subsequent to the removal, vacancy or termination of the term of office of a member of the registry of election finance.

(k) Any member of the registry who violates the oath of office for such position or participates in any of the activities prohibited by this part commits a Class A misdemeanor, and such violation or participation shall be a ground for removal from office. [Acts 1989, ch. 585, § 3.]

Compiler's Notes. The Tennessee registry of election finance, created by this section, terminates June 30, 1999. See §§ 4-29-112, 4-29-220.

Cross-References. Penalty for Class A misdemeanor, § 40-35-111.

Section to Section References. This section is referred to in §§ 3-6-102, 4-29-220.

2-10-204. Executive director — Employees. — (a) The registry shall appoint a full-time executive director who shall serve at the pleasure of the registry. The registry may appoint the state coordinator of elections as the executive director, and the registry may utilize existing staff and resources of the office of the state coordinator of elections. Other employees shall be employed on recommendation of the executive director with the approval of the registry. The registry may call on the office of the state coordinator of elections for such advice, documents or services as it may require.

(b) Employees of the registry shall not have civil service status, but such employees shall be subject to personnel policies applicable to state employees generally, such as leave, compensation, classification and travel requests. [Acts 1989, ch. 585, § 4.]

2-10-205. Jurisdiction to administer and enforce certain statutes. — The registry has the jurisdiction to administer and enforce the provisions of the following statutes:

(1) The "Campaign Financial Disclosure Law," compiled in part 1 of this chapter;

(2) The "Lobbyist Registration and Disclosure Law," compiled in title 3, chapter 6;

(3) The "Conflict of Interest Disclosure Law," compiled in title 8, chapter 50, part 5; and

(4) The "Campaign Contribution Limits Law," compiled in part 3 of this chapter. [Acts 1989, ch. 585, § 5; 1995, ch. 531, § 4.]

Compiler's Notes. Acts 1995, ch. 531, § 17 provided that the amendment by that act shall only apply to contributions and expenditures made after January 1, 1996.

Law Reviews. Professional Responsibilities of Lobbyists (William R. Bruce), 23 Mem. St. U.L. Rev. 547 (1993).

2-10-206. Registry of election finance — Duties. — The duties of the registry include the following:

(1) Develop prescribed forms for statements that are required to be filed under the above laws with the objective of making the disclosure statements as simple and understandable as possible for both the person filing the disclosure statement and the average citizen of the state of Tennessee;

(2) Develop a filing, coding and cross-indexing system;

(3) Make each report filed available for public inspection and copying during regular office hours at the expense of any person requesting copies of the same;

(4) Review all filed statements to ensure compliance with the respective disclosure laws. Statements filed with the registry for more than one hundred eighty (180) days shall be deemed to be sufficient, absent a showing of fraud;

(5) Prepare and publish a manual for all candidates and committees, describing the requirements of the law, including uniform methods of bookkeeping and reporting and requirements as to reporting dates and the length of time that candidates and committees are required to keep any records pursuant to the provisions of this part;

(6) Provide an annual report to the governor and the general assembly concerning the administration and enforcement of the disclosure law;

(7) Investigate any alleged violation upon sworn complaint or upon its own motion. If the registry investigates the records of any selected candidate, it may also investigate the records of all other candidates running for the same position in the same district or other appropriate geographic area;

(8) Preserve all reports or statements for five (5) years from the date of filing; and

(9) Notify all candidates for state public office in a state election of the requirements for filing any required disclosure statement fourteen (14) days before any fixed deadline provided.

The registry shall notify each member of the general assembly by sending notice to the member's home address and the member's legislative office address in Nashville. [Acts 1989, ch. 585, § 6; 1991, ch. 519, § 15.]

Cross-References. Notice concerning inspection of files, statements or records belonging to candidate or political campaign committee, § 2-10-111.

Section to Section References. This section is referred to in § 2-10-111.

2-10-207. Registry of election finance — Powers. — The registry has the following powers:

(1) Promulgate such rules and regulations pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, as are necessary to implement the provisions of this chapter;

(2) Hold hearings, subpoena witnesses, administer oaths, and compel production of books, correspondence, papers and other records, pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5;

(3) Issue written advisory opinions to candidates concerning compliance with this chapter and the Conflict of Interest Disclosure Law, compiled in title 8, chapter 50, part. 5. A candidate may rely upon such opinion without threat of sanction with respect to the issue addressed by the opinion if the candidate conforms such candidate's conduct to the requirements of the advisory opinion;

(4) In determining whether an actual violation has occurred, conduct a contested case hearing pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5;

(5) Issue an appropriate order following such a determination;

(6) Assess a late filing fee of twenty-five dollars ($25.00) per day up to a maximum total penalty of seven hundred fifty dollars ($750);

(7) Assess a civil penalty for any violation of the disclosure laws as provided by this part. Such civil penalties may be assessed for any violation of the Campaign Financial Disclosure Law, compiled in part 1 of this chapter, the Lobbyist Registration and Disclosure Law, compiled in title 3, chapter 6, the Conflict of Interest Disclosure Law, compiled in title 8, chapter 50, part 5 and the Campaign Contribution Limits Act, compiled in part 3 of this chapter; provided, that the registry shall only have the power to assess a civil penalty after notice and opportunity for hearing; and

(8) Where the results of its investigation indicate a willful or fraudulent violation has occurred, the registry may refer the matter to the district attorney general of the district where the alleged violator is a resident for criminal prosecution. [Acts 1989, ch. 585, § 7; 1990, ch. 1049, § 3; 1992, ch. 988, § 3; 1995, ch. 531, §§ 5-7.]

Compiler's Notes. Acts 1995, ch. 531, § 17 provided that the amendment by that act shall only apply to contributions and expenditures made after January 1, 1996.

2-10-208. Applicability of part. — (a) All political accounts or funds subject to Tennessee law on January 1, 1990, shall become subject to the provisions of this part.

(b) For the purposes of enforcement, this part shall be prospective only, and the registry shall limit its investigations to acts or omissions which occur after January 1, 1990. [Acts 1989, ch. 585, § 30.]

2-10-209. Enforcement — Chancery court petitions and orders. — The registry has the authority to petition the chancery court through the attorney general and reporter for enforcement of any order it has issued. The court's order of enforcement has the same force and effect as a civil judgment. [Acts 1989, ch. 585, § 8.]

2-10-210. Authority to establish or levy penalty or sanction. — The registry of election finance shall not establish or levy any penalty or sanction for any action alleged to be a violation of the rules and regulations of the registry unless such action is also a violation of a statutory requirement. [Acts 1992, ch. 988, § 4.]

PART 3—CAMPAIGN CONTRIBUTIONS LIMITS

2-10-301. Short title — Jurisdiction. — (a) This part shall be known and may be cited as the "Campaign Contribution Limits Act of 1995."

(b) The registry of election finance has jurisdiction to administer and enforce the provisions of this part. [Acts 1995, ch. 531, § 1.]

Compiler's Notes. Acts 1995, ch. 531, § 17 provided that the amendment by that act shall only apply to contributions and expenditures made after January 1, 1996.

Attorney General Opinions. Constitutionality of campaign finance reform, OAG 95-058 (5/24/95).

Constitutionality under separation of powers clause, OAG 96-021 (2/16/96).

Cited: Emison v. Catalano, 951 F. Supp. 714 (E.D. Tenn. 1996).

2-10-302. Contribution limits. — (a) No person shall make contributions to any candidate with respect to any election which, in the aggregate, exceed:

(1) For an office elected by statewide election, two thousand five hundred dollars ($2,500); or

(2) For any other state or local public office, one thousand dollars ($1,000).

(b) No multicandidate political campaign committee shall make contributions to any candidate with respect to any election which, in the aggregate, exceed:

(1) For an office elected by statewide election or the senate, seven thousand five hundred dollars ($7,500); and

(2) For any other state or local public office, five thousand dollars ($5,000).

(c) No candidate shall make contributions to the candidate's own election using personal funds with respect to any election which, in the aggregate, exceed:

(1) For an office elected by statewide election, two hundred fifty thousand dollars ($250,000);

(2) For the senate, forty thousand dollars ($40,000); and

(3) For any other state or local public office, twenty thousand dollars ($20,000).

(d) With respect to contributions from multicandidate political campaign committees for each election:

(1) No candidate for an office elected by statewide election shall accept in the aggregate more than fifty percent (50%) of the candidate's total contributions from multicandidate political campaign committees; and

(2) No candidate for any other state or local public office shall accept in the aggregate more than seventy-five thousand dollars ($75,000) from multicandidate political campaign committees.

In determining the aggregate limits established by this subsection, contributions made to a candidate by a committee controlled by a political party on the national, state, or local level or by a caucus of such political party established by members of either house of the general assembly are not included. [Acts 1995, ch. 531, § 1.]

Compiler's Notes. Acts 1995, ch. 531, § 16 provides that if any provision of (c)(1) or (d)(1) or their application to any person or circumstance is held invalid, then the provisions and applications of (c)(1) and (d)(1) are declared to be invalid and void.

Attorney General Opinions. Anonymous campaign contributions, OAG 97-065 (5/12/97).

Cited: Emison v. Catalano, 951 F. Supp. 714 (E.D. Tenn. 1996).

2-10-303. Indirect contributions — Political action committees. — For purposes of the limitations contained in this part:

(1) Contributions made to any political campaign committee authorized by a candidate to accept contributions on the candidate's behalf shall be considered to be contributions made to such candidate;

(2) Contributions made by a political campaign committee authorized by a candidate to make expenditures on the candidate's behalf shall be considered contributions made by such candidate;

(3) All contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate. The intermediary or conduit shall report the original source and the intended recipient of such contribution to the registry of election finance and to the intended recipient;

(4) All contributions made by affiliated political campaign committees shall be considered to have been made by a single committee; and

(5) Expenditures made by any person in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, the candidate's political campaign committees, or their agents, shall be considered to be a contribution to such candidate. For purposes of this subsection, the financing by any person of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, the candidate's political campaign committees, or their authorized agents shall be considered to be an expenditure. [Acts 1995, ch. 531, § 1.]

Attorney General Opinions. Independent election expenditures, OAG 96-90 (7/24/96).

2-10-304. Loans. — (a) The limitations contained in this part do not apply to any loan of money by a financial institution as defined in § 45-10-102(3) that:

(1) Is made in accordance with applicable law and in the ordinary course of business;

(2) Is made on a basis reasonably designed to assure repayment, evidenced by a written instrument, and subject to a payment due date or amortization schedule; and

(3) Bears the usual and customary interest rate of the lending institution.

(b) An endorsement or guaranty of a loan made pursuant to subsection (a) shall be considered a contribution in the amount of the endorsement or guaranty and shall be subject to the limitations contained in this part. Where the written instrument does not specify the portion of the loan for which the endorser or guarantor is liable, each endorser or guarantor shall be considered to have made a contribution in that proportion of the unpaid balance that each

endorser or guarantor bears to the total number of endorsers or guarantors. [Acts 1995, ch. 531, § 1.]

2-10-305. Retention or transfer of funds. — The limits contained in this part do not apply to:

(a) The retention of funds by a candidate pursuant to § 2-10-114(a)(1);

(b) The transfer of funds by a candidate pursuant to § 2-10-114(a)(1) to a campaign fund of the same candidate for election to a different state or local public office; or

(c) The transfer of funds by a candidate for election to a federal office to a campaign fund of the same candidate for election to a state or local public office. [Acts 1995, ch. 531, § 1.]

2-10-306. Aggregate limits — Exemptions. — (a) All contributions made by political campaign committees controlled by a political party on the national, state, or local level or by a caucus of such political party established by members of either house of the general assembly shall be considered to have been made by a single committee. Such contributions shall not, in the aggregate, exceed:

(1) Two hundred fifty thousand dollars ($250,000) per election to any candidate in a statewide election;

(2) Forty thousand dollars ($40,000) per election to any candidate for the senate; and

(3) Twenty thousand dollars ($20,000) per election to any candidate for any other state or local public office.

(b) For purposes of this section, "contributions" does not include:

(1) Payment of the costs of preparation, display or mailing or other distribution with respect to printed slate cards, sample ballots, or other printed listings of three (3) or more candidates who are opposed for election. This exemption does not apply to costs incurred with respect to the preparation and display of listings made on broadcasting stations or in newspapers, magazines and similar types of general public political advertising such as billboards;

(2) Payment of the costs of voter registration and get-out-the-vote activities conducted by party committees, unless the payments are made on behalf of a clearly identified candidate and the payment can be directly attributed to that candidate;

(3) Expenditures for rent, personnel, overhead, general administrative, fundraising, and other day-to-day costs of party committees, unless the expenditures are made on behalf of a clearly identified candidate and the expenditure can be directly attributed to that candidate; or

(4) Expenditures for education campaign seminars and for training of campaign workers, unless the expenditures are made on behalf of a clearly identified candidate and the expenditure can be directly attributed to that candidate. [Acts 1995, ch. 531, § 1.]

Attorney General Opinions. Independent election expenditures, OAG 96-90 (7/24/96).

Cited: Emison v. Catalano, 951 F. Supp. 714 (E.D. Tenn. 1996).

2-10-307. Violations — Return of unlawful contributions. — (a) No candidate or political campaign committee shall accept any contribution or make any expenditure in violation of the provisions of this part. No officer or employee of a political campaign committee shall accept a contribution made for the benefit or use of a candidate, or make any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures under this section.

(b) In keeping with the federal law, a contribution made or accepted in excess of the limitations established by this part shall not be a violation of this part if the candidate or the political campaign committee returns or refunds the contribution to the person who made the contribution within sixty (60) days of the candidate's or committee's receipt of the contribution. [Acts 1995, ch. 531, § 1.]

2-10-308. Penalties. — (a) The registry of election finance may impose a maximum civil penalty for a violation of this part or not more than ten thousand dollars ($10,000) or one hundred fifteen percent (115%) of the amount of all contributions made or accepted in excess of the limitations established by this part, whichever is greater.

(b) Penalties imposed under this part shall be deposited into the state general fund.

(c) To request a waiver or reduction or in any way to contest a penalty imposed by the staff of the registry, a person shall file a petition with the registry. Such petition shall be considered as a contested case proceeding under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(d) If a civil penalty lawfully assessed against a candidate is not paid within thirty (30) days after the assessment becomes final, the candidate shall be ineligible to qualify for election to any state or local public office until such penalty is paid. [Acts 1995, ch. 531, § 1.]

Section to Section References. This section is referred to in §§ 2-10-110, 2-10-118.

Cited: Emison v. Catalano, 951 F. Supp. 714 (E.D. Tenn. 1996).

2-10-309. Construction with federal law. — In determining issues arising in regard to this part, the registry may rely on the precedents established under the federal law. [Acts 1995, ch. 531, § 1.]

Cited: Emison v. Catalano, 951 F. Supp. 714 (E.D. Tenn. 1996).

2-10-310. Fund raising during general assembly session. — (a) From the convening of the general assembly's regular annual session each year to the earlier of May 15 or the conclusion of the annual session, a member or a candidate for the general assembly or a member's or a candidate's campaign committee shall not conduct a fundraiser or solicit or accept contributions for the benefit of the caucus, any caucus member or candidate for the general assembly or governor.

(b) From the convening of the general assembly's regular annual session each year to the earlier of May 15 or the conclusion of the annual session, a

political campaign committee controlled by a political party on the national, state, or local level or by a caucus of such political party established by members of either house of the general assembly, which makes contributions to a candidate for the general assembly or governor for election or to defray the expenses of such person's office shall not conduct a fundraiser, solicit or accept, contributions for the benefit of the caucus, any caucus member or candidate for the general assembly or governor.

(c) Excess funds for election to a local public office are not eligible for transfer under § 2-10-114 to a campaign account for election to the general assembly or governor. [Acts 1995, ch. 531, § 1.]

CHAPTER 11

STATE ELECTION COMMISSION

PART 1—GENERAL PROVISIONS

2-11-101. Composition of commission. — (a) The state election commission shall be composed of five (5) members.

(b) Wherever in the Tennessee Code the board of elections of the state is referred to, the term "state election commission" shall be substituted. [Acts 1972, ch. 740, §§ 1, 6; 1975, ch. 72, §§ 1, 2; T.C.A., § 2-1101.]

Compiler's Notes. The state election commission is attached to the department of state for all administrative matters although the autonomy of the commission and its authority are not affected. See § 4-3-2103.

The state election commission created by this section terminates June 30, 2000. See §§ 4-29-112, 4-29-221.

Section to Section References. This section is referred to in § 4-29-221.

Textbooks. Tennessee Jurisprudence, 10 Tenn. Juris., Elections, § 8.

Comparative Legislation. State boards or commissions:

Ark. Code § 7-4-101 et seq.
Ga. O.C.G.A. § 21-2-30 et seq.
Ky. Rev. Stat. Ann. § 117.015.
Miss. Code Ann. § 23-15-211 et seq.
Mo. Rev. Stat. § 115.015 et seq.
N.C. Gen. Stat. § 163-19 et seq.
Va. Code § 24.1-18 et seq.

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

1. Former board members state officers.
2. Change in number of members.
3. Mandamus.
4. Enjoining officer from performing functions.

1. Former Board Members State Officers.
Members of the former state board of elections were state officers and the provisions of Tenn. Const., art. XI, § 17 relating to the method of filling county offices did not apply. Waldauer v. Britton, 172 Tenn. 649, 113 S.W.2d 1178 (1938).

2. Change in Number of Members.
Members of the former state board of elections elected under the provisions of Code of 1932, § 1955 et seq. were not unconstitutionally deprived of property rights by the provisions of Public Acts 1937 (3rd E.S.), ch. 2 which increased the number of members of such board and which changed the duties of such members to some extent, since the office was not a constitutional office but was one created by the legislature so that the legislature had the authority to reduce or increase the membership of such agency and to diminish or increase its duties and powers from time to time as the exigencies required. Waldauer v. Britton, 172 Tenn. 649, 113 S.W.2d 1178 (1938).

3. Mandamus.
Mandamus would not issue to compel the other members of the former state board of elections to recognize realtor as a member of board, where there was no charge that the other members had excluded the realtor from any meeting or denied him any right, or that they owed him any duty which they had failed or refused to meet. State ex rel. Carey v. Bratton, 148 Tenn. 174, 253 S.W. 705 (1923).

4. Enjoining Officer from Performing Functions.
An injunction will not lie to prevent the person in office from exercising his functions, pending proceedings to determine the right to the office, or to enjoin the election officers from issuing a certificate of election, or to prevent public officers from assuming their functions, even though it be alleged that there was fraud in the election sufficient to vitiate it. State ex rel. Carey v. Bratton, 148 Tenn. 174, 253 S.W. 705 (1923).

Collateral References. 29 C.J.S. Elections § 55.
Elections ⇦ 51.

2-11-102. Qualifications of members. — Each member of the state election commission shall be at least twenty-five (25) years of age and shall have been a resident of the state for at least seven (7) years prior to such member's election. No more than two (2) members shall be from the same grand division, and each member shall have been a resident of the grand division such member represents for at least four (4) years preceding such member's election. [Acts 1972, ch. 740, § 1; 1975, ch. 72, § 3; T.C.A., § 2-1102.]

Cross-References. Age discrimination in appointments to state boards and commissions prohibited, § 4-1-403.
Grand divisions, title 4, ch. 1, part 2.
Textbooks. Tennessee Jurisprudence, 10 Tenn. Juris., Elections, § 8.

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

1. Election of Ineligible Person.
The election of one declared to be ineligible to office by Tenn. Const., art. II, § 10 was void, since that provision not only prohibited the election, but incapacitated the officer, if elected in violation of the mandate, to hold the office. State ex rel. Carey v. Bratton, 148 Tenn. 174, 253 S.W. 705 (1923).

2-11-103. Political composition of commission — Nominations. — (a) Three (3) members of the commission shall be members of the majority party, and two (2) members of the commission shall be members of the minority party.

(b) Each member to be elected shall first be nominated by a joint senate-house caucus of the members of the party of which such person is a member. [Acts 1972, ch. 740, § 1; 1975, ch. 72, § 4; T.C.A., § 2-1103.]

Section to Section References. This section is referred to in § 2-11-104.

Textbooks. Tennessee Jurisprudence, 10 Tenn. Juris., Elections, § 8.

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

1. Political Qualifications.
Where Public Acts 1937 (3rd E.S.), ch. 2 amended the provisions of Code of 1932, § 1955 et seq. and increased the members of the former state board of elections by three, old members of the board who were continued in office for the terms for which they were elected were estopped from attacking the validity of the amendatory act on grounds that it imposed political qualifications for the office where the provisions of statute under which the old members were elected contained the same qualifications. Waldauer v. Britton, 172 Tenn. 649, 113 S.W.2d 1178 (1938).

2-11-104. Election of members. — (a) All members shall be elected for a term of four (4) years, beginning on the first Monday in May 1979.

(b) The election of the members of the state election commission shall be by joint resolution of both houses of the general assembly. The election is to take place in the joint session of both houses in which each member of the general assembly shall be entitled to one (1) vote.

(c) Elections shall be held on any date fixed by joint resolution, but shall be held prior to the fourth Monday in March of the year of the election.

(d) Nomination of members shall be in accordance with § 2-11-103. [Acts 1972, ch. 740, § 1; 1974, ch. 642, § 3; 1975, ch. 72, § 6; 1976, ch. 659, § 1; T.C.A., § 2-1104.]

Textbooks. Tennessee Jurisprudence, 10 Tenn. Juris., Elections, § 8.

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

1. Constitutionality.
2. Members estopped to attack statute.
3. Method of election.
4. Joint convention of general assembly.

1. Constitutionality.
Former § 1955 of the Code of 1932 was not unconstitutional in authorizing election by the general assembly. Richardson v. Young, 122 Tenn. 471, 125 S.W. 664 (1909); Waldauer v. Britton, 172 Tenn. 649, 113 S.W.2d 1178 (1938).

2. Members Estopped to Attack Statute.
Where Public Acts 1937 (3rd E.S.), ch. 2 amended the provisions of Code of 1932, § 1955 et seq. with reference to the former state board of elections, old members of the board who were continued in office for the remainder of their terms were estopped to attack the provisions of such amendatory acts in the capacity of taxpayers. Waldauer v. Britton, 172 Tenn. 649, 113 S.W.2d 1178 (1938).

3. Method of Election.
Public Acts 1937 (3rd E.S.), ch. 2 which increased the members of the former state board of elections by three was not unconstitutional because the filling of the three vacancies was delegated to the secretary of state, the comptroller and the treasurer since the election of all officers and the filling of all vacancies not expressly provided for in the Constitution is committed to the legislature to be exercised as it may direct. Waldauer v. Britton, 172 Tenn. 649, 113 S.W.2d 1178 (1938).

4. Joint Convention of General Assembly.
The requirement that the former state board of elections should be elected "by the joint vote of both houses of the general assembly" clearly authorized a joint convention of the members of the general assembly for such election purposes. Richardson v. Young, 122 Tenn. 471, 125 S.W. 664 (1909).

2-11-105. Vacancies. — (a) Any person chosen to fill a vacancy shall be a bona fide member of the same party as the person such person replaces.

(b) If a vacancy occurs in the membership of the state election commission at the time when the general assembly is in session, the vacancy may be filled by the general assembly in the same manner as full terms are. A person elected to fill a vacancy shall serve only for the remainder of the unexpired term of the member whose place such person fills.

(c) If a vacancy occurs at a time when the general assembly is not in session, the vacancy shall be filled by the remaining members of the commission. If the remaining members of the commission are not able to agree on a successor to fill the vacancy within thirty (30) days of the time when such vacancy occurs, the secretary of state, the comptroller of the treasury, and the state treasurer, or a majority of those officers shall fill the vacancy. Persons selected to fill vacancies under this subsection shall serve only until the next session of the general assembly, when the general assembly shall fill the vacancies as if they had occurred when the general assembly was in session.

(d) If the general assembly adjourns without filling any vacancies, vacancies shall be filled in the same manner as if they had occurred when the general assembly was not in session. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1105.]

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

1. Power to fill vacancies.
2. Method of appointment.
3. Term of appointee to fill vacancy.
4. Election of ineligible member.

1. Power to Fill Vacancies.

If the question was one of doubt about the power to fill vacancies in the offices of the members of the former state board of elections, occurring during a session of the general assembly and left unfilled by that body, public policy would require the doubt to be resolved in favor of the power to appoint. Richardson v. Young, 122 Tenn. 471, 125 S.W. 664 (1909).

2. Method of Appointment.

The election of officers and filling of vacancies, not expressly provided for in the Tennessee Constitution, is committed to the general assembly to be exercised as it may direct, and the appointive power given state secretary, comptroller, and treasurer under former § 1958 of the Code of 1932 was not an invalid delegation of unrestrained appointive power. Waldauer v. Britton, 172 Tenn. 649, 113 S.W.2d 1178 (1938).

3. Term of Appointee to Fill Vacancy.

A member who was appointed to fill a vacancy by the other members holds only until the convening of the general assembly and its election of a successor, and not for the full term of six years from his appointment. State ex rel. Carey v. Bratton, 148 Tenn. 174, 253 S.W. 705 (1923).

4. Election of Ineligible Member.

A member of the board, appointed by the other two members to fill a vacancy while the general assembly was not in session, held over in office after the general assembly met and elected one of its own members to fill the vacancy was contrary to Tenn. Const., art. II, § 10. State ex rel. Carey v. Bratton, 148 Tenn. 174, 253 S.W. 705 (1923).

2-11-106. Qualification and organization. — (a) The members shall qualify within fifteen (15) days after their election and organize by the selection of one (1) member as chair and another as secretary.

(b) The chair and secretary shall be elected for terms of one (1) year and shall be members of different political parties.

(c) Failure on the part of a member to qualify by taking the oath shall vacate the election of such member. [Acts 1972, ch. 740, § 1; 1978, ch. 754, § 5; T.C.A., § 2-1106.]

2-11-107. Compensation of members. — Each member of the state election commission shall receive as compensation such sum as the general assembly may appropriate. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1107.]

2-11-108. Expenses. — (a) The state election commission shall be allowed the necessary sum per annum, payable out of the state treasury, for stationery, postage, and expenses incidental to the conduct of the business of the commission, which shall be payable upon vouchers signed by the secretary and countersigned by the chair of the commission.

(b) The members shall be entitled to reimbursement for travel expense incurred in the performance of their official duties in conformity with comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter. [Acts 1972, ch. 740, § 1; 1976, ch. 806, § 1 (24); 1978, ch. 754, § 6; T.C.A., § 2-1108.]

Compiler's Notes. The state election commission is attached to the department of state for all administrative matters including expense accounts. See § 4-3-2103.

2-11-109. Meetings. — All meetings of the state election commission shall be held in the city of Nashville and at a place selected by the commission. [Acts 1972, ch. 740, § 1; 1973, ch. 321, § 1; T.C.A., § 2-1109.]

2-11-110. Ex officio, nonvoting members. — The chair of the state primary board of any statewide political party which has no members on the state election commission shall be an ex officio, nonvoting member of the state election commission. [Acts 1972, ch. 740, § 1; 1978, ch. 754, § 7; T.C.A., § 2-1110.]

Part 2—Coordinator of Elections

2-11-201. Coordinator of elections. — (a) The secretary of state shall appoint the coordinator of elections, who shall serve at the pleasure of the secretary of state and for such compensation as the secretary of state determines.

(b) The coordinator of elections is the chief administrative election officer of the state and shall obtain and maintain uniformity in the application, operation and interpretation of the election code.

(c) Subject to the concurrence of the secretary of state, the coordinator of elections may make rules and regulations as necessary to carry out the provisions of the election code. Copies of such rules and regulations shall be furnished to the state and county election commissions and to the state and county primary boards.

(d) Subject to the prior approval of the secretary of state, the coordinator of elections may within budgetary limits employ such personnel and enter into such contracts for equipment as may be appropriate for the efficient discharge

of the duties of the office. [Acts 1972, ch. 740, § 1; 1979, ch. 267, § 1; T.C.A., § 2-1111; Acts 1984, ch. 728, § 1.]

Textbooks. Tennessee Jurisprudence, 10 Tenn. Juris., Elections, § 8.

2-11-202. Duties of coordinator — Examination and certification of administrators of elections. — (a) The coordinator of elections shall:

(1) Generally supervise all elections;

(2) Prepare instructions for the conduct of registration;

(3) Advise election commissions, primary boards, and administrators of elections as to the proper methods of performing their duties;

(4) Authoritatively interpret the election laws for all persons administering them;

(5) Investigate or have investigated by local authorities the administration of the election laws and report violations to the district attorney general or grand jury for prosecution. Any report of an investigation conducted by the coordinator's office pursuant to the request of the attorney general and reporter and/or a district attorney general and filed with the attorney general and reporter and/or a district attorney general or a grand jury shall be privileged and confidential and shall not be deemed to be a public record.

(A) The report of an investigation into the seating of a member of the general assembly shall be deemed to be a public record.

(B) If a report of an investigation conducted by the coordinator's office pursuant to the request of the attorney general and reporter and/or a district attorney general appears in the news media, in whole or in part, such report shall be deemed a public record and immediately released. All conclusions of law contained in such report shall be approved by the attorney general and reporter before the report is released;

(6) If a county election commission does not purge the permanent registration records as required by law, investigate the registration records of that county and file a petition with the circuit or chancery court in the county to purge the permanent registration records of those persons the coordinator of elections determines should have been purged by the county election commission;

(7) Publish in accordance with the rules, regulations, policies and procedures of the state publications committee, and keep up to date an election laws manual, including this title, rules and regulations under this title, and such other material as the coordinator of elections may determine to be useful to persons administering the election laws, and prepare condensed materials for the use of election officials;

(8) Furnish instructions for election officials as to their duties in the conduct of elections and copies of election laws manual and updating materials to the election commissions, primary boards, and administrators. Any interested citizen may purchase a copy of the election laws through the coordinator of elections office at a price to be established by the coordinator. The price charged may not exceed the actual cost involved;

(9) Provide materials for and conduct training programs for persons administering the election laws;

(10) Review all bills affecting the election laws and report in writing to the general assembly on them individually;

(11) Report to each general assembly with any recommendations the coordinator of elections may have for improvements in the election laws or their application;

(12) Ensure that all election commissions within the state shall prohibit any person from becoming qualified to have such person's name placed on any ballot wherein such person is seeking to be nominated or elected to more than one (1) state legislative office, as described in § 2-13-202(1), (2) or (3), voted on by voters during any primary or general election;

(13) Prepare an instruction sheet for notaries public setting forth the proper and legal procedure for attesting absentee ballots and registration by mail forms. Such instructions shall be sent, in sufficient quantities, to every county clerk in this state, who shall make such instruction sheet available to notaries public in such county upon their request and to notaries public elected after July 1, 1979;

(14) Properly file and keep up to date the information supplied by the county election commissions as established in § 2-12-114; and, further, to supply that information, within a reasonable time, to any member of the general assembly upon request;

(15) Develop a uniform petition form for use by persons seeking to qualify to run for public office and furnish such form to county election commissions for distribution to such persons;

(16) Devise and furnish to the clerks of the circuit and criminal courts a form to be used for notifying county election commissions of the fact that a registered voter in their county has been convicted of an infamous crime and therefore should be purged from the registration records. Such form shall include the voter's name, race, date of birth, and social security number, if available;

(17) Instruct the administrators in each county that they are to purge the registration of any person appearing on the infamous crime list required by subdivision (16) who is registered to vote in their county;

(18)(A) Not less than one (1) time per calendar year, conduct a training seminar for administrators, deputies and county election commissioners. Attendance at such seminars shall be mandatory for administrators and the expenses incurred in such attendance shall, upon appropriate documentation, be included in the county election commission's annual budget submitted pursuant to § 2-12-109 subject to the reimbursement limits for state employees. If for any reason the administrator cannot attend, the chair or the chair's designee shall attend instead.

(B) Unless, in the opinion of the state election commission, an administrator certified under this section has good cause for failing to attend and participate in the training seminars required by this subsection, such failure to attend and participate in the seminars shall result in the loss of such administrator's certification. Within thirty (30) days of receiving the training seminar attendance records from the coordinator of elections pursuant to subdivision (a)(19), such commission shall cause to be notified the state official responsible for authorizing payments to counties pursuant to § 2-12-

209, of the counties in which the administrator has lost such certification for failing to attend and participate in such seminars.

(C) In addition to the penalties set forth in subdivision (a)(18)(B), if, in the opinion of the state election commission, an administrator fails to substantially perform the duties of the office, the state election commission may revoke the certification of such administrator or otherwise discipline the administrator. In all such cases, the administrator being charged shall be given a hearing before the state election commission. If, after the hearing, the state election commission votes to revoke the certification, such commission shall cause to be notified the state official responsible for authorizing payments to counties pursuant to § 2-12-209, of such revocation and payments to that county shall terminate; and

(19) Keep accurate records of those administrators who do and do not attend the training seminars required by subdivision (a)(18) and, within ten (10) days of the conclusion of each such seminar, transmit such records to the state election commission.

(b) The coordinator of elections and the state election commission shall, at least once per calendar year, prepare and administer a written examination on election laws to any administrator who desires to take the same. The coordinator of elections and the state election commission shall determine whether or not an administrator passes or fails such examination. All examinations administered pursuant to this subsection shall be prepared, conducted and graded in a fair and impartial manner. An administrator who successfully passes such examination shall receive certification from the state election commission. [Acts 1972, ch. 740, § 1; 1976, ch. 511, §§ 1, 2; 1978, ch. 940, § 2; 1979, ch. 316, § 5; 1979, ch. 317, § 2; T.C.A., § 2-1112; Acts 1981, ch. 256, § 1; 1981, ch. 345, § 6; 1981, ch. 478, §§ 1, 19; 1982, ch. 631, § 2; 1984, ch. 636, § 3; 1984, ch. 703, §§ 1-3; 1985, ch. 132, § 2; 1986, ch. 930, §§ 3, 4, 7; 1990, ch. 1024, § 5; 1993, ch. 208, § 1.]

Compiler's Notes. The provisions in § 2-12-109 providing that the county election commission submit an annual budget have been deleted from that section.

Section 2-13-202(2), referred to in (a)(12), was deleted by Acts 1995, ch. 305, § 60, effective July 1, 1996.

References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

Cross-References. Acts purging registration, § 2-2-106.

Judgment of infamy, § 40-20-112.

Notice of infamy, § 40-20-113.

Qualified voters, § 2-2-102.

Registration information, § 2-2-116.

Restoration of suffrage, §§ 2-2-139, 40-29-101.

Suffrage for persons convicted of infamous crimes, § 2-19-143.

Section to Section References. This section is referred to in §§ 2-2-108, 2-12-208, 2-12-209.

Textbooks. Tennessee Jurisprudence, 10 Tenn. Juris., Elections, § 8.

Cited: Shelby County Election Comm'n v. Turner, 755 S.W.2d 774 (Tenn. 1988).

CHAPTER 12

COUNTY ELECTION COMMISSIONS

PART 1—GENERAL PROVISIONS

2-12-101. Commissioners — Appointment — Removal — Legal representation. — (a) The state election commission shall appoint, on the first Monday in April of each odd-numbered year, five (5) election commissioners for each county, for terms of two (2) years and until their successors are appointed and qualified. The five (5) commissioners shall be the county election commission.

(b) The state election commission shall remove a commissioner who becomes unqualified and may remove or otherwise discipline a commissioner for cause.

(c) County election commissions shall be represented in legal proceedings as follows:

(1) If the legal proceeding names the county election commissioners as defendants and the lawsuit involves a municipal election, the municipality concerned shall furnish counsel to represent the commissioners;

(2) If the election involved in the legal proceedings is that of a county election, the county shall furnish counsel for the commissioners and if the election involved in the legal proceedings attacks a state law or presents a question concerning a state or federal election, the attorney general and reporter shall represent the commissioners either by the attorney general and reporter's own staff or by such counsel as the attorney general and reporter may designate;

(3) The counsel furnished, whether by municipality or county, shall be that chosen by the election commission; and

(4) If, in order to properly discharge its duties, the county election commission has to bring legal action against a county or municipality, the compensation for the commission's legal representation shall be borne by the county or municipality as the case may be.

(d) The county election commission created by this section is the immediate successor to the commissioners of elections for each county. Wherever in the Tennessee Code the commissioners of elections for counties are referred to, the term "county election commission" shall be substituted. [Acts 1972, ch. 740, §§ 1, 7; 1974, ch. 535, § 1; 1979, ch. 316, § 3; T.C.A., § 2-1201; Acts 1980, ch. 609, § 6; 1993, ch. 208, § 2.]

Textbooks. Tennessee Jurisprudence, 10 Tenn. Juris., Elections, § 7.

Comparative Legislation. County boards and commissions:

Ala. Code. § 11-3-1.

Ark. Code § 7-4-102 et seq.

Ga. O.C.G.A. § 21-2-111 et seq.

Ky. Rev. Stat. Ann. § 117.035.

Miss. Code Ann. § 23-15-211 et seq.

N.C. Gen. Stat. § 163-30 et seq.

Va. Code § 24.1-73 et seq.

NOTES TO DECISIONS

ANALYSIS

1. Status of commission.
2. Powers of commission.
3. Standing of taxpayers.
4. Payment of attorney fees.
5. Storage of voting machines.

1. Status of Commission.

County election commission could maintain action for declaratory judgment for purpose of determining whether county or city was liable for expenses incurred by commission in holding special referendum election on amendment of city charter under private acts. Abercrombie v. City of Chattanooga, 203 Tenn. 357, 313 S.W.2d 256 (1958).

The county election commission is not an arm of the county government. Abercrombie v. City of Chattanooga, 203 Tenn. 357, 313 S.W.2d 256 (1958).

The county election commission has its legal existence by virtue of the general law of the state and is not a part of any political subdivision of the state. Abercrombie v. City of Chattanooga, 203 Tenn. 357, 313 S.W.2d 256 (1958).

2. Powers of Commission.

County election commission had authority to hold special referendum election for benefit of city for purpose of determining whether or not city charter was to be amended under provisions of private acts, and city rather than county was liable for expenses of holding such election. Abercrombie v. City of Chattanooga, 203 Tenn. 357, 313 S.W.2d 256 (1958).

3. Standing of Taxpayers.

Suit brought by county district attorney general upon information of ten taxpayers and citizens of that county, to recover attorneys' fees paid by acting chief executive officer to law firms for services in defending certain election suits, which payment was subsequently ratified by county commission, was properly dismissed for plaintiffs' lack of standing. State ex rel. Vaughn v. King, 653 S.W.2d 727 (Tenn. Ct. App. 1982).

4. Payment of Attorney Fees.

This section specifically gives to the "county" the power to hire attorneys to defend the county election commission in election contests, and where that authority is expressly given, the county executive should be able to pay them. The general provisions of § 5-6-112 do not dictate otherwise. State ex rel. Vaughn v. King, 653 S.W.2d 727 (Tenn. Ct. App. 1982).

5. Storage of Voting Machines.

Where election commission filed petition for writ of mandamus and declaratory judgment on April 10, 1981, to compel board of commissioners to provide adequate and economically feasible storage for the county's 1,200 voting machines, the lease on the premises where the machines were then being stored being due to expire on April 30, 1981, and the county having failed to exercise option to renew within 60 days of expiration as required by the lease, the trial court was correct in refusing to issue writ of mandamus and in denying an award of attorneys' fees to the election commission, because the suit was premature, since the county was fulfilling its duty to provide storage for the machines, and the election commission had made no showing that the county would not do so in the future. State ex rel. Shelby County Election Comm'n v. Shelby County Bd. of Comm'rs, 656 S.W.2d 9 (Tenn. Ct. App. 1983).

2-12-102. Qualifications of commissioners. — (a)(1) Except as provided in subdivision (a)(2), persons appointed to the county election commission shall be registered voters who have been residents of the state for five (5) years and residents of the county for which they are appointed for two (2) years.

(2) In counties having a population of not less than two hundred seventy-six thousand (276,000) nor more than two hundred seventy-seven thousand (277,000) according to the 1970 federal census or any subsequent federal census, the persons appointed to the county election commission shall be registered voters who have been residents of the county for which they are appointed for two (2) years.

(b) Any member of the county election commission who qualifies as a candidate for any public office while serving as a member of the commission shall automatically become disqualified to continue in office as a member of the commission, and a vacancy on the commission shall be considered to exist. [Acts 1972, ch. 740, § 1; 1976, ch. 558, § 1; 1979, ch. 232, §§ 1, 2; T.C.A., § 2-1202.]

Cross-References. Restrictions on commission or board membership or service as election official, § 2-1-112.

NOTES TO DECISIONS

1. Qualifications.

Whether a member of a county election commission is qualified for the office is a political question which rests entirely with the state election commission. Buford v. State Bd. of Elections, 206 Tenn. 480, 334 S.W.2d 726 (1960).

2-12-103. Political division of commission. — (a) Three (3) members shall be members of the majority party and two (2) members shall be members of the minority party.

(b)(1) The members of the majority party on the state election commission shall appoint the persons who are required to be members of that party on county election commissions.

(2) The members of the minority party on the state election commission shall appoint the persons who are required to be members of that party on county election commissions.

(3) When members of another statewide political party are required to be appointed to a county election commission, they shall be nominated by the party's state primary board.

(4) Before appointing county election commissioners, the members of the state election commission shall consult with the members of the general assembly serving each of the counties as to the persons to be appointed to the county election commissions. [Acts 1972, ch. 740, § 1; 1977, ch. 26, § 1; T.C.A., § 2-1203.]

2-12-104. Qualification by filing oath of office. — Persons appointed to the county election commission shall qualify within twenty (20) days after their appointment by filing their oath of office with the secretary of the state election commission. A failure to qualify shall vacate the office of the person failing. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1204.]

Cross-References. Oaths of office, §§ 8-18-107 — 8-18-114.

Textbooks. Tennessee Jurisprudence, 10 Tenn. Juris., Elections, § 7.

2-12-105. Organization. — Within twenty (20) days after their appointment, the county election commissioners shall organize by the selection of a chair and a secretary of different political parties from among them. The county election commission shall within ten (10) days thereafter report to the secretary of the state election commission and to the coordinator of elections the names and addresses of the officers and other members of the commission. [Acts 1972, ch. 740, § 1; 1978, ch. 754, § 8; T.C.A., § 2-1205.]

2-12-106. Vacancies. — The county election commission shall give prompt notice of all vacancies to the state election commission, which shall appoint a new commissioner of the same political party as the vacating commissioner to fill the unexpired term. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1206.]

2-12-107. Issuance of commissions of appointment — Records. — (a) The state election commission shall issue to the county election commissioners commissions of appointment signed by the chair.

(b) The state election commission shall keep records of the names and addresses of all county election commissioners and their officers, of dates of appointment, and of political affiliations of commissioners, and shall keep the oaths filed by the commissioners. [Acts 1972, ch. 740, § 1; impl. am. Acts 1978, ch. 754, § 5; T.C.A., § 2-1207.]

2-12-108. Compensation. — (a)(1) Except as provided in subdivision (a)(2), each member of the county election commission shall receive each month from the county funds as compensation a minimum of thirty dollars ($30.00) for each day spent in the performance of such duties.

(2)(A) In counties having a population of not less than two hundred eighty-five thousand (285,000) nor more than two hundred eighty-eight thousand (288,000), and in counties having a population of not less than three hundred nineteen thousand six hundred twenty-five (319,625) nor more than three hundred nineteen thousand seven hundred twenty-five (319,725), according to the federal census of 1980 or any subsequent federal census, the chair of the county election commission shall receive three hundred fifty dollars ($350) per month and each other member of the commission shall receive three hundred dollars ($300) per month.

(B) In counties having a population of seven hundred thousand (700,000) or more according to the federal census of 1980 or any subsequent federal census, the chair of the county election commission shall receive seven hundred fifty dollars ($750) per month and each other member of the commission shall receive five hundred dollars ($500) per month.

(2) The compensation may be increased by resolution of the county legislative body.

(b) For the purpose of computing what amount of time entitles a commissioner to the minimum compensation of thirty dollars ($30.00) as provided in subdivision (a)(1), such commissioner shall have worked not less than one (1)

hour in any given twenty-four-hour period in order to be entitled to such payment. Payment shall be made for meetings which last less than one (1) hour if such meetings are required by statute in order to call or conduct an election, or to prepare the annual budget or meetings which are necessary if the election commission is involved in litigation. [Acts 1972, ch. 740, § 1; impl. am. Acts 1978, ch. 754, § 8; 1979, ch. 306, § 5; T.C.A., § 2-1208; Acts 1980, ch. 609, § 5; 1984, ch. 623, § 1; 1986, ch. 514, § 1; 1987, ch. 173, § 1; 1988, ch. 931, § 1.]

Compiler's Notes. This section may be affected by § 9-1-116, concerning entitlement to funds, absent appropriation.

Cross-References. Maximum compensation of clerks and county officers, § 8-24-102.

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

1. Appeal from county appropriation unauthorized.
2. Recovery from state unauthorized.

1. Appeal from County Appropriation Unauthorized.

Appropriation by county legislative body of sum in payment of salaries of members of county election commission cannot be appealed, since county legislative body acted in legislative capacity and not in judicial capacity in passing appropriation. Scott County v. Scott County Election Comm'rs, 184 Tenn. 124, 196 S.W.2d 454 (1946).

2. Recovery from State Unauthorized.

Members of county election commission could not recover expense of conducting special election from state, though the general assembly had appropriated sum of money for preparing and holding of special election, since remedy was by application to county legislative body for an appropriation out of county revenues. State ex rel. Carr v. Wallace, 168 Tenn. 591, 79 S.W.2d 1027 (1935).

2-12-109. Expenses. — (a) Except as otherwise provided by law, it is the responsibility of the county to fund the operations of its election commission. If a county fails to appropriate funds sufficient to pay expenses that are reasonably necessary for the discharge of the statutorily mandated duties of its county election commission, such commission may petition the chancery court of the county in which such election commission is located to compel the appropriation of such funds.

(b) All expenses, including compensation of its employees and election officials, incurred by the county election commission or its members in the performance of duties under this title in holding municipal elections shall be paid out of the funds of the municipality upon the certification of the chair and secretary of the county election commission except as otherwise expressly provided. If a municipal election is held on the same day as a county-wide election, the municipality shall pay only the expenses caused by the municipal election which would not otherwise have been incurred in conducting the county-wide election as certified by the chair and secretary of the county election commission. If, after a legal proceeding involving a municipal election, the court finds that a subsequent election must be held due to an error committed by the county election commission, then the county shall pay the expenses of the subsequent election, unless the court finds that the county

election commission's error resulted from the county election commission's reliance on information provided by the municipality.

(c) If a special election is held for the sole purpose of choosing a member of the general assembly under § 2-14-202(b), all expenses, including compensation of its employees and election officials, incurred by a county election commission or its members in the performance of duties under this title shall be paid out of the state treasury upon the certification of the chair and secretary of the county election commission to the secretary of state; provided, that the secretary of state shall review the claim for expenses and only those items certified by the secretary of state to the comptroller of the treasury shall be paid.

(d) All expenses, including compensation of its employees and election officials, incurred by a county election commission or its members in the performance of its duties under this title in connection with the presidential preference primary shall be paid out of the state treasury upon the certification of the chair and secretary of the county election commission to the secretary of state; provided, that the secretary of state shall review the claim and only those items certified by the secretary of state to the comptroller of the treasury shall be paid. In years in which a presidential preference primary will be held, if a political party elects to hold their county primary in March with the presidential preference primary, then all expenses of the county primary shall likewise be borne by the state upon certification as hereinbefore set forth. [Acts 1972, ch. 740, § 1; 1977, ch. 474, §§ 1, 2; 1978, ch. 754, § 10; T.C.A., § 2-1219; Acts 1983, ch. 345, § 1; 1986, ch. 562, § 21; 1986, ch. 930, § 6; 1996, ch. 603, § 1.]

Amendments. The 1996 amendment added the last sentence in (b).

Effective Dates. Acts 1996, ch. 603, § 2. March 18, 1996.

Cross-References. Certified mail instead of registered mail, § 1-3-111.

Section to Section References. This section is referred to in § 2-11-202.

Textbooks. Tennessee Jurisprudence, 10 Tenn. Juris., Elections, § 25.

NOTES TO DECISIONS

ANALYSIS

1. Constitutionality.
2. Expense of municipal election.

1. Constitutionality.

This section and §§ 2-13-203, 2-13-206 and 2-13-207 are not unconstitutional under Tenn. Const., art. II, § 29 on the theory that the power to expend tax money, and therefore the power to tax, is shifted to political parties, or under Tenn. Const., art. XI, § 9 on the theory that, when applied to the metropolitan government of Nashville, the provisions are of local application, requiring local ratification. Metropolitan Gov't v. Reynolds, 512 S.W.2d 6 (Tenn. 1974).

2. Expense of Municipal Election.

Where a general election covers the entire county and is to elect officers, even for a municipality, the county must pay the expenses, and if a legislative act directs the election and does not provide for payment of expenses the county must bear the expense, but where the election results from a municipal ordinance pursuant to its charter powers the cost of the election should be borne by the city. Red Bank-White Oak v. Abercrombie, 202 Tenn. 700, 308 S.W.2d 469 (1957).

2-12-110. Administration of oaths. — The county election commissioners may administer oaths in the performance of their duties. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1215.]

2-12-111. Notices of elections. — (a) The county election commission shall publish, in a newspaper of general circulation in the county or municipality in which the election is to be held, a notice of all elections, except special elections, not less than ten (10) days before the qualifying deadline for candidates in the election which shall be named in the notice.

(b) The county election commission shall publish, in a newspaper of general circulation in the county a notice of elections on questions not less than twenty (20) days nor more than thirty (30) days before the day of the election. The notice shall include in its entirety the resolution or other instrument requiring the holding of the election except for signatures or names.

(c) The county election commission shall publish, in a newspaper of general circulation in the county, a notice of every election, stating the day, time and polling places for the election, not more than ten (10) nor less than three (3) days before the day of the election. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1216; Acts 1981, ch. 478, § 20.]

Section to Section References. This section is referred to in §§ 2-6-302, 49-2-1206.

Textbooks. Tennessee Jurisprudence, 10 Tenn. Juris., Elections, § 10.

NOTES TO DECISIONS

ANALYSIS

1. Contents of notice.
2. Substantial compliance.
3. Unofficial actual notice.
4. Municipal elections.

1. Contents of Notice.

Although the notice of the election to approve a resolution to issue school bonds did not contain the bond resolution in its entirety, a condensed version of the resolution was sufficient. Partee v. Pierce, 553 S.W.2d 602 (Tenn. Ct. App. 1977), overruled, Gibson County Special School Dist. v. Palmer, 691 S.W.2d 544 (Tenn. 1985).

2. Substantial Compliance.

Where the body of electors have had actual notice of the time and place of holding an election and voters have participated to the usual extent, a substantial compliance with the statutory formalities as to notice is sufficient. State v. Quarterly County Court, 209 Tenn. 153, 351 S.W.2d 390 (1961).

3. Unofficial Actual Notice.

Where the 20-day official notice of election, as required by the private act, was delayed by some four or five days, but county residents actually received timely notice of the forthcoming elections through unofficial channels, for example by letter, newspaper or canvassing, the official oversight was immaterial. Partee v. Pierce, 553 S.W.2d 602 (Tenn. Ct. App. 1977), overruled, Gibson County Special School Dist. v. Palmer, 691 S.W.2d 544 (Tenn. 1985).

4. Municipal Elections.

Where city of Knoxville had power under Private Acts 1923, ch. 412, granting charter to city, to hold election on issuance of bonds the city was presumed to be functioning under its charter provisions in absence of evidence to the contrary and this section was applicable with respect to requirement of notice of advertisement of such elections. Tennessee Pub. Serv. Co. v. City of Knoxville, 170 Tenn. 40, 91 S.W.2d 566 (1936).

2-12-112. Members of county commission in office throughout each election day. — In any county having a population of not less than eight hundred twenty-five thousand (825,000) nor more than eight hundred thirty thousand (830,000) according to the 1990 federal census or any subsequent federal census, the members of the county election commission shall be in the commission office throughout each election day unless they are out for good cause. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1217; Acts 1993, ch. 518, §§ 2, 21.]

2-12-113. Names of election officials failing to serve submitted to grand jury. — The chair of the county election commission shall furnish the

first grand jury sitting in the county after an election the names of all appointed election officials who failed to serve in the election and who did not notify the commission in advance that they could not. If an affidavit has been filed by an official with the commission setting forth why the official did not serve, the chair shall furnish it to the grand jury together with the chair's recommendation. [Acts 1972, ch. 740, § 1; 1978, ch. 754, § 9; T.C.A., § 2-1218.]

2-12-114. Information provided for coordinator of elections. — (a) Each county election commission shall provide to the coordinator of elections the following information by precinct beginning on June 1, 1995, and each six (6) months thereafter:

(1) The number of active voters and the number of inactive voters at the beginning of the reporting period;

(2) The number of active voters and the number of inactive voters at the end of the reporting period;

(3) The number of new valid voter registrations for the reporting period. This number shall not include duplicates, rejected registrations, and changes of names and addresses within the county; and

(4) The number of active voters and the number of inactive voters purged during the reporting period.

(b) Each county election commission shall on the same schedule established in subsection (a) provide to the coordinator of elections the following information for the county:

(1) The number of registration applications received during the reporting period from the following categories of sources:

(A) Those registering to vote in the county election commission office or other supplemental registrations held by or on behalf of the county election commission;

(B) The department of safety, motor vehicle offices;

(C) By-mail registration;

(D) Public assistance agencies serving as voter registration agencies. This includes the following state departments: human services, mental health and mental retardation, health, and veterans affairs;

(E) State-funded agencies primarily serving persons with disabilities;

(F) Armed forces recruitment offices; and

(G) Passive registration agencies: public libraries, county clerks, and registers of deeds;

(2) The number of duplicate registration applications received during the six-month period from the same categories of sources; and

(3) The number of confirmation notices mailed out during the six-month period and the number of responses received to those confirmation notices. [Acts 1979, ch. 317, § 1; T.C.A., § 2-1221; Acts 1995, ch. 76, § 1.]

Section to Section References. This section is referred to in § 2-11-202.

2-12-115. Holdover powers of county election commission upon subdivision of county. — In all cases not otherwise provided for, when fractions

of counties have been cut off to establish a new county, the county election commission of each old county shall, until the next apportionment of representatives, hold all elections for governor, members of congress, and members of the general assembly. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1220.]

2-12-116. Duty to promote voter registration and the electoral process. — (a) Except as provided in subsection (b), the county election commission shall promulgate such policies as are necessary to aid the personnel of the election commission office in the performance of their duties with regard to the promotion of voter registration and the electoral process. These duties shall include the following:

(1) The commission shall appoint an administrator of elections, who shall be the chief administrative officer of the commission and shall be responsible for the daily operations of the commission office and the execution of all elections. After May 31, 1993, any administrator appointed at large for the first time to such position shall possess a high school education or GED. In evaluating a prospective appointee, the commission shall consider the knowledge and experience of such prospective appointee in the following areas: administrative, managerial, instructional, communication, budgetarial, purchasing, promotional, legal and general office skills and other related skills necessary to fulfill the statutory requirements of administrator;

(2) Upon the recommendation of the administrator the commission shall approve an annual budget for the operation of the election commission;

(3) Upon the recommendation of the administrator, the commission shall be responsible for approving any voting equipment to be purchased by the county for use by the commission;

(4) Upon the recommendation of the administrator, hire legal counsel if necessary to conduct the business of the commission;

(5) The commission shall appoint voting machine technicians as required in § 2-9-103. A voting machine technician shall work under the direction of the administrator;

(6) The commission shall certify all voting machines prior to each election and shall canvass all voting machines after each election;

(7) The commission shall assist the administrator in designating polling places, precinct boundaries and, in conjunction with the primary boards and the administrator, shall assist in obtaining and appointing poll workers as needed for each election;

(8) The commission shall be responsible for locking or sealing all absentee ballot boxes and shall retain possession of the keys for such boxes;

(9) The commission members shall be available to assist election commission personnel upon request throughout each election day;

(10) The commission may act as the central absentee counting board if the total number of absentee ballots to be counted is fewer than one hundred (100);

(11) The commission shall be responsible for certifying the results of each election in regard to official tabulations and shall be responsible for certifying all expenses incurred in regard to the commission's responsibility in the performance of its duties for a presidential preference primary or a special election for the sole purpose of selecting a member of the general assembly;

(12) The commission shall be responsible for the keeping and writing of the minutes of all commission meetings;

(13) The commission shall be responsible for determining a uniform time for the opening of the polls;

(14) The commission members shall not request, except in the event of an emergency, that the administrator employ members of the county election commission, their spouses, parents, brothers, sisters or children, including in-laws, of commission members as clerical assistants, absentee voting deputies, poll officials or as a member of the absentee counting board; and

(15) The commission shall be responsible for maintaining the security of the election commission office and any other rooms or facilities it may use in the performance of its duties, including all locks and keys. The commission may delegate this responsibility to the administrator.

(b) This section does not apply in any county having a population of not less than eight hundred twenty-five thousand (825,000) nor more than eight hundred thirty thousand (830,000) according to the 1990 federal census or any subsequent federal census. [Acts 1993, ch. 518, §§ 1, 21; 1994, ch. 859, § 10; 1997, ch. 558, § 17.]

Compiler's Notes. References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

Amendments. The 1997 amendment added (15).

Effective Dates. Acts 1997, ch. 558, § 34. June 25, 1997.

Part 2—Registrars

2-12-201. Employment of election administrators and clerical assistants. — (a) Except as provided in subsection (b), the commission shall appoint an administrator of elections who shall be the chief administrative officer of the commission and who shall be responsible for the daily operations of the office and the execution of all elections. These duties include, but are not limited to, the following:

(1) Employment of all office personnel; registrars at large may not employ, except in the event of an emergency, members of the county election commission, or spouses, parents, siblings or children of commission members as clerical assistants, absentee voting deputies, poll officials or as members of the absentee counting board;

(2) Preparation of the annual operating budget and submission of same to the election commission for approval;

(3) Upon approval by the county election commission, presentation of the annual budget to the county commission or other legislative body for funding;

(4) Requisition and purchase of any supplies necessary for the operation of the election commission office and the conduct of all elections;

(5) Maintenance of voter registration files, campaign disclosure records, and any other records required by this title;

(6) Conducting of instruction class for poll workers or designation of another qualified person to conduct such class;

(7) Preparation of all notices for publication required by this title;

(8) Preparation and maintenance of all fiscal records necessary for the daily operation of the election commission office and all elections. This may include any requests for funding or changes in funding, if necessary, after adoption of the current fiscal budget;

(9) Compilation, maintenance and dissemination of information to the public, the candidates, the voters, the press and all inquiring parties in regard to all aspects of the electoral process on all governmental levels;

(10) Promotion of the electoral process through supplemental registrations, public functions, press releases and media advertising whenever possible;

(11) Attendance at any required seminar and other educational seminars, as funding permits, to gain knowledge beneficial to the administration of the election commission office or to the electoral process;

(12) Having knowledge of all current laws pertaining to the election process and any changes mandated by the general assembly, and apprising the election commission, office staff, candidates, the press and the public in general of this information;

(13) Assistance in the planning and implementation of any plan of apportionment or reapportionment of any governmental entity involved in the electoral process; and

(14) The county election commissioners may not employ themselves or any of their spouses, parents, siblings, in-laws or children as administrator.

(b) In any county having a population of not less than eight hundred twenty-five thousand (825,000) nor more than eight hundred thirty thousand (830,000) according to the 1990 federal census or any subsequent federal census:

(1) The county election commission shall employ an administrator and such clerical assistants and may incur such expenses as may be necessary to perform the duties required by this title;

(2) County election commissioners may not employ themselves or the spouse, parent, brother, sister, or children of any of them as administrators or clerical assistants under this section;

(3) The commission may appoint regular clerical assistants as deputy; and

(4) The commission may use volunteers only as clerical assistants but may not appoint them as deputy. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1209; Acts 1993, ch. 518, §§ 3, 21.]

Compiler's Notes. References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

Section to Section References. This section is referred to in § 2-12-208.

Textbooks. Tennessee Jurisprudence, 10 Tenn. Juris., Elections, § 6.

2-12-202. Precinct registrars and assistants — Appointment and duties. — (a)(1) Except as provided in subdivision (a)(2), the majority party members of the county election commission shall appoint one (1) precinct registrar for each polling place, and the minority party members of the commission shall appoint one (1) precinct registrar for each polling place. The appointments shall be made for each election.

(2) In any county having a population of not less than eight hundred twenty-five thousand (825,000) nor more than eight hundred thirty thousand

(830,000) according to the 1990 federal census or any subsequent federal census, the majority party members of the county election commission shall appoint one (1) precinct registrar for a two (2) year term for each polling place, and the minority party members of the commission shall appoint one (1) precinct registrar for a two (2) year term for each polling place. The appointments shall be made on the first Monday in May of each odd-numbered year.

(b) The commission may appoint for each polling place for each election only as many assistant precinct registrars as may be necessary to expedite voting.

(c) Precinct registrars and assistant precinct registrars shall perform the duties imposed by this title and duties assigned them by the county election commission. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1210; Acts 1993, ch. 518, §§ 4, 21.]

2-12-203. Precinct registrars and assistants — Compensation. — For each day's attendance upon registration periods and for attendance at the polls, precinct registrars and assistant precinct registrars shall be paid a minimum of fifteen dollars ($15.00) per day. The compensation may be increased by resolution of the county legislative body. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1211.]

2-12-204. Absent precinct registrars. — If a precinct registrar is absent on a day fixed for registration or for an election, the commissioners representing the same party as the absent registrar shall select a person who meets the requirements of this chapter to act for the absent precinct registrar during the period of such precinct registrar's absence. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1212.]

2-12-205. Removal of precinct registrars for violation of oath. — The commission may remove any precinct registrar for violation of such registrar's oath as a registrar. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1213.]

2-12-206. Death or resignation of precinct registrars. — If a precinct registrar dies or resigns or is removed, the vacancy shall be filled by appointment by the commissioners representing the same party as the registrar. The new appointee shall serve for the unexpired term of the person whom such appointee replaces. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1214.]

2-12-207. Administration of oaths. — The administrator of elections, deputies, precinct registrars and assistant precinct registrars may administer oaths in the performance of their duties. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1215.]

Compiler's Notes. References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

2-12-208. Compensation of certified administrators of elections. — (a) Any administrator of elections employed pursuant to § 2-12-201, who has been certified under § 2-11-202(b), including any such administrator so

certified prior to January 1, 1987, shall receive a base minimum yearly salary as follows:

(1) In counties of the second and third class, the administrator shall receive at least ninety percent (90%) of the salary of such county's assessor of property as provided in § 67-1-508;

(2) In counties of the fourth, fifth, sixth and seventh class, the administrator shall receive at least eighty percent (80%) of the salary of such county's assessor of property as provided in § 67-1-508; and

(3) In counties of the first class, the administrator shall receive at least eighty-five percent (85%) of the salary of such county's assessor of property as provided in § 67-1-508.

(b) The minimum salaries for certified administrators provided by this section shall be paid by the county for which such administrator is employed. Nothing in this section shall be construed as prohibiting a county from paying its administrator more than the minimum salary provided by this section.

(c) For the purposes of classifying the counties under this section, the population classifications established in § 8-24-101 shall be applicable. For the purpose of establishing the compensation of certified administrators, the schedule established in § 8-24-102 shall be applicable for the certified administrators in their respective counties effective July 1, 1996.

(d) For the purpose of phasing in the compensation schedule provided in this section no administrator shall receive more than a seven percent (7%) increase in the 1996-97 fiscal year. If any subsequent year's increase provides for an increase of more than ten percent (10%) in any fiscal year, then the remaining increase that exceeds ten percent (10%) shall be carried over to subsequent years until the compensation provided for is obtained.

(e) The population of counties for purposes of this section shall be determined by the 1990 federal census or the most recent succeeding federal census or a special census as provided in § 8-24-102(d).

(f) On July 1, 1997, and each July 1 thereafter, the compensation for certified administrators as provided by this section, shall be increased by a dollar amount equal to the average annualized general increase in state employee's compensation during the prior fiscal year multiplied by the compensation established for the county officials of the county with the median population of all counties; provided, in no year shall such compensation increase by more than ten percent (10%). On or before May 1 of each year, the commissioner of finance and administration shall certify to the comptroller of the treasury the average annualized general increase in state employee's compensation during that fiscal year. [Acts 1986, ch. 930, § 1; 1996, ch. 1081, §§ 3-5, 8.]

Code Commission Notes. According to the County Technical Assistance Service (Technical Bulletin 94-1), the following minimum salaries for certified administrators of elections effective July 1, 1994, are: 1990 population of 400,000 or more — 65% of the assessor's salary, or $52,398 if the assessor receives only the statutory minimum salary; 150,000 - 400,000 — 80% or $59,466; 74,500 - 150,000 — 80% or $40,370; 50,000 - 74,500 — 80% or $38,233, except 67,300 - 67,600 — 80% or $40,185; 23,300 - 50,000 — 70% or $28,675; 12,000 - 23,300 — 70% or $26,284; 5,500 - 12,000 — 70% or $22,701; 5,500 or less — 70% or $21,507, except Van Buren County — 70% or $20,580.

According to the County Technical Assistance Service (Technical Bulletin 96-1), the following minimum salaries for certified administrators of elections are effective July 1, 1997: in counties having a 1990 population of 400,000 or

more — $61,673; 275,000 to 399,999 — $69,992; 250,000 to 274,999 — $65,961; 225,000 to 249,999 — $63,261; 200,000 to 224,999 — $60,561; 175,000 to 199,999 — $57,861; 150,000 to 174,999 — $55,161; 125,000 to 149,999 — $47,516; 100,000 to 124,999 — $47,516; 65,000 to 99,999 — $47,516, except for Anderson and Bailey Counties ($47,298, limited to 7% increase), and Wilson County ($45,000, limited to 7% increase); 50,000 to 64,999 — $45,000; 35,000 to 49,999 — $33,750; 23,000 to 34,999 — $33,750; 12,000 to 22,999 — $28,124; 5,000 to 11,999 — $30,936; and less than 5,000 — $23,012, except Van Buren County ($25,313, limited to 7% increase).

Compiler's Notes. References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

Amendments. The 1996 amendment substituted "ninety percent (90%)" for "eighty percent (80%)" in (a)(1), substituted "eighty percent (80%)" for "seventy percent (70%)" in (a)(2), substituted "eighty-five percent (85%)" for "sixty-five percent (65%)" in (a)(3), rewrote (c) and added (d)-(f).

Effective Dates. Acts 1996, ch. 1081, § 9. July 1, 1996.

Section to Section References. This section is referred to in § 2-2-108.

2-12-209. State contribution to compensation of certified administrators of elections. — (a) The state shall pay to the general fund of every county in which the administrator of elections is or becomes certified under the provisions of § 2-11-202(b), the sum of eighteen thousand dollars ($18,000) in the manner set out in subsection (b) of this section.

(b) The state payments to a county made pursuant to this section shall be paid quarterly in amounts of four thousand five hundred dollars ($4,500) per quarter.

(1) If an administrator becomes certified at some time other than the beginning of a quarter, such payments to the county shall commence at the beginning of the quarter next following the administrator's certification.

(2) If an administrator in a county receiving quarterly payments under the provisions of this section loses certification for whatever reason, such administrator shall have six (6) months from the date of such loss to regain such certification. If the administrator has not done so at the end of six (6) months, state payments to the county pursuant to this section shall cease until the quarter next following the quarter such administrator regains certification.

(3) If the office of administrator in a county receiving quarterly payments under the provisions of this section becomes vacant for whatever reason, the new administrator shall have six (6) months from the date of taking office to become certified. If the new administrator has not become certified at the end of six (6) months, state payments to the county pursuant to this section shall cease until the quarter next following the quarter such new administrator becomes certified.

(c)(1) No county receiving payments pursuant to this section shall reduce the total amount of funds appropriated to such county's election commission below the total amount appropriated to such commission in previous comparable election and non-election years.

(2)(A) If a county election commission is of the opinion that the county legislative body has not appropriated an amount of funds for its budget that is comparable to previous years as prohibited by subdivision (c)(1), it shall, by petitioning the state election coordinator, have the right to a hearing on such matter before an administrative law judge in the office of the secretary of state.

(B) Within ten (10) days of receiving such petition, the state election coordinator shall set a hearing date, which date shall be within thirty (30)

days of receiving the petition. The county executive and county election commission shall be notified of the time, place and date of the hearing by registered mail, return receipt requested, at least ten (10) days prior to such hearing.

(C) The hearing shall be held before an administrative law judge from the office of the secretary of state. None of the parties involved in the hearing shall be required to have an attorney present.

(D) The judge shall examine all evidence produced at the hearing, including the total appropriations made to the election commission of such county in previous comparable election or non-election years. Upon the conclusion of the hearing, the judge shall determine whether the total amount of funds appropriated to the election commission of such county is comparable to the amount it appropriated to such commission in previous election or non-election years.

(E) If the judge determines that the total amount appropriated to the county election commission is not comparable to previous years, and such county is receiving state payments pursuant to this section, the judge shall so certify to the state official responsible for authorizing such payments. Upon receiving certification from the judge pursuant to this subdivision, such state official shall cease authorization of payment to such county effective the quarter next following the one in which such certification is received.

(3) In addition to the remedy set out in subdivision (c)(2), the county election commission of any county receiving state payments under this section which so reduces election appropriations shall also be authorized to seek a writ of mandamus to compel the county legislative body to comply with the provisions of this subsection. [Acts 1986, ch. 930, § 1; 1996, ch. 1081, §§ 6, 7.]

Compiler's Notes. References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

Amendments. The 1996 amendment substituted "eighteen thousand dollars ($18,000)" for "fifteen thousand dollars ($15,000)" in (a) and substituted "four thousand five hundred dollars ($4,500)" for "three thousand seven hundred fifty dollars ($3,750)" in (b).

Effective Dates. Acts 1996, ch. 1081, § 9. July 1, 1996.

Cross-References. Certified mail instead of registered mail, § 1-3-111.

Section to Section References. This section is referred to in § 2-11-202.

2-12-210. Status as county employee unchanged. — Nothing in Acts 1986, ch. 930 shall be construed as conferring upon any county election commission, administrator of elections or any other county election official, status as a state employee. All such persons shall be subject to all applicable purchasing and budgetary laws of such county. [Acts 1986, ch. 930, § 5.]

Compiler's Notes. For translation of Acts 1986, ch. 930 see the Session Law Disposition Tables in Volume 13.

References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

Cross-References. County purchasing laws, title 5, ch. 14.

CHAPTER 13

POLITICAL PARTIES AND PRIMARIES

SECTION.

PART 1—POLITICAL PARTY ORGANIZATION

PART 2—SELECTION OF CANDIDATES

PART 3—PRESIDENTIAL PREFERENCE PRIMARY AND CONVENTION DELEGATES

PART 1—POLITICAL PARTY ORGANIZATION

2-13-101. Definitions. — In this chapter, "political party" and "party" mean "statewide political party" unless another intent is clearly shown. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1302.]

Section to Section References. Sections 2-13-101 — 2-13-205 are referred to in § 2-5-105.

This part is referred to in §§ 2-5-105, 2-19-132.

This section is referred to in § 57-4-102.

Comparative Legislation. Primary elections:

Ala. Code § 17-16-1 et seq.

Ark. Code § 7-3-101 et seq.

Ga. O.C.G.A. § 21-2-110 et seq.

Ky. Rev. Stat. Ann. § 118.105 et seq.

Miss. Code Ann. § 23-15-1051 et seq.
Mo. Rev. Stat. § 115.305 et seq.
N.C. Gen. Stat. § 163-96 et seq.
Va. Code § 24.1-170 et seq.

Collateral References. 25 Am. Jur. 2d Elections §§ 128-182.
29 C.J.S. Elections §§ 93, 111-129.
Elections ⇦ 120-159.

2-13-102. Creation of state primary boards. — (a) Each political party shall have a state executive committee which shall be the state primary board for the party.

(b) The state primary board shall perform the duties and exercise the powers required by this title for its party.

(c) The state primary board of each statewide political party created by this section is the immediate successor to the state board of primary election commissioners of each party. Wherever in the Tennessee Code the state board of primary election commissioners of a political party is referred to, "state primary board" shall be substituted. [Acts 1972, ch. 740, §§ 1, 8; T.C.A., § 2-1303.]

2-13-103. State executive committee — Election — Composition — Terms. — (a) Members of the state executive committee for each party are elected at the regular August primary election immediately before the election of the governor.

(b) In each party's primary its voters in each senatorial district shall elect one (1) man and one (1) woman as members of the state executive committee for terms of four (4) years beginning on September 15 following their election.

(c) Persons elected shall qualify by taking the oath of office and filing it with the coordinator of elections. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1304.]

Section to Section References. This section is referred to in §§ 2-13-106, 2-13-107.

2-13-104. Party membership requirements for candidates. — All candidates for state executive committee membership and for membership in the general assembly shall be bona fide members of the political party whose election they seek. A party may require by rule that candidates for its nominations be bona fide members of the party. [Acts 1972, ch. 740, § 1; 1973, ch. 106, § 3; T.C.A., § 2-1305.]

Section to Section References. This section is referred to in § 2-5-204.

2-13-105. Vacancies on state executive committee. — Each state executive committee may, by vote of its members, temporarily fill a vacancy in its membership due to death, resignation, disqualification, change of residence, persistent absence from meetings without good cause, or violation of the oath of office until a successor is chosen at the next regular August election. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1306.]

2-13-106. State primary board — Operating provisions. — When acting as the state primary board of its party, the state executive committee shall operate subject to the following provisions:

(1) The chair and secretary of the committee, duly elected under the rules of the political party, shall be the chair and secretary of the board;

(2) Unless elected to the committee under § 2-13-103, the chair shall vote only in the event of a tie vote among the members and the secretary shall not vote; and

(3) If there is not a quorum at a properly called meeting, the members present may adjourn from day to day and may treat the absence of a member after the first day of the meeting as a temporary vacancy unless there is known to be good cause for the absence. The members present may fill the vacancy for that meeting only. [Acts 1972, ch. 740, § 1; 1978 ch. 754, § 11; T.C.A., § 2-1307.]

2-13-107. New political parties — State executive committee — County primary boards. — (a) The first state executive committee of a new political party shall be elected at a statewide convention of the party after it becomes a statewide political party. The chair and secretary of the convention shall certify the election of the members of the committee to the coordinator of elections not less than ninety (90) days before the next regular August election. The term of the first members of the committee shall be until September 15 after the elections required by § 2-13-103. Members shall take the oath upon election.

(b) Upon certification, the new state primary board shall have all the powers and duties of a state primary board.

(c) The board shall promptly appoint county primary boards to have the power and perform the duties of county primary boards. The first members of the county primary boards shall serve until replaced by regular appointments under this chapter. [Acts 1972, ch. 740, § 1; 1978, ch. 754, § 12; T.C.A., § 2-1308.]

2-13-108. Meetings of state primary boards — Appointment of county primary boards. — (a)(1) Each state primary board shall meet at a public building in Nashville at least once in every even-numbered year at the call of its chair, or on such other occasions as may be necessary in order that it may fulfill its duties under this title.

(2) Meetings of each state primary board shall be open and subject to the provisions of title 8, chapter 44.

(b) Each state primary board shall appoint five (5) persons in each county, for terms of two (2) years from the date of their appointment and until their successors are appointed and qualified by taking the oath, to compose its county primary boards.

(c) The county primary board of each statewide political party created by this section for each county is the immediate successor to the county boards of primary election commissioners of each political party. Wherever in the Tennessee Code the county boards of primary election commissioners of political parties are referred to, "county primary board" shall be substituted. [Acts 1972, ch. 740, §§ 1, 9; 1974, ch. 465, § 1; 1976, ch. 739, §§ 1-3; 1977, ch. 480, § 7; T.C.A., § 2-1309.]

2-13-109. Political party membership requirement for county primary boards. — Members of the county primary boards shall be bona fide

members of the political party to whose county primary board they are appointed. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1310.]

2-13-110. Lists of nominees for county primary boards. — (a) Each state primary board shall appoint the members of its county primary boards from lists submitted by the county executive committees.

(b) Where the list submitted by the county executive committee is not divided fairly among the elements of the party, the state primary board may appoint two (2) members of the county primary board without regard for the list, but it shall appoint the other three (3) members from the list submitted by the county executive committee.

(c) If no list is submitted, the state primary board shall draw up its own list of nominees from which it shall appoint the county primary board for that county or it may designate the county election commission to act as its county primary board. [Acts 1972, ch. 740, § 1; 1976, ch. 600, § 1; T.C.A., § 2-1311.]

2-13-111. Organization of county primary boards. — The county primary boards shall organize within ten (10) days after their appointment by the election of a chair and secretary. [Acts 1972, ch. 740, § 1; 1978, ch. 754, § 13; T.C.A., § 2-1312.]

2-13-112. Vacancies on county primary board. — Each county primary board shall immediately notify its state primary board upon the occurrence of any vacancy in its membership. The state primary board shall appoint new members to fill any vacancies in the membership of its county primary boards due to death, resignation or other cause. The person so appointed shall hold office during the unexpired term for which the person was appointed. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1313.]

2-13-113. Information furnished primary boards. — The state and county election commissions shall furnish to the state and county primary boards such information and such access to records as may be required to enable the boards to carry out their duties under this title. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1318.]

Part 2—Selection of Candidates

2-13-201. Party nominations — Requirements. — (a) No person's name may be shown on a ballot as the nominee of a political party for the offices named in § 2-13-202 or for any office voted on by the voters of more than one (1) county unless the political party:

(1) Is a statewide political party; and

(2) Has nominated the person substantially in compliance with this chapter.

(b)(1) No person's name may be shown on a ballot as the nominee of a local political party unless:

(A) At least one (1) of the candidates of the political party received at the most recent local election at least twenty percent (20%) of the total vote cast for the office for which the person was a candidate; or

(B) Within one (1) year before the election the local political party has filed with the county election commission a petition for recognition as a local political party signed by at least five percent (5%) of the registered voters of the county or municipality in which it seeks to nominate candidates.

(2) Local political parties nominating candidates under this section shall nominate candidates by methods, other than primary election, authorized by the rules of the party and certify their names by the qualifying deadlines to the county election commission. Local political parties may only nominate candidates under this section for offices which are not covered by subsection (a). [Acts 1972, ch. 740, § 1; T.C.A., § 2-1301.]

Cross-References. Affidavit of nonadvocacy of subversive policies and copy of rules required to be filed by political party, § 2-1-114.

Primary election voting requirements, § 2-7-115.

Results in primary elections, §§ 2-8-113 — 2-8-115.

Section to Section References. This part is referred to in § 2-5-105.

Textbooks. Tennessee Jurisprudence, 10 Tenn. Juris., Elections, § 2.

2-13-202. Offices for which candidates are chosen in primary elections. — Political parties shall nominate their candidates for the following offices by vote of the members of the party in primary elections at the regular August election:

(1) Governor;

(2) [Deleted by 1995 amendment.]

(3) Members of the general assembly;

(4) United States senator; and

(5) Members of the United States house of representatives. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1314; 1995, ch. 305, § 60.]

Section to Section References. This section is referred to in §§ 2-5-101, 2-5-102, 2-5-206, 2-5-207, 2-6-103, 2-8-106, 2-11-202, 2-13-201, 2-13-203.

Textbooks. Tennessee Jurisprudence, 10 Tenn. Juris., Elections, § 25.

Cited: Metropolitan Gov't v. Reynolds, 512 S.W.2d 6 (Tenn. 1974).

2-13-203. Methods of nomination for other offices. — (a) Political parties may nominate their candidates for any office other than those listed in § 2-13-202 by any method authorized under the rules of the party or by primary election under this title.

(b) Persons nominated other than by primary method for offices to be filled by the voters of one (1) county or any part of a county shall be immediately certified by the chair of the nominating body to the county election commission by the qualifying deadlines.

(c) Persons nominated other than by primary method for offices to be filled by the voters of more than one (1) county or for statewide office shall be immediately certified to the coordinator of elections by the chair of the nominating body. The coordinator of elections shall thereafter certify such nominees to the county election commissions in each county in which the nominees are candidates by the qualifying deadlines.

(d) If a political party decides to nominate by primary election under this section, the county executive committee shall, at least fifteen (15) days before

the qualifying deadline, direct, in writing, the county election commission of each county whose voters are entitled to vote to fill the office to hold the election. Primaries, if any, for nominating candidates for any office which will appear on the regular August election ballot shall be held on the first Tuesday in May before the August election. In the years in which an election will be held for president of the United States, a political party primary for offices to be elected in the regular August election may be held on the same day as the presidential preference primary. In such event, the qualifying deadline for candidates and for delegate-candidates shall be twelve o'clock (12:00) noon, prevailing time, the third Thursday in January.

(e) Notwithstanding any provision of this section or any other law to the contrary, by resolution adopted by a two-thirds (⅔) vote of the county legislative body of any county having a population in excess of eight hundred twenty-five thousand (825,000), according to the 1990 federal census or any subsequent federal census, the county legislative body may require that all elections to fill state trial court judgeships and county judicial offices in such county shall be conducted in a nonpartisan manner. [Acts 1972, ch. 740, § 1; 1976, ch. 439, § 2; 1977, ch. 316, § 2; 1977, ch. 480, § 8; 1978, ch. 754, § 14; T.C.A., § 2-1315; Acts 1983, ch. 134, § 1; 1986, ch. 562, § 19; 1991, ch. 127, §§ 1, 2; 1995, ch. 87, § 3; 1997, ch. 559, § 1.]

Code Commission Notes. Qualifying deadlines, constitutionality, OAG 88-42 (2/29/88).

Compiler's Notes. June 25, 1997. Acts 1997, ch. 559, § 2 provided that the act take effect upon becoming a law. The act was returned without the governor's signature and became effective under the provisions of Tenn. Const., art. III, § 18.

Amendments. The 1997 amendment added (e).

Effective Dates. Acts 1997, ch. 559, § 2. June 25, 1997.

Cross-References. Noninstructional public school personnel eligible to run for public office, § 49-5-301.

Section to Section References. This section is referred to in §§ 2-4-105, 2-5-101, 2-13-204, 16-15-202.

This section is referred to in § 16-15-202.

Textbooks. Tennessee Jurisprudence, 10 Tenn. Juris., Elections, § 25.

Law Reviews. Selected Tennessee Legislation of 1983 (N. L. Resener, J. A. Whitson, K. J. Miller), 50 Tenn. L. Rev. 785 (1983).

NOTES TO DECISIONS

ANALYSIS

1. Constitutionality.
2. Jurisdiction.
3. Renomination of same person.

1. Constitutionality.

This section and §§ 2-12-109, 2-13-206 and 2-13-207 are not unconstitutional under Tenn. Const., art. II, § 29 on the theory that the power to expend tax money, and therefore the power to tax, is shifted to political parties, or under Tenn. Const., art. XI, § 9 on the theory that, when applied to the metropolitan government of Nashville, the provisions are of local application, requiring local ratification. Metropolitan Gov't v. Reynolds, 512 S.W.2d 6 (Tenn. 1974).

2. Jurisdiction.

Tennessee chancery courts do not have jurisdiction over contests of the title to nomination of a political party for office, since no such right existed at common law and there is no statute specifically providing such right. Taylor v. Tennessee State Democratic Executive Comm., 574 S.W.2d 716 (Tenn. 1978).

The chancery court is not an appropriate forum for party members to challenge alleged misconduct in making party nominations. State ex rel. Inman v. Brock, 622 S.W.2d 36 (Tenn.), cert. denied, 454 U.S. 941, 102 S. Ct. 477, 70 L. Ed. 2d 249 (1981).

3. Renomination of Same Person.

See note under heading "Renomination of Same Person," § 2-13-204, Notes to Decisions, State ex rel. Cassity v. Turner, 601 S.W.2d 710 (Tenn. 1980).

2-13-204. Withdrawal or death of candidate — New nomination. — (a) If a political party's candidate for any office dies or withdraws because of military call-up for the draft, or physical or mental disability, such physical or mental disability being properly documented by competent medical authority, or is forced to change residence by the candidate's employer for a job-related reason, or is declared ineligible or disqualified by a court, a new nomination may be made by the former nominee's party by any method of nomination authorized by § 2-13-203. A political party's candidate may withdraw for reasons other than those stated in the preceding sentence, but the political party may make no further nomination for the position in question.

(b)(1) If the office is to be filled by the voters of the entire state, the party's state executive committee shall determine the method of nomination.

(2) If the office is to be filled by the voters of more than one (1) county, the party's chairs of its county executive committees in those counties whose voters will fill the office shall be a committee to determine the method of nomination. However, if the office to be filled is for the house of representatives of the United States congress in a district which consists of more than one (1) county, the chair of the congressional district's convention for that political party shall convene a convention in accordance with the party's rules within fourteen (14) days of the date of the vacancy to determine the method of nomination.

(3) If the office is to be filled by the voters of one (1) county, the party's county executive committee shall determine the method of nomination.

(4) If the office to be filled is a seat in the general assembly, it shall be filled by the members of the party's county executive committee who represent precincts within that district. In a county with two (2) or more districts, only members of the county executive committee who represent precincts in a particular district shall determine the method of nomination in that district. The chair of the county executive committee of the residence of the former nominee shall call a joint convention for the purpose of selecting a new nominee as herein provided within ten (10) days of the date the vacancy occurred. In counties where the members of the county executive committee are selected at large, the full executive committee shall determine the method of nomination.

(5) In counties having a metropolitan form of government the proper county political party executive committee shall meet to choose the party's new nominee.

(c) No later than twelve o'clock (12:00) noon prevailing time on the thirtieth day before the election, the chair of the party's state executive committee shall file with the county election commission of each county in which the nominee is a candidate a written statement of the name of the new nominee. [Acts 1972, ch. 740, § 1; 1974, ch. 660, § 1; 1976, ch. 669, §§ 1-3; 1977, ch. 480, § 2; 1978, ch. 754, § 2; 1979, ch. 306, §§ 14, 18-20; T.C.A., § 2-511(a), (b); Acts 1981, ch. 392, § 1; 1997, ch. 558, § 3.]

Compiler's Notes. June 25, 1997. Acts 1997, ch. 558, § 34 provided that the act take effect upon becoming a law. The act was returned without the governor's signature and became effective under the provisions of Tenn. Const., art. III, § 18.

Amendments. The 1997 amendment substituted "thirtieth" for "twentieth" in (c).

Effective Dates. Acts 1997, ch. 558, § 34. June 25, 1997.

Section to Section References. This section is referred to in §§ 2-14-106, 2-14-202.

Textbooks. Tennessee Jurisprudence, 10 Tenn. Juris., Elections, § 2.

Cited: State ex rel. Ozment v. Rand, 567 S.W.2d 759 (Tenn. 1978).

NOTES TO DECISIONS

1. Renomination of Same Person.
This section applies only when a political party has timely certified a candidate and thereafter the person certified is declared ineligible to hold the office sought but it cannot be used to renominate the same person where his name was not certified to the county election commission within the prescribed time. State ex rel. Cassity v. Turner, 601 S.W.2d 710 (Tenn. 1980).

2-13-205. Presidential preference primaries — Date of election — Failure to have candidate's name on ballot. — On the second Tuesday in March before presidential electors are elected a presidential preference primary shall be held for each statewide political party. If no candidate will appear on the presidential preference primary ballot of a political party under § 2-5-205, no presidential preference primary shall be held for that political party. [Acts 1972, ch. 740, § 1; 1976, ch. 439, § 3; 1977, ch. 316, § 3; T.C.A., § 2-1316; Acts 1986, ch. 562, § 5.]

Cross-References. Election of delegates to national convention, § 2-13-302.

2-13-206. County primary elections in metropolitan form of government — Costs. — All counties in the state which have a metropolitan form of government shall bear the expense of holding county primary elections for those political parties qualified under this chapter. [Acts 1973, ch. 363, § 1; T.C.A., § 2-1324.]

Textbooks. Tennessee Jurisprudence, 10 Tenn. Juris., Elections, § 25.

NOTES TO DECISIONS

1. Constitutionality.
This section and §§ 2-12-109, 2-13-203 and 2-13-207 are not unconstitutional under Tenn. Const., art. II, § 29 on the theory that the power to expend tax money, and therefore the power to tax, is shifted to political parties, or under Tenn. Const., art. XI, § 9, on the theory that, when applied to the metropolitan government of Nashville, the provisions are of local application, requiring local ratification. Metropolitan Gov't v. Reynolds, 512 S.W.2d 6 (Tenn. 1974).

2-13-207. Filing fees for such elections. — The city council of any such metropolitan government may set any reasonable filing fees up to five hundred dollars ($500). [Acts 1973, ch. 363, § 2; T.C.A., § 2-1325.]

Textbooks. Tennessee Jurisprudence, 10 Tenn. Juris., Elections, § 25.

NOTES TO DECISIONS

1. Constitutionality.
This section and §§ 2-12-109, 2-13-203 and 2-13-206 are not unconstitutional under Tenn. Const., art. II, § 29 on the theory that the power to expend tax money, and therefore the power to tax, is shifted to political parties, or under Tenn. Const., art. XI, § 9 on the theory that, when applied to the metropolitan government of Nashville, the provisions are of local application, requiring local ratification. Metropolitan Gov't v. Reynolds, 512 S.W.2d 6 (Tenn. 1974).

2-13-208. Municipal elections to be nonpartisan. — (a) Notwithstanding other provisions of this part, municipal elections shall be nonpartisan. Municipal elections shall not require candidates to be nominated by political parties unless the municipality's charter specifically permits partisan elections. When a municipality's charter allows partisan elections, political parties may nominate candidates for municipal office by using the primary election provisions of this title or as otherwise authorized by the rules of the party.

(b) In any county having a metropolitan form of government, the election of the chief executive officer and the members of the legislative body of such metropolitan government shall be considered to be municipal elections within the meaning of this section; however, the provisions of this section shall not be construed to require a partisan election for any other officers of the metropolitan government if the charter of such metropolitan government provides that elections for such officers shall be nonpartisan. [Acts 1993, ch. 89, § 1.]

Part 3—Presidential Preference Primary and Convention Delegates

2-13-301. Short title. — This part shall be known and may be cited as the "Southern Regional Presidential Convention Delegate Act of 1986." [Acts 1976, ch. 421, § 1; T.C.A., § 2-1341; Acts 1986, ch. 562, § 6.]

Cross-References. Presidential preference primary, date of election, failure to have candidate's name on ballot, § 2-13-205.

Presidential preference primary, printing of names on ballot, withdrawal of name, § 2-5-205.

Cited: McPherson v. Everett, 594 S.W.2d 677 (Tenn. 1980).

2-13-302. Election of delegates to national convention. — On the second Tuesday in March 1988, and every four (4) years thereafter, an election will be held to elect delegates to the national conventions of all statewide political parties. [Acts 1976, ch. 421, § 2; 1977, ch. 316, § 4; T.C.A., § 2-1342; Acts 1986, ch. 562, § 7.]

Cross-References. Presidential preference primary, date of election, § 2-13-205.

2-13-303. Certification of delegates, alternates and delegates-at-large — Elections — Allocations — Apportionment of delegates according to primary votes. — (a) On the second Thursday in January next preceding the election, the chair of each statewide political party will certify to the secretary of state and the coordinator of elections the number of delegates and alternates to the national convention allocated by the national party to be elected by the state party.

(b) The chair of each statewide political party will further certify to the secretary of state and the coordinator of elections:

(1) The number of delegates allocated to the state party by the national party to various congressional districts within Tennessee; and

(2) The number of delegates-at-large allocated by the national party to the state party.

(c)(1) Delegates-at-large and alternates shall be elected in accordance with the rules of the respective parties.

(2) If the party executive committee decides to elect the at-large delegates and alternates, it shall meet to do so after the second Tuesday in March and before the first Tuesday in April, such election to be by open ballot of the committee members and no secret balloting shall be permitted. Alternate delegates shall be elected proportional to the vote for delegates in the party's delegate election.

(d) All state party allocations must be in accordance with the charter, rules, and bylaws of the respective national or state party.

(e)(1) There shall be at least three (3) delegates allocated to each congressional district unless such allocation violates the charter, bylaws or rules of the respective national political parties.

(2) Where a political party has allocated three (3) delegates from each congressional district by national party rules, at least one third (⅓) of the at-large delegates shall be elected by popular vote on the ballot.

(f) The respective party executive committees shall meet prior to the second Thursday in January to determine how the provisions of this section with respect to the division of delegates by district and at-large and the method of selecting at-large delegates, and the chair of each party shall certify the decisions of the executive committee to the secretary of state and the coordinator of elections.

(g) In no case shall the candidate receiving the greatest number of votes in a primary have apportioned to such candidate a lesser number of delegates than the candidate with the next greatest number of votes. If one (1) candidate with a total number of votes statewide greater than other candidates receives fewer delegates from districts than the other candidates then the at-large delegates shall be so apportioned as to reflect the percentage of the vote received by the candidate with the greatest number of votes and that candidate's competitors. [Acts 1976, ch. 421, § 3; 1977, ch. 316, § 5; T.C.A., § 2-1343; Acts 1980, ch. 483, §§ 1-3; 1986, ch. 562, §§ 8-11; 1995, ch. 444, § 1.]

2-13-304. Placement of presidential candidates on preference primary ballot. — (a) On the first Tuesday in January of the year in which the election will be held, the secretary of state shall notify all nationally recognized candidates for president that their names are to be placed on the Tennessee presidential preference primary ballot. Such notice shall also be given at the same time to all of the statewide political parties.

(b) Any person who is notified that such person's name is to be placed on such ballot and who does not desire the name to appear on such ballot shall execute and file with the secretary of state an affidavit stating without qualification that the person is not and does not intend to become a candidate for president in the forthcoming presidential election. Such person shall file such affidavit with the secretary of state prior to twelve o'clock (12:00) noon prevailing time on the second Tuesday in January of the year in which the election is to be held.

(c) On the second Thursday in January, after twelve o'clock (12:00) noon prevailing time, the secretary of state shall announce the candidates for

president who shall appear on the ballot and shall issue a call for an election for the purpose of electing delegates to the national conventions of all statewide political parties. [Acts 1976, ch. 421, § 4; 1977, ch. 316, § 6; T.C.A., § 2-1344; Acts 1980, ch. 481, § 1; 1986, ch. 562, §§ 12-14; 1987, ch. 409, §§ 6-8.]

2-13-305. Nominating petitions for delegates — Filing. — (a) Candidates for election as delegates to the national convention of a political party shall qualify by filing nominating petitions no later than twelve o'clock (12:00) noon prevailing time on the third Thursday in January of the presidential election year in the office of the secretary of state in Nashville.

(b)(1) Nominating petitions shall be signed by the candidate and one hundred (100) or more registered voters who are eligible to vote to fill the position.

(2) Nominating petitions shall bear the name and address of the candidate.

(3) The sufficiency of such petitions, including the requisite quantity and authenticity of signatures, shall be verified by the county election commission.

(c) If the candidate does not file by the deadline specified in this section, the candidate's name shall not be printed on the ballot.

(d) Nominating petitions for delegate candidates may be mailed to the secretary of state and, if postmarked by twelve o'clock (12:00) noon prevailing time on the third Thursday in January, shall be considered as being filed in time. [Acts 1976, ch. 421, § 5; 1977, ch. 316, § 7; T.C.A., § 2-1345; Acts 1980, ch. 483, §§ 4, 7; 1986, ch. 562, § 15; 1989, ch. 58, § 1.]

2-13-306. Nominating petitions — Form. — Nominating petitions shall be in substantially the following form and the information thereon shall be verified by the county election commission:

We, the undersigned registered voters of the state of Tennessee and members of the (respective) party, hereby nominate (candidate's name), (address) of _____ County, as a candidate for delegate to the national convention of the (respective) party to be voted in the presidential preference primary election to be held on the _____ day of March. We request that the above nominee's name be printed on the official ballot as a candidate for delegate (at large) or (from the _____ congressional district). [Acts 1976, ch. 421, § 6; T.C.A., § 2-1346; Acts 1980, ch. 483, § 5; 1986, ch. 562, § 16.]

2-13-307. Declaration of candidacy. — (a) At the time of filing the nominating petition, the candidate for delegate to a national convention shall also file a declaration of candidacy which shall be in the following form:

"I (candidate's name) declare that I reside in _____ County and am a qualified and registered voter in that county. I further certify that I am a member of the (respective) party and am a candidate for election as a delegate (at large) or (from the _____ congressional district) to the national convention of the (respective) party next to be held for the nomination of candidates of such party for president and vice president of the United States. I request that my name be printed as such candidate on the official ballot of the

(respective) party in this election. I further declare that if elected as a delegate, I will attend such convention unless I shall be prevented by sickness or other occurrence over which I have no control."

(b) If the delegate is supporting a particular presidential candidate, the declaration of candidacy shall also include the following:

"I further declare that I am pledged to and a supporter of (name of candidate) and if elected as a delegate will cast my vote for (name of candidate) for at least two (2) ballots if that many ballots are taken." [Acts 1976, ch. 421, § 7; T.C.A., § 2-1347.]

Section to Section References. This section is referred to in §§ 2-13-308, 2-13-311, 2-13-317.

2-13-308. Indication of commitment. — At the time the declaration of candidacy is filed as provided by § 2-13-307, a delegate-candidate shall indicate in writing to the secretary of state so that the ballot may so indicate, that the delegate-candidate is either:

(1) An uncommitted delegate; or

(2) Supporting a particular presidential candidate, and if so, which presidential candidate. [Acts 1976, ch. 421, § 8; T.C.A., § 2-1348.]

Section to Section References. This section is referred to in §§ 2-13-309, 2-13-311.

2-13-309. Presidential candidate's consent. — (a) In the event that the delegate-candidate is subject to the provisions of § 2-13-308(2), the delegate-candidate shall provide the secretary of state with the presidential candidate's written consent thereto no later than twelve o'clock (12:00) noon prevailing time at the time the nominating petition is filed.

(b) In the event that such consent is not granted in writing by the presidential candidate, then the name of the delegate-candidate shall appear on the ballot as an uncommitted delegate-candidate.

(c) Each presidential candidate must consent for each district to at least one (1) more and no more than twice the number of delegate-candidates being pledged to such candidate than the number of delegates allocated to the district. [Acts 1976, ch. 421, § 9; T.C.A., § 2-1349; Acts 1980, ch. 481, § 2; 1986, ch. 562, § 17.]

Section to Section References. This section is referred to in § 2-13-311.

2-13-310. Certified copies of nominating petition and declaration of delegate candidacy — Filing — Certification of names. — (a) Certified copies of the original nominating petition and declaration of delegate candidacy shall be filed by the secretary of state with the coordinator of elections, with the chair of the state executive committee of the candidate's party, and with the chair of the state election commission.

(b) The chair of the state election commission shall no later than four thirty p.m. (4:30 p.m.), prevailing time, on the third Thursday in January, certify to

the chair of the appropriate county election commission the names of all delegate-candidates who have qualified to have their names printed on the ballot in that county. [Acts 1976, ch. 421, § 10; T.C.A., § 2-1350; Acts 1986, ch. 562, § 18.]

2-13-311. Order of names on ballot. — The names of the candidates for president and delegate-candidates shall appear on the ballot as follows:

(1) The names of the presidential candidates shall be listed vertically within the first two (2) columns for each respective party's primary election. The presidential candidates' names shall appear alphabetically according to the first initial of their surnames. Within the same columns for the presidential preference of each party, there shall be an "Uncommitted" designation immediately following the last listed presidential candidate's name within each party's primary.

(2)(A) Within the vertical columns immediately following and below the entire presidential preference listing for that primary, the names of the presidential candidates shall again appear in vertical columns in alphabetical order according to their surnames. Immediately beneath each presidential candidate's name, the names of delegate-candidates who are committed to that particular presidential candidate in accordance with §§ 2-13-307, 2-13-308(2), and 2-13-309(a), shall appear vertically in alphabetical order according to their surnames. The "Uncommitted" designation shall appear with an alphabetical vertical listing of those uncommitted delegate-candidates pledged to the last listed presidential candidate.

(B) It is expressly understood and provided that the appearance of presidential candidates' names as provided in this subsection is only for the purpose of identifying individual delegate-candidates committed to particular presidential candidates. The ballot shall clearly indicate that each voter is to vote individually for delegate-candidates.

(3) In each congressional district, the ballot shall list only those delegate-candidates seeking election as a delegate from such congressional district and any at-large delegates who are to be placed on the ballot. [Acts 1976, ch. 421, § 11; T.C.A., § 2-1351.]

2-13-312. Number of votes. — Each voter of the political parties shall cast one (1) vote for such voter's preference for candidate for president or for the uncommitted designation and, shall vote for as many delegate-candidates as there are to be delegates from such congressional district. [Acts 1976, ch. 421, § 12; T.C.A., § 2-1352.]

2-13-313. Allocation of elected delegates. — Delegates elected from a congressional district shall be allocated among the presidential candidates and the uncommitted designation as proportionally as is mathematically possible to the number of votes received in the presidential preference selection within such congressional district. If the votes received by a presidential candidate in any congressional district are less than fifteen percent (15%) of the votes cast in such district, no delegates shall be allocated to such candidate and such votes of less than fifteen percent (15%) shall be considered as votes for the uncommitted designation. [Acts 1976, ch. 421, § 13; T.C.A., § 2-1353.]

2-13-314. Allocation of delegates-at-large and alternates. — (a) Delegates-at-large and alternates shall be allocated among the presidential candidates or an uncommitted designation so that the proportion of total delegates committed to any candidate shall equal, as mathematically as is possible, the proportion of the vote received by that candidate.

(b) In no event shall the candidate receiving the greatest number of votes receive fewer district and at-large delegates than the candidate with the next greatest number of votes.

(c) If the total votes received by a presidential candidate in the state at large is less than fifteen percent (15%) of the votes cast, no delegate-at-large or alternates shall be allocated to such candidate and such votes of less than fifteen percent (15%) shall be considered as votes for the uncommitted designation.

(d) Votes for the uncommitted designation shall be considered in the same manner as votes for presidential candidates in the allocation of delegates. [Acts 1976, ch. 421, § 14; T.C.A., § 2-1354; Acts 1980, ch. 483, § 6.]

2-13-315. Certification of political party's delegates. — The delegate-candidate, or delegate-candidates, according to the number allocated for any presidential candidate or for the uncommitted designation, receiving the highest number of votes shall be certified as that political party's delegate or delegates to the party's national convention. [Acts 1976, ch. 421, § 15; T.C.A., § 2-1355.]

2-13-316. Vacancies in delegation. — Vacancies in the delegation to the national nominating convention of a political party shall be filled in accordance with the rules of the respective party. [Acts 1976, ch. 421, § 16; T.C.A., § 2-1356.]

2-13-317. Binding effect of presidential primary. — The results of the preferential presidential primary shall be binding on the delegates to the national conventions as hereinafter provided. The delegates to the national conventions shall be bound by the results of the preferential presidential primary for the first two (2) ballots and shall vote for the candidate to whom they are pledged as provided in § 2-13-307. The delegates shall thereafter be bound to support such candidate so long as the candidate, not to exceed two (2) ballots, has twenty percent (20%) of the total convention vote or until such time the candidate of their party releases them from the results of the presidential preference primary. [Acts 1976, ch. 421, § 17; T.C.A., § 2-1357.]

2-13-318. Legislative intent. — It is the intent of this part that delegate selection comply with the delegate selection rules of the delegates' respective national or state party. [Acts 1976, ch. 421, § 18; T.C.A., § 2-1358; Acts 1995, ch. 444, § 2.]

2-13-319. Conduct of elections. — The elections shall be conducted in accordance with the provisions of chapters 1-19 of this title. Contested elections shall be determined in the manner provided for the determination of

contested elections for primary candidates for statewide office. [Acts 1976, ch. 421, § 19; T.C.A., § 2-1359.]

2-13-320. Election to fill vacancies in county legislative body — Date. — All other laws notwithstanding, any county which shall have a special election to fill a county legislative body vacancy to correspond with the date of the presidential preference primary previously set forth in the former law may by resolution of the county legislative body schedule such election to correspond with the date of the preferential presidential primary set forth in this part. [Acts 1976, ch. 421, § 21; impl. am. Acts 1978, ch. 934, §§ 7, 36; T.C.A., § 2-1360.]

CHAPTER 14

SPECIAL ELECTIONS

PART 1—GENERAL PROVISIONS

2-14-101. Special elections — When required. — Special elections shall be held when a vacancy in any office is required to be filled by election at other times than those fixed for general elections. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1401.]

Cross-References. Vacancy filled without official notice of vacancy, § 8-48-108.

Vacancy in office of United States senator or representative in congress, § 2-16-101.

Section to Section References. This chapter is referred to in § 2-16-101.

This part is referred to in § 2-14-202.

Attorney General Opinions. Authority to call special election to fill vacancy, OAG 97-019 (3/3/97).

Comparative Legislation. Special elections:

Ala. Code § 17-18-1 et seq.
Ark. Code § 7-5-703 et seq.
Ga. O.C.G.A. § 21-2-540 et seq.
Ky. Rev. Stat. Ann. § 118.710 et seq.
Miss. Code Ann. § 23-15-937.
N.C. Gen. Stat. § 163-137.
Va. Code § 24.1-163 et seq.

NOTES TO DECISIONS

ANALYSIS

1. Power to Hold Election.

The right to hold an election cannot exist or be exercised without an express grant of power to do so by the general assembly. Brewer v. Davis, 28 Tenn. 208, 49 Am. Dec. 706 (1848).

2. Indispensable Provisions in Holding Elections.

Whatever statutory provisions are essential for ascertaining the will of the community upon a particular question are obviously indispensable. Whatever precautions prescribed by stat-

ute against mistake or fraud that are of such a nature that their omission in the particular instance has resulted in a fraud upon the electors, or has rendered the result of the election incurably uncertain, or the future omission of which, if permitted, would render elections insecure and uncertain, must be held to be essential to the validity of the election. Barry v. Lauck, 45 Tenn. 588 (1868).

3. Compliance with Election Laws.

The general rule is that only a substantial compliance, rather than a strictly literal compliance, with the election laws is required, so that, absent proof of fraud, the court would not hold illegal either the ballots of persons who merely voted in the wrong city precinct or the ballots of women who had married since their prior registration and who had simply failed to report a change of name; but where there were more than five clearly illegal ballots cast in an election because of the improper and unauthorized late registration of voters who had not previously registered to vote in municipal elections, those were not minor or technical violations but rather violations of major and important statutory provisions governing the registration of voters, so that the election was held void and a new election ordered. Lanier v. Revell, 605 S.W.2d 821 (Tenn. 1980).

Collateral References. 25 Am. Jur. 2d Elections §§ 3, 37; 26 Am. Jur. 2d Elections §§ 183, 185-187, 193-199.

29 C.J.S. Elections §§ 11, 66-82.

Elections ⇐ 2, 81, 199.

2-14-102. Time of holding special election. — (a) Special elections shall be held not less than seventy-five (75) days nor more than eighty (80) days after the officer or body charged with calling the election receives notice of the facts requiring the call. An election for an office shall be held on the same day in every county in which it is held.

(b)(1) If it is necessary to hold a special election to fill a vacant seat in the United States house of representatives, a vacancy in a county office, or a vacancy in any municipal office, and the date for such election, as established under subsection (a), falls within thirty (30) days of an upcoming regular primary or general election being held in that district, the governor, or the county election commission, as specified in § 2-14-103, may issue the writ of election for the special election for the date which will coincide with the regular primary or general election.

(2) If the date of the election is adjusted, as provided herein, all other dates dependent on the date of election shall be adjusted accordingly, and any filing of candidacy, or qualifying petitions, financial statements, or other acts shall be timely done if performed in accordance with the revised dates. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1402; Acts 1980, ch. 649, § 2; 1981, ch. 478, § 10.]

Cross-References. Time for holding special election to fill vacancy in general assembly, § 2-14-202.

Cited: Austin v. Mayfield, 611 S.W.2d 824 (Tenn. 1981).

2-14-103. Order for special elections. — The governor shall, by writs of election, order special elections for all offices except county and municipal offices for which elections shall be ordered by the county election commission. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1403.]

Section to Section References. This section is referred to in § 2-14-102.

Textbooks. Tennessee Jurisprudence, 10 Tenn. Juris., Elections, § 2.

2-14-104. Order — Contents and direction. — (a) The order to hold an election for an office shall specify the counties, county or district in which and

the day on which the election is to be held, the reason for the election, and the name of the person in whose office the vacancy has occurred.

(b) The order shall be directed to the county election commission or commissions which are to hold the election. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1404.]

2-14-105. Publication of notice. — Within ten (10) days after receipt of an order to hold a special election or notice of facts requiring a special election, the county election commission shall publish, in a newspaper of general circulation in the county, a notice of the date and purpose of the election. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1405.]

Section to Section References. This section is referred to in § 13-7-116.

Textbooks. Tennessee Jurisprudence, 10 Tenn. Juris., Elections, § 10; 15 Tenn. Juris., Injunctions, § 26.

NOTES TO DECISIONS

ANALYSIS

1. Necessity of notice.
2. Failure to give notice in certain divisions or districts.

1. Necessity of Notice.

The required notice of a special election is essential to its validity, and a failure to give such notice renders the election in the county void. Barry v. Lauck, 45 Tenn. 588 (1868).

2. Failure to Give Notice in Certain Divisions or Districts.

The failure to give notice of a special election in one county of a judicial district operated as a practical disfranchisement of the legal voters of the entire county, though an election is actually held in nine of the 12 civil districts in that county, and was such a substantial and material failure of the electoral franchise as rendered an election for chancellor a nullity throughout the entire division, where it appeared that the voters who did not vote were more than sufficient to have changed the result, had they all voted one way. Barry v. Lauck, 45 Tenn. 588 (1868).

Collateral References. Special election, validity of, as affected by publication or dissemination of matter or information extrinsic to the question as submitted, regarding nature or effect of the proposal. 122 A.L.R. 1142.

Statutory provision as to manner and time of notice of special election as mandatory or directory. 119 A.L.R. 661.

2-14-106. Time when qualifying petitions are to be filed. — (a) Candidates for office in a special election shall qualify as required in regular elections but shall file qualifying petitions before twelve o'clock (12:00) noon prevailing time on the sixth Thursday before the day of the election to have their names printed on the ballots. Party nominations shall be made under §§ 2-5-101(g) and 2-13-204 subject to the deadline in the preceding sentence.

(b) In counties having a population in excess of six hundred thousand (600,000) according to the federal census of 1970 or any subsequent federal census, when a special election is being held in conjunction with either a municipal, August primary or general election, the time of qualifying for candidates to the office for which the special election is being held shall conform and be governed by the same time and the same date prescribed for

the municipal, August primary or general election; but in no way shall the time for qualifying specified by this subsection be less than the qualifying time prescribed for the special election. [Acts 1972, ch. 740, § 1; 1975, ch. 84, § 1; T.C.A., § 2-1406.]

Cross-References. Failure to use standard time, § 4-1-401.

Section to Section References. This section is referred to in § 5-1-104.

PART 2—VACANCIES

2-14-201. When election required. — If twelve (12) months or more remain prior to the next general election for members of the general assembly and the seat of a member of either house becomes vacant, a successor shall be elected by the qualified voters of the district in which the vacancy occurred. The successor shall serve the remainder of the original term. [Acts 1978, ch. 923, § 1; T.C.A., § 2-2001.]

Cross-References. Vacancy filled without official notice, § 8-48-108.

2-14-202. Time of election — Vacancy in state senate. — (a) The governor shall, by writs of election, order a special election to fill such vacancy.

(b) The governor shall, by writs of election, set a date not less than fifty-five (55) nor more than sixty (60) days from the date of the writs for primary elections for nominations by statewide political parties to fill the vacancy and shall, by the same writs of election, set a date of not less than one hundred (100) nor more than one hundred seven (107) days from the date of the writs for a general election to fill the vacancy. Candidates for the primary elections and independent candidates for the general election shall qualify as required in regular elections but shall file qualifying petitions before twelve o'clock (12:00) noon prevailing time on the sixth Thursday before the day of the primary elections. Except where this subsection makes different provisions, part 1 of this chapter shall govern elections required by this subsection. The state primary boards shall perform their duties under chapter 8 of this title with respect to primaries held under this subsection as quickly as practicable, and shall certify the nominees of their parties to the county election commissions no later than twelve o'clock (12:00) noon prevailing time on the thirty-fifth day before the day of the general election.

(c)(1) If it is necessary to hold a special election to fill a vacancy in the membership of the general assembly, and the date for such election, as established under subsection (b), falls within thirty (30) days of a regular primary or general election being held in the legislative district, or alternatively falls within thirty (30) days of a municipal election being held in an odd-numbered year in a legislative district which is contained entirely within the boundaries of such municipality, the governor may issue the writ of election for the special election for the date which will coincide with the regular primary, general or municipal election.

(2) If the date of the election is adjusted, as provided herein, all other dates dependent on the date of the election shall be adjusted accordingly, and any

filing of candidacy, qualifying petitions, financial statements, or other acts shall be timely done if performed in accordance with the revised dates.

(d)(1) In the event a vacancy occurs in the state senate, in a seat with more than two (2) years remaining in the term, within such proximity to the next general election for legislators as would preclude following the timetable of subsections (a)-(c), the members of the county executive committees who represent the precincts composing such senate district may nominate a candidate to appear on the November election ballot by any method authorized under the rules of the party. The procedure to be followed by an executive committee shall be the same as set forth in § 2-13-204(b)(4). Persons so chosen shall be certified to every county election commission wholly or partially in the district by twelve o'clock (12:00) noon, prevailing time, on the thirty-fifth day prior to the regular November election. Independent candidates shall qualify by filing petitions as provided for in § 2-5-104 by twelve o'clock (12:00) noon, prevailing time, on the thirty-fifth day prior to the regular November election.

(2) In the event the vacancy occurs within thirty-five (35) days of the next general election for legislators, the candidate receiving the highest number of write-in votes at such election shall be elected. [Acts 1978, ch. 923, § 1; T.C.A., § 2-2002; modified; Acts 1980, ch. 649, § 3; 1981, ch. 478, § 11; 1982, ch. 678, §§ 1, 2.]

Section to Section References. This section is referred to in § 2-12-109.

2-14-203. Interim successor. — The legislative body of the replaced legislator's county of residence at the time of such legislator's election may elect an interim successor to serve until the election. [Acts 1978, ch. 923, § 1; T.C.A., § 2-2003.]

2-14-204. Eligibility to fill vacancy. — Only a qualified voter of the district represented shall be eligible to succeed to the vacant seat. [Acts 1978, ch. 923, § 1; T.C.A., § 2-2004.]

CHAPTER 15

PRESIDENTIAL ELECTIONS

2-15-101. Selection of presidential electors. — At the regular November election immediately preceding the time fixed by the law of the United States for the choice of president and vice president, as many electors of president and vice president as this state may be entitled to shall be elected. Each registered voter in this state may vote for the whole number of electors. The persons, to the number required to be chosen, having the highest number of votes shall be declared to be duly chosen electors. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1501.]

Cross-References. Presidential convention delegates and presidential preference primary, see §§ 2-13-205, and ch. 13, part 3 of this title.

Comparative Legislation. Presidential elections:

Ala. Code § 17-19-1 et seq.
Ark. Code § 7-8-201 et seq.
Ga. O.C.G.A. § 21-2-190 et seq.
Ky. Rev. Stat. Ann. § 118.435 et seq.
Miss. Code Ann. § 23-15-1081 et seq.
Mo. Rev. Stat. § 128.010 et seq.
N.C. Gen. Stat. § 163-208 et seq.
Va. Code § 24.1-158 et seq.

Collateral References. 25 Am. Jur. 2d Elections §§ 1, 3, 4, 9, 57, 58, 129, 131, 164.

29 C.J.S. Elections §§ 91, 94, 97, 106, 174, 210.

Presidential and vice-presidential electors. 153 A.L.R. 1066.

United States ⇨ 25.

2-15-102. Residence requirements for electors. — For each congressional district there shall be elected one (1) elector who is a resident of the congressional district from which such elector is elected, and for the state there shall be two (2) electors who may be residents of any part of the state. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1502.]

2-15-103. Duties of governor. — The governor shall perform the duties with respect to the electors required of the governor by the laws of the United States. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1503.]

2-15-104. Meeting of electors. — (a) The electors shall meet at the seat of government of this state at the time prescribed by the laws of the United States and perform the duties required of them by the laws of the United States.

(b) The governor shall immediately deliver to the electors present a certificate of all the names of the electors.

(c)(1) The electors shall cast their ballots in the electoral college for the candidates of the political party which nominated them as electors if both candidates are alive.

(2) If the presidential candidate of the party is dead or both the presidential and vice presidential candidates of the party are dead, the electors may cast their ballots in the electoral college as they see fit.

(3) If the vice presidential candidate of the party is dead, the electors shall cast their ballots in the electoral college for the presidential candidate of the political party which nominated them as electors but may cast their ballots in the electoral college for vice president as they see fit. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1504.]

2-15-105. Vacancies. — If any elector fails to appear before nine o'clock a.m. (9:00 a.m.), prevailing time, on the day on which electors are to cast their votes for president and vice president, the electors present shall, immediately and in the presence of the governor, elect any resident citizen of the state to fill such vacancy. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1505.]

CHAPTER 16

MEMBERS OF CONGRESS

2-16-101. Vacancies. — (a) If a vacancy occurs in the office of United States senator, a successor shall be elected at the next regular November election and shall hold office until the term for which the predecessor was elected expires. If the vacancy will deprive the state of its full representation at any time congress may be in session, the governor shall fill the vacancy by appointment until a successor is elected at the next regular November election and is qualified.

(b) If a vacancy occurs in the office of representative in congress, within ten (10) days of such vacancy occurring the governor shall, by writs of election, order a special election to fill the vacancy. The governor shall, by writs of election, set a date not less than fifty-five (55) nor more than sixty (60) days from the date of the writs for primary elections for nominations by statewide political parties to fill the vacancy and shall, by the same writs of election, set a date of not less than one hundred (100) nor more than one hundred seven (107) days from the date of the writs for a general election to fill the vacancy. Candidates for the primary elections and independent candidates for the general election shall qualify as required in regular elections but shall file qualifying petitions before twelve o'clock (12:00) noon prevailing time on the sixth Thursday before the day of the primary elections. Except where this subsection makes different provisions, chapter 14 of this title shall govern elections required by this subsection. The state primary boards shall perform their duties under chapter 8 of this title with respect to primaries held under this subsection as quickly as practicable and shall certify the nominees of their parties to the county election commissions no later than twelve o'clock (12:00) noon prevailing time on the thirty-fifth day before the day of the general election. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1601; Acts 1980, ch. 883, § 1.]

Comparative Legislation. Members of Congress:
Ala. Code § 17-20-1 et seq.
Ark. Code § 7-8-101 et seq.
Ga. O.C.G.A. § 21-2-1 et seq.
Ky. Rev. Stat. Ann. § 118.475 et seq.
Miss. Code Ann. § 23-15-1031 et seq.
Mo. Rev. Stat. § 128.010 et seq.
N.C. Gen. Stat. § 163-201 et seq.
Va. Code § 24.1-1 et seq.

NOTES TO DECISIONS

1. Denial of Right to Vote for United States Congressman.

In case an elector is wrongfully denied the right to vote for a member of the national house of representatives, at a national election held in the district where he resides, an action to recover damages therefor presents a question arising under the Constitution of the United States and federal courts have jurisdiction thereof. Swafford v. Templeton, 185 U.S. 487, 22 S. Ct. 783, 46 L. Ed. 1005 (1902).

Collateral References. 25 Am. Jur. 2d Elections §§ 3, 4, 8, 30, 54, 56; 54 Am. Jur. 2d, United States §§ 14, 15; 77 Am. Jur. 2d United States §§ 20-25.

29 C.J.S. Elections § 1.

Elections ⇨ 1.

2-16-102. Establishment of congressional districts. — The general assembly shall establish the composition of districts for the election of members of the house of representatives in congress after each enumeration and apportionment of representation by the congress of the United States. The districts may not be changed between apportionments. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1602.]

2-16-103. Composition of congressional districts. — (a)(1) All census descriptions, counties, voting districts (VTDs), tracts, blocks, census delineations, census district lines and other census designations are those established for or by the United States department of commerce, bureau of the census, for taking the 1990 federal decennial census in Tennessee as contained in the automated geographic data base, known as the TIGER (Topologically Integrated Geographic Encoding and Referencing) System.

(2) All subdivisions listed under a county are voting districts (VTDs) unless labeled as tracts and blocks.

(b) The state of Tennessee is divided into the following nine (9) congressional districts composed as follows:

DISTRICT 1: All of Carter, Cocke, Greene, Hancock, Hawkins, Jefferson, and Johnson counties;

In Knox County:

VTDs: 085, 086:

Tract 005300, Block 205; 218;

All of Sevier, Sullivan, Unicoi, and Washington counties.

DISTRICT 2: Blount County;

In Bradley County:

VTDs: 1-1 McDonald North, 1-2 Prospect (In), 1-2 Prospect (Out), 1-3 Hopewell (In), 1-3 Hopewell (Out), 2-2 North Lee (In), 2-2 North Lee (Out A), 2-2 North Lee (Out B), 2-3 Charleston High, 2-4 Charleston City, 4-1 Taylor, 4-2 Oak Grove (In), 4-2 Oak Grove (Out), 4-3 Michigan Avenue (In), 4-3 Michigan Avenue (Out), 5-3 T. C. Bower County (B), 6-5 Blue Springs:

Tract 011500: Block 121, 123, 124, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 314, 318, 322, 399B, 403, 404, 405, 406, 436, 438, 439, 440, 441, 442, 443, 444, 445, 446;

In Knox County:

VTDs: 006, 009, 012, 013, 018, 020, 021, 027, 028, 029, 030, 031, 032, 033, 034, 035, 036, 037, 038, 039, 040, 041, 042, 043, 044, 045, 046, 047, 048, 049, 051, 055, 056, 057, 058, 059, 060, 061, 062, 063, 064, 065, 067(A), 067(B), 068(A), 068(B), 084(C), 068(D), 069, 070, 071, 072, 073, 074, 075, 076, 077, 078, 079, 082:

Tract 005202, Block 103, 104, 107, 108, 109, 110, 121, 122, 123, 124, 204, 205, 211, 212, 213, 214, 215, 216, 217, 218, 299, 301, 302B, 303D, 305B, 306C, 399, 903A, 903B, 906, 907, 908, 909B, 910, 911, 912, 914, 915, 916, 917, 918, 920, 925, 926;

VTDs: 086:

Tract 005300, Block 201, 202, 203, 204, 206, 207, 208, 209, 210, 211, 216, 220, 224, 237, 238, 239, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 299B, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 339, 362, 363, 364, 399;

VTDs: 087, 088, 089, 090, 091, 092, 093, E11, E14, E15, E17, E26, F25, L19, M14, N10, N16, N23, N24, N50, N66, Q24, S10, S16, S19, S23, S24, S50, S66, V25, W11, W15, W17, W26;

All of Loudon, McMinn and Monroe counties.

DISTRICT 3: All of Anderson and Bledsoe counties;

In Bradley County:

VTDs: 2-1 E. L. Ross, 3-1 College Hill, 3-2 Mayfield 3-3 Bradley Junior High (In), 3-4 East Cleveland, 5-1 T. C. Bower City, 5-2 Blythe Avenue, 5-3 T. C. Bower County (A), 6-1 Valley View, 6-2 Flint Springs, 6-3 Waterville, 6-4 McDonald South, 6-5 Blue Springs:

Tract 011500, Block 326, 330, 435;

VTDs: 7-1 Arnold (In), 7-1 Arnold (Out), 7-2 Stuart, 7-3 Cleveland High:

All of Grundy, Hamilton, Marion, Meigs, Morgan, Polk, Roane, Sequatchie and Van Buren counties.

DISTRICT 4: All of Bedford, Campbell, Claiborne, Coffee, Cumberland, Fentress, Franklin, Giles, Grainger, Hamblen, and Hardin counties;

In Knox County:

VTDs: 080, 081, 082:

Tract 005202, Block 101, 201, 202, 203, 206, 207, 208, 209, 210, 901, 902, 913, 919;

VTDs: 084;

All of Lawrence, Lincoln, Moore, Pickett, Rhea, Scott, Union, Warren, Wayne, and White counties.

DISTRICT 5: In Davidson County:

VTDs: 1-1, 1-2, 1-3, 1-4, 1-5, 1-6, 1-7, 2-1, 2-2, 2-3, 2-4, 3-1, 3-2, 3-3, 3-4, 3-5, 4-1, 4-2, 4-3, 4-4, 5-1, 5-2, 5-3, 5-4, 5-5, 6-1, 6-2, 6-3, 6-5, 7-1, 7-2, 7-3, 7-4, 8-1, 8-2, 8-3, 8-4, 8-5, 9-1, 9-2, 9-3, 9-4, 9-5, 10-1, 10-2, 10-3, 10-4, 11-1, 11-2, 11-3, 11-4, 11-5, 11-6, 12-1, 12-2, 12-3, 12-4, 13-1, 13-2, 13-4, 13-5, 13-6, 13-7, 13-8, 14-2, 14-3, 14-4, 14-5, 15-1, 15-2, 15-3, 15-4, 16-1, 16-2, 16-3, 16-4, 17-1, 17-2, 17-3, 17-4, 18-1, 18-2, 18-3, 19-1, 19-2, 19-3, 19-4, 19-5, 19-6, 20-1, 20-2, 20-3, 20-4, 20-5, 21-1, 21-2, 21-3, 21-4, 22-1, 22-2, 22-3, 22-4, 23-1, 23-2, 23-3, 23-4, 24-1, 24-2, 24-3, 24-4, 25-1, 25-2, 25-3, 25-4, 25-5, 25-6, 25-7, 26-1, 26-3, 26-2A, 26-2B, 26-4, 26-5, 27-1, 27-2, 27-3, 27-4, 27-5, 28-1, 28-2, 28-3, 29-1, 29-2, 29-3, 30-1, 30-2, 30-3, 30-4, 31-1, 31-2, 31-3, 31-4, 31-5, 32-1:

Tract 018700, Block 207A, 901;

Tract 018800, Block 203, 204, 208, 209, 210, 211, 212, 301, 302, 304, 309, 310, 311, 312, 321, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 514, 515;

VTDs: 32-2, 32-3, 32-4, 32-5, 33-1, 33-2, 33-3A, 33-3B, 33-4A, 33-4B, 33-5, 33-6, 34-1, 34-2, 34-3, 34-4A, 34-4B, 34-5A, 34-5B, 34-6, 35-1, 35-2, 35-3, 35-4, 35-5;

In Robertson County:

VTDs: 7-1 Adams Club House, 12-1 Bransford Elementary School, 10-1 Catholic School, 7-2 Cedar Hill Club House, 9-1 The Center, 1-1 Cross Plains City Hall, 1-2 Orlinda Club House, 5-1 Greenbrier High School, 8-1 Krisle School, 6-2 Mt. Sharon Cumberland Presbyterian;

Tract 080601, Block 203;

VTDs: 8-3 Owens Chapel Club House, 8-2 Pentecostal Church, 11-2 Springfield Skating Center, 7-3 Stroudsville Church of Christ, 3-1 South Haven Christian School, 4-1 Green Ridge Service Center, 2-1 White House-1st United Methodist Church;

DISTRICT 6: All of Cannon and Clay counties;

In Davidson County:

VTDs: 32-1:

Tract 018700, Block 906, 909, 910, 911, 912, 914;

Tract 018800, Block 305, 306, 307, 313, 314, 315, 316, 317, 318, 319, 320, 322, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 999A, 999B, 999C;

All of DeKalb, Jackson, Macon, Marshall, Overton, Putnam, Rutherford, Smith, Sumner, Trousdale, Williamson, and Wilson counties.

DISTRICT 7: All of Cheatham, Chester, Decatur, Dickson, Fayette, Hardeman, Henderson, Hickman, Lewis, McNairy, Maury, Montgomery, and Perry counties;

In Robertson County:

VTDs: 6-1 Coopertown School, 6-2 Mt. Sharon Cumberland Presbyterian:

Tract 080601, Block 117, 119, 201, 202, 211, 212, 213, 214, 215, 216, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261;

Tract 080700, Block 239, 240, 241, 243, 244, 245, 246, 250, 251, 252, 253;

VTDs: 11-1 Westside School;

In Shelby County:

VTDs: 2 Bartlett, 3 Bartlett, 4 Bartlett, 5 Bartlett, 7 Bartlett:

Tract 020620, Block 106, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 213, 214, 215, 216, 301, 302A, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 341, 601A, 602, 603, 607, 608;

VTDs: 8 Bartlett, 9 Bartlett, 10 Bartlett, 11 Bartlett, 12 Bartlett, 1 Collierville, 2 Collierville, 3 Collierville, 4 Collierville, 5 Collierville, 1 Cordova, 2 Cordova, 3 Cordova, 4 Cordova, 5 Cordova, 6 Cordova, 7 Cordova, 8 Cordova, 9 Cordova, Forest Hills, 1 Germantown, 10 Germantown, 11 Germantown, 12 Germantown, 2 Germantown, 3 Germantown, 4 Germantown, 5 Germantown, 6 Germantown, 7 Germantown, 8 Germantown, 9 Germantown, 1 Hickory Hill, 2 Hickory Hill, 3 Hickory Hill, 4 Hickory Hill, 5 Hickory Hill, 74-1 Memphis, 74-6 Memphis, 80-1 Memphis;

Tract 021310, Block 202, 203, 204, 299, 303;

VTDs: 80-2 Memphis, 81-3 Memphis, 81-5 Memphis:

Tract 021330, Block 101C, 102B, 401, 402, 403, 406, 407, 408;

Tract 021340, Block 111B, 501B, 507, 508, 509A;

Tract 021500, Block 505A;

VTDs: 88-1 Memphis, 88-3 Memphis, 89-1 Memphis, 89-2 Memphis:

Tract 021120, Block 301, 307, 308, 309, 310, 401, 402, 403, 404, 501, 502;

VTDs: Morning Sun, 2 Ross Store, 3 Ross Store, 5 Ross Store, 6 Ross Store, 8 Ross Store, 10 Ross Store.

DISTRICT 8: All of Benton, Carroll, Crockett, Dyer, Gibson, Haywood, Henry, Houston, Humphreys, Lake, Lauderdale, Madison, and Obion counties;

In Shelby County:

VTDs: Arlington, 1 Bartlett, 6 Bartlett, 7 Bartlett:

Tract 020620, Block 401, 402, 403, 404A, 405, 499A;

VTDs: Brunswick, Eads, Kerrville, Lakeland, Locke, Lucy, 1 McConnell's, 2 McConnell's, 69-1 Memphis, 69-2 Memphis, 70-1 Memphis, 70-2 Memphis, 70-3 Memphis, 71-1 Memphis, 71-4 Memphis, 72-1 Memphis, 72-2 Memphis:

Tract 010220, Block 501, 502, 506, 507, 508, 509, 510, 601, 602, 604;

VTDs: 72-4 Memphis, 72-5 Memphis, 72-6 Memphis, 84-2 Memphis, 85-1 Memphis, 85-2 Memphis, 86 Memphis, 87-1 Memphis, 87-2 Memphis, 87-3 Memphis, 88-2 Memphis, 90-2 Memphis, 90-4 Memphis, 1 Millington, 2 Millington, 3 Millington, 4 Millington, Stewartville, Woodstock, 88-4 Memphis;

All of Stewart, Tipton, and Weakley counties.

DISTRICT 9: In Shelby County:

VTDs: 1 Capleville, 2 Capleville, 3 Capleville, and in the city of Memphis:

VTDs: 1, 2, 7, 11-1, 11-2, 12, 13-1, 13-2, 13-3, 14-1, 14-2, 15, 16-1, 16-2, 16-3, 17-1, 17-2, 18, 20-1, 20-2, 20-3, 21-1, 21-2, 21-3, 22, 25-1, 25-2, 25-3, 25-4, 26-1, 26-2, 27-1, 27-2, 27-3, 28-1, 28-2, 29-1, 29-2, 30, 31-1, 31-2, 31-3, 31-4, 32-1, 32-2, 33, 34-1, 34-2, 35-1, 35-2, 35-3, 36-1, 36-2, 36-3, 37, 38-1, 38-2, 38-3, 39, 40-1, 40-2, 41-1, 41-2, 41-3, 42-1, 42-2, 42-3, 43-1, 43-2, 44-1, 44-2, 44-3, 44-4, 44-5, 45-1, 45-2, 45-3, 45-4, 46-1, 46-2, 46-3, 47-1, 47-2, 47-3, 48, 49-1, 49-2, 49-3, 50-1, 50-2, 51, 52-1, 52-2, 52-3, 53-1, 53-2, 53-3, 54-1, 54-2, 55-1, 55-2, 56-1, 56-2, 57, 58-1, 58-2, 58-3, 58-4, 58-5, 59-1, 59-2, 59-3, 59-4, 59-5, 60-1, 60-2, 60-3, 60-4, 60-5, 60-6, 60-7, 60-8, 60-9, 61-1, 61-2, 62-1, 62-2, 63-1, 63-2, 64-1, 64-2, 65-1, 65-2, 66-1, 66-2, 66-3, 67-1, 67-2, 67-3, 68-1, 68-2, 68-3, 71-2, 71-3, 72-2; Memphis:

Tract 010220, Block 603, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 799;

VTDs: 72-3, 72-7, 73-1, 73-2, 73-3, 73-4, 73-5, 73-6, 73-7, 73-8, 73-9, 74-2, 74-3, 74-4, 74-5, 74-7, 74-8, 74-9, 75-1, 75-10, 75-11, 75-12, 75-2, 75-3, 75-4, 75-5, 75-6, 75-7, 75-8, 75-9, 76-1, 76-2, 76-3, 76-4, 76-5, 76-6, 77-1, 77-2, 77-3, 78-1, 78-2, 78-3, 78-4, 78-5, 79-1, 79-2, 79-3, 79-4, 79-5, 79-6, 79-7, 79-8, 79-9, 80-1; Memphis:

Tract 021310, Block 217, 218, 219, 299, 608B;

VTDs: 81-1, 81-2, 81-4, 81-5; Memphis:

Tract 021330, Block 404, 405;

VTDs: 81-6, 81-7, 82-1, 82-2, 82-3, 83, 84-1, 89-2; Memphis:

Tract 021120, Block 311, 312;

VTDs: 90-1 Memphis, 90-3 Memphis, 1 Ross Store, 4 Ross Store, 7 Ross Store, 9 Ross Store, ZZZZ.

(c) It is the legislative intent that all congressional districts be contiguous and, toward that end, if any enumeration or voting district or other geographical entity designated as a portion of a district is found to be noncontiguous

with the larger portion of such district, it shall be constituted a portion of the district smallest in population to which it is contiguous. [Acts 1972, ch. 733, § 1; T.C.A., § 2-1603; Acts 1981, ch. 528, § 1; 1992, ch. 885, § 1.]

NOTES TO DECISIONS

1. Population Figures.

Where plaintiffs' argument that the reapportionment effected by this section in 1972 was unconstitutional, was based upon the population figures in the official 1970 federal census, and opposing parties offered the figures in the 1975 "provisional estimates" of population to show that the original malapportionment had corrected itself, the court held that in the absence of clear, cogent and convincing proof that the 1975 figures were the best evidence as opposed to the 1970 figures, the court had to rely on the 1970 figures and thus entered a decree reapportioning the districts. Dixon v. Hassler, 412 F. Supp. 1036 (W.D. Tenn.), aff'd sub nom., Republican Party v. Dixon, 429 U.S. 934, 97 S. Ct. 346, 50 L. Ed. 2d 303 (1976).

DECISIONS UNDER PRIOR LAW

1. Constitutionality.

A former statute, Acts 1951, ch. 251, § 1; Acts 1965, ch. 4, § 1, was held in violation of U.S. Const., art. 1, § 2 and all state and local election officials and their successors, subordinates, agents, and employees were permanently enjoined from holding any future primary or general elections for members of the house of representatives of the United States congress from the state of Tennessee under its provisions. Baker v. Ellington, 273 F. Supp. 174 (M.D. Tenn. 1967). For prior holding see Baker v. Clement, 247 F. Supp. 886 (M.D. Tenn. 1965).

Collateral References. Referendum, act of state legislature redistricting the state for congressional purposes as subject to state referendum. 5 A.L.R. 1417; 83 A.L.R. 1374; 87 A.L.R. 1321; 122 A.L.R. 717.

CHAPTER 17

CONTESTED ELECTIONS

2-17-101. Jurisdiction — Standing. — (a) Except as otherwise expressly provided in this chapter, election contests shall be tried in the chancery court of the division in which the defendant resides. The chief justice of the supreme court shall assign a chancellor from a different division to decide a contested election of chancellor.

(b) The incumbent office holder and any candidate for the office may contest the outcome of an election for the office. Any campaign committee or individual which has charge of a campaign for the adoption or rejection of a question submitted to the people may contest the election on the question. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1701.]

Cross-References. Contested election of governor, ch. 18 of this title.

Section to Section References. This chapter is referred to in § 65-29-113.

This part is referred to in § 16-3-201.

This section is referred to in §§ 2-17-105, 2-17-116.

Textbooks. Gibson's Suits in Chancery (7th ed., Inman), §§ 8, 567.

Tennessee Jurisprudence, 10 Tenn. Juris., Elections, §§ 14-18, 23; 11 Tenn. Juris., Equity, § 35; 16 Tenn. Juris., Judges, § 18; 17 Tenn. Juris., Jurisdiction, § 23; 21 Tenn. Juris., Public Officers, § 5.

Law Reviews. Procedure and Evidence — 1961 Tennessee Survey (II) (Edmund M. Morgan, Joel F. Handler), 15 Vand. L. Rev. 921.

Comparative Legislation. Contested elections:

Ala. Code § 17-15-1 et seq.

Ark. Code § 7-5-801 et seq.

Ga. O.C.G.A. § 21-2-520 et seq.

Ky. Rev. Stat. Ann. § 120.015 et seq.

Miss. Code Ann. § 23-15-911 et seq.

Mo. Rev. Stat. § 115.527 et seq.

N.C. Gen. Stat. § 163-84 et seq.

Va. Code § 24.1-236.1 et seq.

Cited: Rodgers v. White, 528 S.W.2d 810 (Tenn. 1975); State ex rel. Dye v. Rawls, 573 S.W.2d 159 (Tenn. 1978).

NOTES TO DECISIONS

ANALYSIS

1. Election Contests Generally.

An action which undertakes to go behind the certificate of the returning officer of an election by the people is a contest of the election within the meaning of our statutes. State ex rel. Anderson v. Gossett, 77 Tenn. 644 (1882); Adcock v. Houk, 122 Tenn. 269, 122 S.W. 979 (1909); Wolfenbarger v. Election Comm'n, 166 Tenn. 548, 64 S.W.2d 12 (1933).

A contested election is defined as going behind the returns to ascertain who was elected, or to determine whether there has been any legal election; and the incumbent, the inducting court, or the unsuccessful candidate may contest the successful candidate's apparent election and right to the office. Maloney v. Collier, 112 Tenn. 78, 83 S.W. 667 (1903); Heiskell v. Lowe, 126 Tenn. 475, 153 S.W. 284 (1912).

An election contest is a judicial proceeding controlled by the usual rules of practice and procedure and when fraud and irregularities in the election are charged, specifications are necessary in order to avoid indefinite and indeterminable inquiries. Barham v. Denison, 159 Tenn. 226, 17 S.W.2d 692 (1929).

Petition by candidate for office of judge of general sessions court which alleged that his name was fraudulently withheld from official ballot by election commissioners was an action to contest validity of election and was not an action in the nature of quo warranto. Morrison v. Crews, 192 Tenn. 20, 237 S.W.2d 1 (1951).

An election contest is a proper proceeding to test the validity of an election on the charge that the candidate receiving the highest number of votes cast in the election had not complied with the residence requirement and was ineligible on the day of the election to hold the office. Hatcher v. Bell, 521 S.W.2d 799 (Tenn. 1974).

Where plaintiffs in action for declaratory judgment claimed that county referendum election was invalid because the question submitted was inadequate and misleading in that it failed to refer to the effect which the private act voted upon had on the powers and functions of the county judge, the claims amounted to an election contest. Dehoff v. Attorney Gen., 564 S.W.2d 361 (Tenn. 1978).

Where a complaint alleged that under the rules of the State Democratic Party, the Democratic Executive Committee had no power to nominate candidates for Justice of the State Supreme Court and that the nomination of defendant by the committee was void, the complaint alleged no irregularities in the general election nor any constitutional disqualifications on the part of defendant, and thus, although the complaint termed itself an "election contest," it was no more than a contest of the nomination and failed to come under the purview of this section. Taylor v. Tennessee State

Democratic Executive Comm., 574 S.W.2d 716 (Tenn. 1978).

2. —Nature of Proceedings.

Contested election cases are statutory proceedings, and the statutes under which they are authorized and conducted furnish the only remedy for contesting such elections. Harmon v. Tyler, 112 Tenn. 8, 83 S.W. 1041 (1903).

A suit to recover an office is distinguished from an action to annul the election. Nelson v. Sneed, 112 Tenn. 36, 83 S.W. 786 (1903); Johnson v. Brice, 112 Tenn. 59, 83 S.W. 791 (1903).

3. —Nature of Right to Hold Office.

An office is an incorporeal right, and consists in the right to execute a public trust and to take the emoluments belonging to it. The right to hold an office, receive and enjoy its emoluments and exercise its functions, is an incorporeal right, which may be enforced by a civil proceeding. An injury to this right of office is an injury to a private right. Dodd v. Weaver, 34 Tenn. 670 (1855); Boring v. Griffith, 48 Tenn. 456 (1870); Lewis v. Watkins, 71 Tenn. 174 (1879); State ex rel. Anderson v. Gossett, 77 Tenn. 644 (1882); Moore v. Sharp, 98 Tenn. 65, 38 S.W. 411 (1896); Nelson v. Sneed, 112 Tenn. 36, 83 S.W. 786 (1903); Maloney v. Collier, 112 Tenn. 78, 83 S.W. 667 (1903); Staples v. Brown, 113 Tenn. 639, 85 S.W. 254 (1904); Malone v. Williams, 118 Tenn. 390, 103 S.W. 798, 121 Am. St. R. 1002 (1907).

The right to exercise a public office is a species of property, equal with any other thing capable of possession, and the law affords adequate redress when the enjoyment of it is wrongfully prevented. Memphis v. Woodward, 59 Tenn. 4, 27 Am. R. 750 (1873); Malone v. Williams, 118 Tenn. 390, 103 S.W. 798, 121 Am. St. R. 1002 (1907). This applies to county officers. State ex rel. Shelby County v. Stewart, 147 Tenn. 375, 247 S.W. 984 (1919).

4. —Quo Warranto Distinguished.

A contested election is not analogous to a bill in the nature of a writ of quo warranto; and there can be no contest under title 29, ch. 35 as to who is elected to the offices. Boring v. Griffith, 48 Tenn. 456 (1870); State ex rel. v. Wright, 57 Tenn. 237 (1872); Conner ex rel. v. Conner, 67 Tenn. 11 (1874); Lewis v. Watkins, 71 Tenn. 174 (1879); State v. McConnell, 71 Tenn. 332 (1879); State ex rel. Anderson v. Gossett, 77 Tenn. 644 (1882); Maloney v. Collier, 112 Tenn. 78, 83 S.W. 667 (1903).

Where county election commission omitted (former) office of justice of peace for municipality from ballot of general election in August because provision in city charter provided for election of such official in October although under Tenn. Const., art. VII, § 5 he should have been elected in August, a quo warranto proceeding could properly be had in chancery court against a person who was issued a certificate of election on basis of six write-in votes in the August election as there could have been no actual election without amounting to a disfranchisement of the voters of the municipality and consequently the suit was not an election contest within the meaning of this section. State ex rel. Bryant v. Maxwell, 189 Tenn. 187, 224 S.W.2d 833 (1949).

5. —Mandamus.

The legality and validity of an election may be inquired into in any proceeding by mandamus to compel other persons to recognize the claimant's title to the office, or when he seeks to enter into it, or otherwise assert his right to act as duly selected. Lawrence v. Ingersoll, 88 Tenn. 52, 12 S.W. 422, 17 Am. St. R. 870 (1889); Adcock v. Houk, 122 Tenn. 269, 122 S.W. 979 (1909).

Chancery has jurisdiction of mandamus to compel recognition of right of contestant to office; but will not prevent the incumbent from enjoying the perquisites pending suit. State ex rel. Brumit v. Grindstaff, 144 Tenn. 554, 234 S.W. 510 (1921).

6. —Jurisdiction of Contest.

Where jurisdiction or power to hear and determine a contested election is not conferred by statute upon any particular court, the same is vested in the court charged with the duty and having the power to induct the person elected into office. Blackburn v. Vick, 49 Tenn. 377 (1870); Winston v. Tennessee & P.R.R., 60 Tenn. 60 (1873); Lewis v. Watkins, 71 Tenn. 174 (1879); State ex rel. Swann v. Burchfield, 80 Tenn. 30 (1883); Leonard v. Haynes, 82 Tenn. 447 (1884); Johnson v. Brice, 112 Tenn. 59, 83 S.W. 791 (1903); Maloney v. Collier, 112 Tenn. 78, 83 S.W. 667 (1903).

A chancery court has jurisdiction of proceedings for contesting an election for the former office of county judge. There are no other provisions in the Code for the disposition of such a matter. Maloney v. Collier, 112 Tenn. 78, 83 S.W. 667 (1903).

A petition addressed to the chancellor of the division in which the election for a former office of county judge was held was sufficient in a contested election case over the election and office of county judge. Maloney v. Collier, 112 Tenn. 78, 83 S.W. 667 (1903).

A court acting without jurisdiction is acting without authority of law, and its decrees are absolutely void. Sheffy v. Mitchell, 142 Tenn. 48, 215 S.W. 403 (1919).

While the judiciary cannot remove a judge from office for official misconduct, it may exercise, in appropriate proceedings, jurisdiction to determine the due selection of one, and to declare the results in favor of one or the other candidate, or, upon proper pleadings, declare the election void. Morrison v. Buttram, 154 Tenn. 679, 290 S.W. 399 (1926).

This section confers exclusive jurisdiction on the chancery courts for election contests, not

contests of the title to nomination of a political party for office. Taylor v. Tennessee State Democratic Executive Comm., 574 S.W.2d 716 (Tenn. 1978).

7. —Authority of Special Chancellor.

A special chancellor appointed by the governor during the sickness of the regular chancellor is competent to try such contested elections. Wade v. Murry, 34 Tenn. 50 (1854); Ex parte Knight, 71 Tenn. 401 (1879). See Maloney v. Collier, 112 Tenn. 78, 83 S.W. 667 (1903).

A chancellor appointed by the governor pending a contested election of chancellor is a chancellor de facto, and his official acts are binding. Gold v. Fite, 61 Tenn. 237 (1872); Turney v. Dibrell, 62 Tenn. 235 (1873).

8. —Who May Contest Election.

The incumbent may oppose one's investment with an office claimed under a void election. Marshall v. Kerns, 32 Tenn. 68 (1852).

Any court or officer whose duty it is to induct the person offering into office, or who is called upon by legal process, as by mandamus, to recognize him, may make the point of the invalidity of the election. Marshall v. Kerns, 32 Tenn. 68 (1852); Lewis v. Watkins, 71 Tenn. 174 (1879); Maloney v. Collier, 112 Tenn. 78, 83 S.W. 667 (1903); Adcock v. Houk, 122 Tenn. 269, 122 S.W. 979 (1909); Heiskell v. Lowe, 126 Tenn. 475, 153 S.W. 284 (1912).

The incumbent, the inducting court, or the unsuccessful candidate may contest the successful candidate's election and right to the office. Lewis v. Watkins, 71 Tenn. 174 (1879); Maloney v. Collier, 112 Tenn. 78, 83 S.W. 667 (1903); Adcock v. Houk, 122 Tenn. 269, 122 S.W. 979 (1909).

Although an opposing candidate has received fewer votes than his opponent he may maintain a contest against such opponent on ground that the latter is disqualified to hold office. Lewis v. Watkins, 71 Tenn. 174 (1879); Adcock v. Houk, 122 Tenn. 269, 122 S.W. 979 (1909).

The question whether any citizen, as such, who was not a candidate at the election in question, or who is not interested in the office as incumbent, can make any question as to the validity of the election, is not decided, but is expressly reserved, and the holding in the case of Marshall v. Kerns, 32 Tenn. 68 (1852), that any citizen may oppose one's investment with an office claimed under a void election, is correctly characterized as a dictum. Maloney v. Collier, 112 Tenn. 78, 83 S.W. 667 (1903).

Petition which alleged that petitioner was the nominee of one of the two major political parties as a candidate for office of judge of general sessions court, that he had complied with all of the the statutory requirements for placing his name on official ballot, and that election commissioners had fraudulently withheld his name from the ballot stated a cause of action by a "candidate" so as to entitle petitioner to contest validity of election. Morrison v. Crews, 192 Tenn. 20, 237 S.W.2d 1 (1951).

Candidate for the former office as county judge had the right as a candidate to maintain contest of election for the sole purpose of having the election annulled, and it was immaterial whether chancellor had authority to allow petitioner to amend petition after period of limitation to affirmatively declare on the face that it was being presented by petitioner in the name of the state on the relation of petitioner. Hollis v. State, 192 Tenn. 118, 237 S.W.2d 952 (1951).

Opposing candidate in election is a proper party to institute election contest proceedings. Hatcher v. Bell, 521 S.W.2d 799 (Tenn. 1974).

This statute governs the right to contest an election and a group coming into existence after an election for the adoption or rejection of a question had no standing to contest the election. Moyers v. Sherrod, 525 S.W.2d 126 (Tenn. 1975).

Where city officials, concerned over the loss of revenue which would be sustained if a county referendum resulted in a favorable vote on the enabling sales tax resolution adopted by the quarterly county court [now county legislative body], met twice informally prior to the referendum, but their objective was not to organize a campaign in opposition to the question presented to the voters but to await the results and thereafter take whatever action they deemed to be in the interests of their respective cities, the city officials did not constitute a "campaign committee" or individuals who had "charge of a campaign for the adoption or rejection of a question submitted to the people" within the purview of this section and so had no standing to contest the referendum. City of Greenfield v. Butts, 573 S.W.2d 748 (Tenn. 1978).

While this section does not contain a definition of a "campaign committee" or of a "campaign" regarding a question, it would be an unreasonable interpretation to hold that a group of individuals, who were not even qualified to vote, could simply agree privately to oppose a referendum and then later contend that they had standing under this section to contest an unfavorable result. City of Greenfield v. Butts, 573 S.W.2d 748 (Tenn. 1978).

Municipal corporations could not challenge the county sales tax referendum held pursuant to § 67-6-706, under the provisions of this section, relating to election contests generally. City of Greenfield v. Butts, 573 S.W.2d 748 (Tenn. 1978).

A person who cannot legally hold the office in question is not a "candidate" for the purpose of bringing lawsuits to contest elections. Gilpatrick v. Reneau, 661 S.W.2d 863 (Tenn. 1983).

Plaintiff had standing to contest the election as a private citizen, notwithstanding the provi-

sions of subsection (b). Brackin v. Sumner County ex rel. Sumner County Bd. of County Comm'rs, 814 S.W.2d 57 (Tenn. 1991).

Plaintiff had standing to challenge election results as an individual in charge of a campaign even though it may not have gotten beyond the stages of a one-man campaign because of the time limitations mandated by § 2-17-105, where he had 6,100 supporters who had signed his petitions, among whom were advocates who had contributed to his campaign. Brackin v. Sumner County ex rel. Sumner County Bd. of County Comm'rs, 814 S.W.2d 57 (Tenn. 1991).

9. —Necessary Parties.

The state is not a necessary party to contested elections nor is it the duty of the district attorney to attend and take part in them. Such a contest is a suit between the private individuals contending for the office. Dodd v. Weaver, 34 Tenn. 670 (1855); Boring v. Griffith, 48 Tenn. 456 (1870); Lewis v. Watkins, 71 Tenn. 174 (1879); State v. McConnell, 71 Tenn. 332 (1879); State ex rel. Anderson v. Gossett, 77 Tenn. 644 (1882); Moore v. Sharp, 98 Tenn. 65, 38 S.W. 411 (1896); Nelson v. Sneed, 112 Tenn. 36, 83 S.W. 786 (1903); Maloney v. Collier, 112 Tenn. 78, 83 S.W. 667 (1903); Tennessee v. Condon, 189 U.S. 64, 23 S. Ct. 579, 47 L. Ed. 709 (1903).

10. —Validity of Election.

It is settled law that the validity of an election may be determined in a contested election case. Maloney v. Collier, 112 Tenn. 78, 83 S.W. 667 (1903).

An election void to an extent sufficient to change the result is void in toto. Nelson v. Sneed, 112 Tenn. 36, 83 S.W. 786 (1903), and citations.

The presumption is in favor of the validity of an election held under the forms of law. This presumption stands for a conclusion until rebutted by proof upon a contest. Churchwell v. White, 171 Tenn. 543, 106 S.W.2d 225 (1937).

11. ——Ineligible Candidate.

The fact that a plurality or a majority of the votes are cast for an ineligible candidate at a popular election does not entitle the candidate receiving the next highest number of votes to be declared elected; in such a case the electors have failed to make a choice and the election is a nullity. Blackwood v. Hollingsworth, 195 Tenn. 427, 260 S.W.2d 164 (1953).

After the induction into office, the contestant may rely upon matter which goes only to the disqualification or ineligibility of the incumbent, in connection with matter which bears exclusively upon the merits of his own claim to the office. Lewis v. Watkins, 71 Tenn. 174 (1879).

In a mandamus proceeding to compel petitioner's induction into office, his ineligibility may be relied on and adjudged. Lewis v. Watkins, 71 Tenn. 174 (1879).

12. ——Failure to Hold Elections in Some Districts.

A failure to hold a county election in one or more of the civil districts or voting precincts will vitiate the election, where the result might have been different, if the election had been held in the omitted district or precinct. Marshall v. Kerns, 32 Tenn. 68 (1852); Louisville & N.R.R. v. County Court, 33 Tenn. 636, 62 Am. Dec. 424 (1854); McCraw v. Harralson, 44 Tenn. 34 (1867); Barry v. Lauck, 45 Tenn. 588 (1869); Lewis v. Watkins, 71 Tenn. 174 (1879); Nelson v. Sneed, 112 Tenn. 36, 83 S.W. 786 (1903); Maloney v. Collier, 112 Tenn. 78, 83 S.W. 667 (1903).

A county election is not affected by the failure to hold an election in a civil district, where it does not affirmatively appear that the result would have been changed, had all the voters of the district voted one way. Louisville & N.R.R. v. County Court, 33 Tenn. 636, 62 Am. Dec. 424 (1854); McCraw v. Harralson, 44 Tenn. 34 (1867); Barry v. Lauck, 45 Tenn. 588 (1868); Lewis v. Watkins, 71 Tenn. 174 (1879); Nelson v. Sneed, 112 Tenn. 36, 83 S.W. 786 (1903); Maloney v. Collier, 112 Tenn. 78, 83 S.W. 667 (1903).

13. —Pleading and Practice.

Where there was no express regulation by statute in case of contested elections, the court before which the contest was held may prescribe and regulate the rules of pleading and practice in such cases, provided no fundamental principles are violated; and amendments may be ordered to present the questions. Boring v. Griffith, 48 Tenn. 456 (1870); Blackburn v. Vick, 49 Tenn. 377 (1870); Ex parte Knight, 71 Tenn. 401 (1879); Shields v. Davis, 103 Tenn. 538, 53 S.W. 948 (1899); Harmon v. Tyler, 112 Tenn. 8, 83 S.W. 1041 (1903); Nelson v. Sneed, 112 Tenn. 36, 83 S.W. 786 (1903).

The rules of pleading and practice in civil cases are applicable to contested elections, except where otherwise provided by statute authorizing the proceedings. Nelson v. Sneed, 112 Tenn. 36, 83 S.W. 786 (1903).

14. ——Essential Allegations.

Specific pleading is necessary to raise an issue as to the disqualification of a voter or for whom a disqualified voter voted. Moore v. Sharp, 98 Tenn. 491, 41 S.W. 587 (1897), overruled in part on other grounds, Brown v. Hows, 163 Tenn. 138, 40 S.W.2d 1017 (1931).

A bill attacking the result of an election upon the ground that it was carried by illegal votes must specifically set out the names of the illegal or disqualified voters, in order that an issue in respect of their qualification may be made. Crockett v. McLanahan, 109 Tenn. 517, 72 S.W. 950, 61 L.R.A. 914 (1903); Red River Furnace Co. v. Tennessee Cent. R.R., 113 Tenn. 697, 87 S.W. 1016 (1905).

A contestant in a suit against a candidate

who has received a certificate of election must show upon the face of his pleading a clear right to the office. Nelson v. Sneed, 112 Tenn. 36, 83 S.W. 786 (1903).

The rule that a pleading must show such a state of facts as will entitle the pleader to relief is peculiarly applicable to election contests. Nelson v. Sneed, 112 Tenn. 36, 83 S.W. 786 (1903).

It is essential that the contestant in his pleadings show both a valid election and a reception of a majority of the legal votes cast in the election. Nelson v. Sneed, 112 Tenn. 36, 83 S.W. 786 (1903); Johnson v. Brice, 112 Tenn. 59, 83 S.W. 791 (1903).

Contestant seeking to recover an office must show the validity of the election and that he was deprived of a sufficient number of votes at specified polling places to change the result of the election. Johnson v. Brice, 112 Tenn. 59, 83 S.W. 791 (1903).

Allegations as to the number of votes must be specific, and not indefinite. Maloney v. Collier, 112 Tenn. 78, 83 S.W. 667 (1903).

15. ——Sufficiency of Allegations.

Election returns cannot be purged of illegal votes upon general charges of fraud and misconduct of the officers of the election and friends and supporters of the contestee. Nelson v. Sneed, 112 Tenn. 36, 83 S.W. 786 (1903).

A bill asserting title to office, but showing void election, must be dismissed upon demurrer. Johnson v. Brice, 112 Tenn. 59, 83 S.W. 791 (1903).

In a contested election case seeking relief by purging the polls, an allegation that contestant received "many legal votes" which were not counted for him, and that "many votes," which were illegal and fraudulent, were counted for contestee, was too general and indefinite for any purpose whatever, as to the number of votes. Maloney v. Collier, 112 Tenn. 78, 83 S.W. 667 (1903).

A bill attacking an election upon the ground that 88 votes were rejected by the judges of the election, without more, was insufficient to show illegality. Red River Furnace Co. v. Tennessee Cent. R.R., 113 Tenn. 697, 87 S.W. 1016 (1905).

Allegations that contestants were "informed and therefore charge, that the following parties, to wit (naming nine persons), had prior to the election been convicted of infamous crimes and rendered infamous, and yet they voted in the election and for the proposition" was properly subject to demurrer for vagueness where it was not alleged that the convictions were had in a court or courts of competent jurisdiction and also the courts and terms of court in which the parties were tried were not alleged. Red River Furnace Co. v. Tennessee Cent. R.R., 113 Tenn. 697, 87 S.W. 1016 (1905).

Allegation that persons named as having been bribed cast their votes for the proposition in city election on question of subscription to railroad stock without any allegation that the judges counted such votes in favor of the subscription was not sufficient where a number of ballots were rejected. Red River Furnace Co. v. Tennessee Cent. R.R., 113 Tenn. 697, 87 S.W. 1016 (1905).

In contest of election to determine whether or not city should subscribe for stock of railroad general allegation that railroad company used a large amount of money with purchasable voters, and that in that way secured a "number of votes" and that, had it not been for the use of money in corrupting the electors, the number of votes cast "for subscription" would have been greatly below the number returned by the judges of the election was not a sufficient allegation of fraud. Red River Furnace Co. v. Tennessee Cent. R.R., 113 Tenn. 697, 87 S.W. 1016 (1905).

In contest where it was alleged that several hundred legal votes cast for the contestant were fraudulently called by the election officials and credited to the contestee, contestant was not required to allege the identity of the voters. Blackwood v. Hollingsworth, 195 Tenn. 427, 260 S.W.2d 164 (1953).

Although there were no general or specific charges of fraud or lack of duty on the part of the election officials in action to enjoin destruction of the ballots for the purpose of having an election declared void but there were sharp and pointed charges against some of the precinct officials in their conduct of the election, the accuracy of which would depend upon the proof, the petition was good as against demurrer. Southall v. Billings, 213 Tenn. 280, 375 S.W.2d 844 (1963).

16. ——Statement of Grounds of Contest.

The grounds of contest of election may be stated in two aspects, based upon the invalidity and the validity of the election. Taylor v. Carr, 125 Tenn. 235, 141 S.W. 745, 1913C Ann. Cas. 155 (1911).

17. ——Irrelevant Matters in Pleadings.

The court will not seek out irrelevant matters in the pleadings, in the absence of a motion pointing them out with reasonable accuracy. Johnson v. Brice, 112 Tenn. 59, 83 S.W. 791 (1903).

18. ——Amendments.

Amendments after issue will not be allowed without reason and negligence shown is a ground for denial. Harmon v. Tyler, 112 Tenn. 8, 83 S.W. 1041 (1903).

19. ——Binding Effect of Pleadings.

Where contestant of an election attacked in his pleadings the returns from a certain district, upon the ground that one ballot was marked for a voter not physically disabled, and was counted for contestee and not certified as

required by statute, such contestant was properly charged with such ballot where evidence showed it was cast for him instead of the contestee, although the latter did not, in his pleadings, attack the returns of such district in any manner. Moore v. Sharp, 98 Tenn. 491, 41 S.W. 587 (1897), overruled in part on other grounds, Brown v. Hows, 163 Tenn. 138, 40 S.W.2d 1017 (1931).

The contestant is bound by his pleadings, and a private suit to recover the office cannot be converted into a public suit to remove the incumbent as a usurper. Nelson v. Sneed, 112 Tenn. 36, 83 S.W. 786 (1903).

20. —Grounds for Dismissal of Contest.

Petition by taxpayers that election contest be dismissed on the ground that a special election would be a burden on taxpayers of the county could not be sustained, since special election was provided by law where a stated election was void. Shoaf v. Bringle, 198 Tenn. 526, 281 S.W.2d 255 (1955).

21. —Evidence.

The evidence failed to sustain the charge that certain persons were unlawfully kept from casting their ballots where there was no proof that such persons did not, in fact, vote, and the poll lists showed that persons of the same name did vote. Moore v. Sharp, 98 Tenn. 491, 41 S.W. 587 (1897), overruled in part on other grounds, Brown v. Hows, 163 Tenn. 138, 40 S.W.2d 1017 (1931).

Evidence that the political associations of certain voters were with men belonging to the political party to which a certain candidate for sheriff belonged is insufficient, alone and of itself, to show that they voted for such candidate. Moore v. Sharp, 98 Tenn. 491, 41 S.W. 587 (1897), overruled in part on other grounds, Brown v. Hows, 163 Tenn. 138, 40 S.W.2d 1017 (1931).

22. ——Declarations of Voters.

The voter's declarations as to how he voted, made after the election, are hearsay, and are incompetent evidence upon that issue. Moore v. Sharp, 98 Tenn. 491, 41 S.W. 587 (1897), overruled in part on other grounds, Brown v. Hows, 163 Tenn. 138, 40 S.W.2d 1017 (1931).

It is competent to prove for what candidate a voter cast his ballot, by his declaration of intent on or before voting, his expressions of sympathy or promise of support, his political associations and affiliations, his conduct at the polls, and other circumstances indicating his choice. Moore v. Sharp, 98 Tenn. 491, 41 S.W. 587 (1897), overruled in part on other grounds, Brown v. Hows, 163 Tenn. 138, 40 S.W.2d 1017 (1931).

23. ——Testimony of Voters.

Neither legal nor illegal voters can be compelled to testify for whom they voted in a contest over the election. Moore v. Sharp, 98 Tenn. 491, 41 S.W. 587 (1897), overruled in part on other grounds, Brown v. Hows, 163 Tenn. 138, 40 S.W.2d 1017 (1931).

24. ——Ballots as Evidence.

Where the ballots cast at an election have been preserved in strict accordance with the statutory requirements, and they are offered in evidence in a contested election case where the issue to be tried depends upon the number of ballots cast for each candidate, such ballots are controlling matter of evidence, sufficient in law to overthrow the prima facie case made by the returns. Stokely v. Burke, 130 Tenn. 219, 169 S.W. 763, 1916B Ann. Cas. 488 (1914).

The ballots are tampered with, and are inadmissible to contradict the returns of the election, where they are not preserved as required by law. Stokely v. Burke, 130 Tenn. 219, 169 S.W. 763, 1916B Ann. Cas. 488 (1914).

When ballots voted at an election have not been preserved as required by law and have been three times counted by unauthorized persons after the election and ample opportunity afforded for destruction or substitution, they are inadmissible to control the returns of the contest. Stokely v. Burke, 130 Tenn. 219, 169 S.W. 763, 1916B Ann. Cas. 488 (1914).

25. —Remedies and Relief.

The maxim of the law that there is no wrong without a remedy will be applied where the exercise and enjoyment of a public office is wrongfully prevented, so as to afford the person entitled a remedy to recover the office. Dodd v. Weaver, 34 Tenn. 670 (1855); Mayor of Memphis v. Woodward, 59 Tenn. 499, 27 Am. R. 750 (1873); Tomlinson v. Board of Equalization, 88 Tenn. 1, 12 S.W. 414, 6 L.R.A. 207 (1889); Moore v. Sharp, 98 Tenn. 65, 38 S.W. 411 (1896); Malone v. Williams, 118 Tenn. 390, 103 S.W. 798, 121 Am. St. R. 1002 (1907).

There can be no purging of the polls under a bill showing the election to be void. Johnson v. Brice, 112 Tenn. 59, 83 S.W. 791 (1903).

The invalidity of an election may be the sole redress sought. Maloney v. Collier, 112 Tenn. 78, 83 S.W. 667 (1903).

26. ——Injunction.

An injunction was illegal which restrained the voting in quarterly court of a justice possessing a certificate of election. State ex rel. Pierce v. Hardin, 163 Tenn. 471, 43 S.W.2d 924 (1931).

An injunction may not issue, in aid of an election contest to restrain the execution of the will of the voters as certified by the election officers. Churchwell v. White, 171 Tenn. 543, 106 S.W.2d 225 (1937).

27. ——Recount.

In an election contest where the evidence established that following the election the bal-

lot boxes had been kept under lock and key in a city jail and had not been tampered with, a recount could be had and the winner would be determined on the basis of the recount. Blackwood v. Hollingsworth, 195 Tenn. 427, 260 S.W.2d 164 (1953).

28. —Costs.

A cause of action which rests on plaintiff's title to office is different from one which rests on the disqualification of the defendant and if plaintiff chooses to unite them in the same suit and if he succeed in one and fail in the other he may be charged with the costs in that branch in which he fails. Lewis v. Watkins, 71 Tenn. 174 (1879).

DECISIONS UNDER PRIOR LAW

ANALYSIS

1. Statutes Mandatory.

The provisions of the statutes governing contests of elections for former office of justice of the peace were mandatory and jurisdictional and they had to be complied with. Harmon v. Tyler, 112 Tenn. 8, 83 S.W. 1041 (1903); Nelson v. Sneed, 112 Tenn. 36, 83 S.W. 786 (1903).

2. Jurisdiction.

Jurisdiction was formerly conferred upon the (former) county court to try contested elections for (former) justices of the peace, constables, county trustees, county registers, county court clerks, county surveyors, or rangers. Dodd v. Weaver, 34 Tenn. 670 (1855); Lightfoot v. Grove, 52 Tenn. 473 (1871); Bouldin v. Lockhart, 62 Tenn. 262 (1873); Leonard v. Haynes, 82 Tenn. 447 (1884); McCreary v. First Nat'l Bank, 109 Tenn. 128, 70 S.W. 821 (1902); Stokely v. Burke, 130 Tenn. 219, 169 S.W. 763, 1916B Ann. Cas. 488 (1914).

Chancery court had no jurisdiction to try suit for usurpation of office against person inducted into office of sheriff where the bill alleged facts amounting to a contest of election as the proper tribunal for contests of election for such office was the circuit court. State ex rel. Anderson v. Gossett, 77 Tenn. 644 (1882).

The (former) monthly county court had no jurisdiction of a contested election over the office of county superintendent of schools, because he was elected by the (former) quarterly county court, whose final legislative judgment in the election, if not violative of the law, could not be reviewed and set aside by the courts. Leonard v. Haynes, 82 Tenn. 447 (1884); Johnson v. Brice, 112 Tenn. 59, 83 S.W. 791 (1903).

The jurisdiction of the (former) county court is limited to what the statute expressly confers, and should not be extended by construction. Leonard v. Haynes, 82 Tenn. 447 (1884).

A contested election of this character was not a "cause" within the meaning of statute conferring upon chancery courts concurrent jurisdiction of "all civil causes of action triable in the circuit court." Shields v. Davis, 103 Tenn. 538, 53 S.W. 948 (1899); Baker v. Mitchell, 105 Tenn. 610, 59 S.W. 137 (1900); McCreary v. First Nat'l Bank, 109 Tenn. 128, 70 S.W. 821 (1902); Memphis St. Ry. v. Byrne, 119 Tenn. 278, 104 S.W. 460 (1907); Richardson v. Young, 122 Tenn. 471, 125 S.W. 664 (1909).

Jurisdiction of contested election of the officers of a municipal corporation was in the circuit court and not the chancery court. Baker v. Mitchell, 105 Tenn. 610, 59 S.W. 137 (1900); Adcock v. Houk, 122 Tenn. 269, 122 S.W. 979 (1909); Taylor v. Carr, 125 Tenn. 235, 141 S.W. 745, 1913C Ann. Cas. 155 (1911).

The (former) county judge had jurisdiction over contested election cases and the statutes did not give jurisdiction over such cases to the quarterly court. Johnson v. Brice, 112 Tenn. 59, 83 S.W. 791 (1903).

"County court" in the former statute relating to contested elections for county officers referred to the monthly court presided over by the (former) county judge or chairman and not the (former) quarterly county court. Johnson v. Brice, 112 Tenn. 59, 83 S.W. 791 (1903); Throgmorton v. Copeland, 188 Tenn. 248, 218 S.W.2d 994 (1949).

Original jurisdiction of contested election cases involving offices of county register and county clerk was in the (former) monthly county court to be held by the (former) county judge or chairman. Johnson v. Brice, 112 Tenn. 59, 83 S.W. 791 (1903); Sheffy v. Mitchell, 142 Tenn. 48, 215 S.W. 403 (1919); Brown v. Hows, 163 Tenn. 138, 40 S.W.2d 1017 (1931).

The county court referred to in the former statute was the quorum court, presided over by the (former) county judge or county chairman. This court was judicial in its nature, and in the case of a (former) county judge, it must be presided over by one learned in the law. Sheffy v. Mitchell, 142 Tenn. 48, 215 S.W. 403 (1919).

The (former) quarterly county court had no jurisdiction to hear election contest cases.

Sheffy v. Mitchell, 142 Tenn. 48, 215 S.W. 403 (1919).

Jurisdiction over contested election cases to county board of education was in the (former) county court instead of the circuit court. Wolfenbarger v. Election Comm'n, 166 Tenn. 548, 64 S.W.2d 12 (1933).

3. Nature of Tribunal.

The (former) county court exercised judicial, and not merely ministerial, functions in determining contested elections. Dodd v. Weaver, 34 Tenn. 670 (1855); Moore v. Sharp, 98 Tenn. 65, 38 S.W. 411 (1896), overruled in part on other grounds, Brown v. Hows, 163 Tenn. 138, 40 S.W.2d 1017 (1931).

The circuit court, in determining an election contest over the office of sheriff under former statutes did not sit as a special tribunal, but as a court in the exercise of its judicial functions. Moore v. Sharp, 98 Tenn. 65, 38 S.W. 411 (1896), overruled in part on other grounds, Brown v. Hows, 163 Tenn. 138, 40 S.W.2d 1017 (1931).

Prior to the 1950 Code Supplement jurisdiction of contests of election of circuit judges, chancellors, and attorney general was not conferred upon the chancery court, as a court, but the chancellor was constituted a special tribunal to determine and hear the contest. Barham v. Denison, 159 Tenn. 226, 17 S.W.2d 692 (1929).

Prior to the Code Supplement of 1950 jurisdiction was not conferred on the court but on the chancellor as a special tribunal. Throgmorton v. Copeland, 188 Tenn. 248, 218 S.W.2d 994 (1949).

4. Commencement of Contest.

Prior to Acts 1925, ch. 5, the (former) county court had jurisdiction of contested elections of (former) justices of the peace only when the contest was commenced as prescribed before the returns were made, such provisions being mandatory and jurisdictional. No provision was made for contest to be commenced after the candidate claiming to have been elected had been inducted into office by being commissioned and qualified. Gallagher v. Moore, 59 Tenn. 257 (1873); Puckett v. Springfield, 97 Tenn. 264, 37 S.W. 2 (1896).

By virtue of Acts 1925, ch. 5, the successful party held office pending determination of any contest proceeding, and though contest proceedings should be filed promptly there was no longer any necessity for the immediate action required prior to passage of the 1925 act. Burnett v. Stokely, 181 Tenn. 485, 181 S.W.2d 750 (1944).

5. Period for Filing Notice.

In elections for the former office of justice of the peace, the polls could not be legally compared until the first Monday succeeding the election, and a contestant was entitled to the whole of that day to file notice of contest, and this right could not be defeated by forwarding the returns to the secretary of state early that day. Puckett v. Springfield, 97 Tenn. 264, 37 S.W. 2 (1896).

6. Transfer of Cases.

Where the (former) county judge, because of interest, was incompetent to hear and determine a case upon its merits, for instance, a contested election case over the office of county register or (former) clerk of the county court, it was proper for him, under former § 17-2-114 (obsolete), to certify the case to the circuit court. Johnson v. Brice, 112 Tenn. 59, 83 S.W. 791 (1903).

County court did not abuse its discretion in transferring (former) justice of peace election contest case to chancery court where county judge was incompetent to try case even though petition for transfer requested change to circuit court. Throgmorton v. Copeland, 188 Tenn. 248, 218 S.W.2d 994 (1949).

7. Pleading and Practice.

The circuit court must regulate its own practice, provided no fundamental principles were violated. The contest should not be dismissed for merely formal defects which could be supplied or amended. Boring v. Griffith, 48 Tenn. 456 (1870); Blackburn v. Vick, 49 Tenn. 377 (1870); Shields v. Davis, 103 Tenn. 538, 53 S.W. 948 (1899); Harmon v. Tyler, 112 Tenn. 8, 83 S.W. 1041 (1903); Nelson v. Sneed, 112 Tenn. 36, 83 S.W. 786 (1903). See Barham v. Denison, 159 Tenn. 226, 17 S.W.2d 692 (1929).

Prior to the 1950 Code Supplement it was held that the chancellor could prescribe the practice and procedure for the trial. Harmon v. Tyler, 112 Tenn. 8, 83 S.W. 1041 (1903); Barham v. Denison, 159 Tenn. 226, 17 S.W.2d 692 (1929).

8. Judicial Office.

Former office of county judge was a judicial office within the meaning of former statute. Stone v. Edmondson, 168 Tenn. 698, 80 S.W.2d 665 (1935).

9. District Attorney General.

No formal induction into office by the court is necessary in the case of a district attorney general. That proceeding must be had before a chancellor. The decision of the circuit court as to which of the claimants it will permit to exercise the office of district attorney general for the state before it, is made for its own guidance solely, and is in no sense an adjudication between the claimants as to their respective right or title to the office. Hyde v. Trewhitt, 47 Tenn. 59 (1869).

10. Injunction.

It was unlawful to enjoin a (former) justice of the peace, elected on the face of the returns and possessing a certificate of election, from voting at a meeting of the quarterly county court.

State ex rel. Pierce v. Hardin, 163 Tenn. 471, 43 S.W.2d 924 (1931).

11. Review.

The judgment of the (former) county court in a contested election case was not final and conclusive, but was subject to revision, or to a trial de novo in the circuit court, where the case could be taken from the (former) county court by appeal or certiorari. Dodd v. Weaver, 34 Tenn. 670 (1855); Blackburn v. Vick, 49 Tenn. 377 (1870); Lightfoot v. Grove, 52 Tenn. 473 (1871); Friedman Bros. v. Mathes, 55 Tenn. 488 (1872); Bouldin v. Lockhart, 62 Tenn. 262 (1873); Tomlinson v. Board of Equalization, 88 Tenn. 1, 12 S.W. 414, 6 L.R.A. 207 (1889); Moore v. Sharp, 98 Tenn. 65, 38 S.W. 411 (1896); Hayes v. Kelley, 111 Tenn. 294, 76 S.W. 891 (1903); Staples v. Brown, 113 Tenn. 639, 85 S.W. 254 (1904); Taylor v. Carr, 125 Tenn. 235, 141 S.W. 745, 1913C Ann. Cas. 155 (1911).

An appeal lay from the judgment of the circuit court in a contested election case brought into that court from the (former) county court. Dodd v. Weaver, 34 Tenn. 670 (1855); Blackburn v. Vick, 49 Tenn. 377 (1870).

Collateral References. 26 Am. Jur. 2d Elections §§ 316-364, 369.

29 C.J.S. Elections §§ 245-322.

Cost or reimbursement for expenses incident to election contest or recount. 106 A.L.R. 928.

Custody of ballots since original count, determination of facts as condition of recount. 71 A.L.R. 435.

Power of election officers to withdraw or change their returns. 168 A.L.R. 855.

Elections ⇨ 269-308.

2-17-102. Contests for offices of general assembly members. — Contests for the office of senator in the general assembly are decided by the senate, and contests for the office of representative in the general assembly are decided by the house of representatives. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1702.]

2-17-103. Contests for office of presidential and vice presidential elector. — (a) Contests for the office of presidential and vice presidential elector shall be decided finally and unreviewably before the last day of November by the presidential electors tribunal composed of the governor, secretary of state and attorney general and reporter.

(b) A petition of contest shall be filed with the secretary of state and a copy of the petition delivered to the chair of the state executive committee of the political party against whose electors the complaint is made within ten (10) days after the election. The petition shall state each ground of complaint specifically and concisely.

(c) A hearing shall be held on the petition between the fifth and tenth day after it is filed at a time and place set by the governor. The governor shall publish a notice of the hearing in each grand division in a newspaper of general circulation. No other pleadings are required. The complaining political party or candidate for elector and each other candidate may be present at the hearing in person and by counsel, may examine and cross-examine witnesses, and may introduce evidence relevant to the grounds of protest.

(d) The governor may administer oaths and subpoena witnesses for the tribunal. The hearing is not subject to the rules of evidence as applied in courts.

(e) After deciding the contest by majority vote, the tribunal shall record its decision and file it with the returns of the election. The governor, secretary of state, and the attorney general and reporter shall then proceed under § 2-8-110 as in uncontested elections. [Acts 1972, ch. 740, § 1; 1978, ch. 754, § 15; T.C.A., § 2-1703.]

2-17-104. Contest of primary election. — (a) Any candidate may contest the primary election of the candidate's party for the office for which that person was a candidate.

(b) To institute a contest, the candidate shall, within five (5) days after the certification of results by the county election commission, file a written notice of contest with the state primary board of the candidate's party and with all other candidates who might be adversely affected by the contest. In the notice the candidate shall state fully the grounds of the contest.

(c) The state primary board shall hear and determine the contest and make the disposition of the contest which justice and fairness require, including setting aside the election if necessary. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1704.]

Textbooks. Tennessee Jurisprudence, 10 Tenn. Juris., Elections, §§ 17, 18, 25; 17 Tenn. Juris., Jurisdiction, § 23.

NOTES TO DECISIONS

ANALYSIS

1. In general.
2. Jurisdiction.
3. Parties.

1. In General.

A suit to enjoin the placing of a candidate's name on the general election ballot on the ground that he would not at that time have attained the required age was held not to be an election contest to which this section applied. Comer v. Ashe, 514 S.W.2d 730 (Tenn. 1974).

The legislative intent was that intraparty squabbles over the nominating procedures are to be considered a political matter which are to be resolved by the party itself without judicial intervention. Taylor v. Tennessee State Democratic Executive Comm., 574 S.W.2d 716 (Tenn. 1978).

2. Jurisdiction.

Under this section the State Primary Board of the Democratic Party, not the chancery courts, has exclusive jurisdiction to dispose of a contest of the title to nomination of a political party for office. Taylor v. Tennessee State Democratic Executive Comm., 574 S.W.2d 716 (Tenn. 1978).

The chancery court is not an appropriate forum for party members to challenge alleged misconduct in making party nominations. State ex rel. Inman v. Brock, 622 S.W.2d 36 (Tenn.), cert. denied, 454 U.S. 941, 102 S. Ct. 477, 70 L. Ed. 2d 249 (1981).

3. Parties.

A Republican is without standing to contest a Democratic primary election. Dobbins v. Crowell, 577 S.W.2d 190 (Tenn. 1979); Payne v. Ramsey, 591 S.W.2d 434 (Tenn. 1979).

DECISIONS UNDER PRIOR LAW

1. Finality of Action of Commission.

The action of the state primary election board (now state primary board) is final and conclusive and is not subject to review by the court. Heiskell v. Ledgerwood, 144 Tenn. 666, 234 S.W. 1001 (1921).

Collateral References. State court jurisdiction over contest involving primary election for member of congress. 68 A.L.R.2d 1320.

2-17-105. Time for filing complaint. — The complaint contesting an election under § 2-17-101 shall be filed within ten (10) days after the election. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1705.]

Textbooks. Gibson's Suits in Chancery (7th ed., Inman), § 568.

Tennessee Jurisprudence, 10 Tenn. Juris., Elections, § 19; 16 Tenn. Juris., Judges, § 6.

Cited: State ex rel. Dye v. Rawls, 573 S.W.2d 159 (Tenn. 1978).

NOTES TO DECISIONS

ANALYSIS

1. Right to contest.
2. Statute of limitations.

1. Right to Contest.

The election contest statute gives the unsuccessful candidate the right to contest the validity of the election by suit filed within 10 days without limitation to any specific ground or grounds of contest. Hatcher v. Bell, 521 S.W.2d 799 (Tenn. 1974).

Plaintiff had standing to challenge election results as an individual in charge of a campaign even though it may not have gotten beyond the stages of a one-man campaign because of the time limitations mandated by this section, where he had 6,100 supporters who had signed his petitions, among whom were advocates who had contributed to his campaign. Brackin v. Sumner County ex rel. Sumner County Bd. of County Comm'rs, 814 S.W.2d 57 (Tenn. 1991).

2. Statute of Limitations.

If a special statute of limitations applies to a special statutory proceeding, as in this section, that limitation will be applied when a declaratory judgment action is employed seeking the same result as would be achieved in the special proceeding. Dehoff v. Attorney Gen., 564 S.W.2d 361 (Tenn. 1978).

Where plaintiffs, in action for declaratory judgment filed more than three months after the election, claimed that county referendum election was invalid because the question submitted was inadequate and misleading in that it failed to refer to the effect which the private act voted upon had on the powers and functions of the (former) county judge, the claims amounted to an election contest which was barred by the limitation period prescribed in this section. Dehoff v. Attorney Gen., 564 S.W.2d 361 (Tenn. 1978).

The "first day" which is excluded in calculation of the 10 days in this section is the day of the election. Sanders v. Parks, 718 S.W.2d 676 (Tenn. 1986).

The trial court denied plaintiff's motion to file a second amended complaint outside the statutory 10-day period despite the relaxed pleading requirements of the Tennessee Rules of Civil Procedure, specifically provisions regarding the amendment of complaints found in Tenn. R. Civ. P. 15. Forbes v. Bell, 816 S.W.2d 716 (Tenn. 1991).

DECISIONS UNDER PRIOR LAW

ANALYSIS

1. Nature and application of statute.
2. Amendments.
3. Exhibits.
4. Replication.
5. Defenses.
6. Cross-bill.
7. Contest barred.

1. Nature and Application of Statute.

A statutory requirement that a sworn statement of the grounds of the contest should be presented to the chancellor within 20 days after the election was in the nature of a statute of limitation, and this construction of the statute applied to all amended or other pleadings of the contestant, making new charges upon which to contest the election, with the same force as it did to the original bill. Harmon v. Tyler, 112 Tenn. 8, 83 S.W. 1041 (1903).

2. Amendments.

The statutory limitation applies to amendments as well as the original bill. State ex rel. Davis v. Kivett, 180 Tenn. 598, 177 S.W.2d 551 (1944).

3. Exhibits.

Where in a proceeding to have an election declared void a list containing the names of voters whose poll taxes had been paid in bulk was filed as an exhibit more than 20 days after the election such exhibit should have been struck from the record. State ex rel. Davis v. Kivett, 180 Tenn. 598, 177 S.W.2d 551 (1944).

4. Replication.

The contestant in a contested election case could not, more than 20 days after the election, file a further pleading, in the form of a replication to the contestee's answer, stating new and distinct grounds upon which to contest the election of the contestee; and evidence offered to sustain such charges will not be heard or considered. Harmon v. Tyler, 112 Tenn. 8, 83 S.W. 1041 (1903).

5. Defenses.

The limitation has no application to the contestee's defense to the grounds of contest pre-

sented against him, though his defense may in part be an attack on the vote and returns in favor of the contestant, on the ground of fraud and illegality. Harmon v. Tyler, 112 Tenn. 8, 83 S.W. 1041 (1903).

Orderly procedure and fairness to the contestant require that, within a reasonable time before the trial, the contestee present his defense in some tangible form, so that the chancellor may be apprised of the issues to be tried, and so that the contestant may have notice of the proof to be offered by the contestee, and time in which to produce his evidence in rebuttal. Harmon v. Tyler, 112 Tenn. 8, 83 S.W. 1041 (1903).

6. Cross-Bill.

There is no provision for filing a cross-bill in contested elections, and none is necessary or allowable. There can be no cross contest, because only one certificate can be awarded, and, the contestee having received it, there is no other person apparently elected whose right to the office can be contested. An answer is evidently the proper pleading and should be filed. Where the contestee files a pleading which is an answer, the fact that he filed a cost bond does not change its character. Harmon v. Tyler, 112 Tenn. 8, 83 S.W. 1041 (1903).

7. Contest Barred.

Action of citizen attacking validity of election of (former) county judge was barred by this section where it was filed 29 days after election. Stone v. Edmondson, 168 Tenn. 698, 80 S.W.2d 665 (1935).

2-17-106. Time of trial — Service of process. — (a) The trial of an election contest shall be held not less than fifteen (15) nor more than fifty (50) days from the day the complaint is filed and not less than ten (10) days after the complaint is served on the defendant.

(b) A sheriff or constable of the division or circuit shall serve a copy of the complaint on the defendant and make return to the court. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1706.]

Textbooks. Gibson's Suits in Chancery (7th ed., Inman), § 568.

Tennessee Jurisprudence, 10 Tenn. Juris., Elections, §§ 19, 20.

NOTES TO DECISIONS

1. Denial of Relief.

Although court of appeals would be reluctant to deny relief because a court was unable to try and decide an election contest within 50 days, if the plaintiff in such a case does not do his best to obtain a timely decision, then denial of relief is in order under the statute. Crenshaw v. Blanton, 606 S.W.2d 285 (Tenn. Ct. App.), appeal dismissed, 449 U.S. 914, 101 S. Ct. 310, 66 L. Ed. 2d 142 (1980).

Decisions Under Prior Law

Analysis

1. Purpose of statute.
2. Return.
3. Time of trial.

1. Purpose of Statute.

The statute requiring a statement of grounds of contest to be filed within 20 days after the election was intended to give the contestee time in which to prepare and make his defense and not to limit the time in which he could do so, and clearly showed that he could make defense at the expiration of the limit in which contestant was required to present his statement of grounds of contest, for the latter might delay filing his statement with the chancellor until the nineteenth day after the election. Harmon v. Tyler, 112 Tenn. 8, 83 S.W. 1041 (1903).

2. Return.

A statute specifying that election contest should be made returnable to and answerable in next succeeding term of court had reference to general election held on first Thursday in August, hence contest of special election on July 20 for (former) office of justice of peace filed on September 1 and made returnable on second Monday in September was timely, since otherwise contestants would have only about 10 days to contest special election instead of 25 days allowed contestants at general election. Burnett v. Stokely, 181 Tenn. 485, 181 S.W.2d 750 (1944).

3. Time of Trial.

A contested election case could be tried after the induction into office by the (former) county court, provided it was commenced at the first term of the circuit court after the election, if there was sufficient time to give notice of the contest. Boring v. Griffith, 48 Tenn. 456 (1870).

2-17-107. Testimony and orders. — The testimony in an election contest may be taken orally or by deposition, upon such notice as the court may prescribe, and the court may make all necessary orders with respect to any matter required in the contest. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1707.]

2-17-108. Witnesses. — The clerk of the court may, upon the application of either party, issue subpoenas for witnesses, and the witnesses summoned shall be bound under the same penalties as witnesses in the circuit court to attend and give evidence, and for such attendance shall be allowed the same compensation. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1708.]

2-17-109. Poll books, voter signature lists and ballot applications as evidence. — (a) Poll books, voter signature lists and ballot applications, or copies of them, certified by the officer having custody of them, are official records and shall be received as evidence in any case arising out of the election. They may be impeached by other evidence.

(b) If the poll books, voter signature lists and ballot applications or copies of them are not certified, they may nonetheless be proved by other credible evidence and received as evidence in an election contest. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1709; Acts 1990, ch. 727, § 5.]

Textbooks. Gibson's Suits in Chancery (7th ed., Inman), § 568.

NOTES TO DECISIONS

1. Failure to Properly Certify Poll Books.
Where election officials failed to properly certify poll books, lists of votes and tally sheets, parties to election contest should have been permitted to introduce proof to show whether or not there was in fact miscounting of ballots. Summitt v. Russell, 199 Tenn. 174, 285 S.W.2d 137 (1955).

2-17-110. Voting machine as evidence. — (a) If voting machines were used in the election, any party to the contest who challenges either the accuracy of the voting machines or the accuracy of the election officials' recording of the vote on the machines may have the machine or machines brought into court to be examined by the parties or as evidence.

(b) The total votes shown on the machine shall be conclusive unless the court finds reason to believe that the vote shown on the machine is not accurate. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1710.]

Textbooks. Gibson's Suits in Chancery (7th ed., Inman), § 568.

2-17-111. Minutes of proceedings. — The clerk of the court shall keep minutes of the proceedings in contested election cases as in other cases. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1711.]

2-17-112. Judgment. — (a) After hearing the case the court shall give judgment either:

(1) Confirming the election;

(2) Declaring the election void;

(3) Declaring a tie between persons who have the same number of votes if it appears that two (2) or more persons who have the same number of votes have, or would have had if the ballots intended for them and illegally rejected had been received, the highest number of votes for the office; or

(4) Declaring a person duly elected if it appears that such person received or would have received the highest number of votes had the ballots intended for such person and illegally rejected been received.

(b) A judgment under subdivision (a)(4) deprives the person whose election is contested of all right or claim to the office and invests the person declared by the judgment duly elected with the right to the office. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1712.]

Textbooks. Gibson's Suits in Chancery (7th ed., Inman), § 569.

Tennessee Jurisprudence, 10 Tenn. Juris., Elections, § 23.

Cited: Hatcher v. Bell, 521 S.W.2d 799 (Tenn. 1974); Payne v. Ramsey, 591 S.W.2d 434 (Tenn. 1979).

NOTES TO DECISIONS

ANALYSIS

1. Apportionment of illegal votes.
2. Votes returned for wrong candidate.
3. Rejection of part of grounds for contest.
4. Violation — Effect.
5. Evidence sufficient to void election.

1. Apportionment of Illegal Votes.

Where the evidence shows that illegal votes were cast, but does not show for whom they were cast, such votes should be deducted from the vote of each candidate, in the proportion which that vote bears to the entire vote polled at the precinct where the illegal votes were cast. Moore v. Sharp, 98 Tenn. 491, 41 S.W. 587 (1897), overruled in part on other grounds, Brown v. Hows, 163 Tenn. 138, 40 S.W.2d 1017 (1931).

Apportionment is allowable only where it is shown to be impossible to ascertain for whom the illegal votes were cast. Contestant must make at least a prima facie case of title to office. Morrison v. Buttram, 154 Tenn. 679, 290 S.W. 399 (1926); Barham v. Denison, 159 Tenn. 226, 17 S.W.2d 692 (1929).

2. Votes Returned for Wrong Candidate.

Where the uncontradicted evidence shows that a certain number of votes were cast for the contestant, while a less number were returned for him, and that a certain number of votes were cast for a third candidate, while a less number were returned for him, but there is no evidence, except the face of the returns, that contestee received the number of votes returned for him, or any other number, and it is evident that the votes not counted and returned for the contestant and the third candidate were counted and returned for the contestee, and by taking that number from his returned votes, and adding the number of votes cast but not counted for contestant to his returned votes, it is found that contestant has a plurality of votes in the county, he will be declared to have been elected, and the fact will be so certified. Shields v. McMahan, 112 Tenn. 1, 81 S.W. 597 (1903), overruled in part on other grounds, Brown v. Hows, 163 Tenn. 138, 40 S.W.2d 1017 (1931).

3. Rejection of Part of Grounds for Contest.

One of two grounds for the contest of an election properly stated may be sustained, and the other rejected on the evidence. Maloney v. Collier, 112 Tenn. 78, 83 S.W. 667 (1903).

4. Violation — Effect.

Violation of the absentee voting statutes presents the opportunity for fraud, whether committed or intended and whether there is proof of actual fraud only, or a violation of statutory safeguards only, or a combination of the two, the issue is whether or not those acts, viewed cumulatively, compel the conclusion that the election did not express the free and fair will of the qualified voters. Emery v. Robertson County Election Comm'n, 586 S.W.2d 103 (Tenn. 1979).

5. Evidence Sufficient to Void Election.

Courts may void elections upon a sufficient quantum of proof that fraud or illegality so permeated the conduct of the election as to render it incurably uncertain, even though it cannot be shown to a mathematical certainty that the result might have been different. Emery v. Robertson County Election Comm'n, 586 S.W.2d 103 (Tenn. 1979).

The courts may void an election where the evidence reveals that the number of illegal ballots cast equals or exceeds the difference between the two candidates receiving the most votes. Emery v. Robertson County Election Comm'n, 586 S.W.2d 103 (Tenn. 1979).

DECISIONS UNDER PRIOR LAW

ANALYSIS

1. Trial.
2. Votes intended but not cast.

1. Trial.

In a contested election suit over the office of sheriff, it was the province of the circuit judge to hear and determine the controversy, and neither party was entitled to a jury. Shields v. McMahan, 112 Tenn. 1, 81 S.W. 597 (1903), overruled in part on other grounds, Brown v. Hows, 163 Tenn. 138, 40 S.W.2d 1017 (1931); Taylor v. Carr, 125 Tenn. 235, 141 S.W. 745, 1913C Ann. Cas. 155 (1911).

2. Votes Intended but Not Cast.

A candidate for office was not entitled to credit for one intending to vote for him, who did not vote at the election, merely because the one holding the poll tax receipt of such voter was improperly arrested, where he was released before the polls were closed, and where the voter did not need a poll tax receipt to entitle him to vote, as where he had just attained his majority, and was also disfranchised because he had changed his residence after registering, and had failed to reregister. Moore v. Sharp, 98 Tenn. 491, 41 S.W. 587 (1897), overruled in part on other grounds, Brown v. Hows, 163 Tenn. 138, 40 S.W.2d 1017 (1931).

Collateral References. 26 Am. Jur. 2d Elections § 357.
29 C.J.S. Elections §§ 306, 317.

2-17-113. Election declared void. — If the person whose election is contested is found to have received the highest number of legal votes, but the election is declared null by reason of constitutional disqualifications on that person's part or for other causes, the election shall be declared void. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1713.]

Cited: Brackin v. Sumner County ex rel. Sumner County Bd. of County Comm'rs, 814 S.W.2d 57 (Tenn. 1991).

NOTES TO DECISIONS

ANALYSIS

1. Determination of validity of election.
2. Legal votes.
3. Age requirement.
4. Failure to give notice of special election.
5. Insufficient notice of special election.
6. Conspiracy to defeat contestant.
7. Commission under void election.
8. Holding over after election declared void.

1. Determination of Validity of Election.

The validity of any election concerning which the Code makes provision for contests may be determined in such contest proceeding. Maloney v. Collier, 112 Tenn. 78, 83 S.W. 667 (1903); Shoaf v. Bringle, 192 Tenn. 695, 241 S.W.2d 832 (1951).

An election contest is a proper proceeding to test the validity of an election on the charge that the candidate receiving the highest number of votes in the election has not complied with the residence requirements set forth in the Constitution and was ineligible on the day of election to hold office. Hatcher v. Bell, 521 S.W.2d 799 (Tenn. 1974).

2. Legal Votes.

Where a candidate did not meet the constitutional age requirement for judge of juvenile court, but such fact was not well known among the electorate, votes cast for such candidate were "legal votes" within the meaning of this section. Stambaugh v. Price, 532 S.W.2d 929 (Tenn. 1976).

3. Age Requirement.

Where the candidate receiving the highest number of votes for judge of juvenile court did not meet the constitutional age requirements for the office, the election was properly declared void under this section. Stambaugh v. Price, 532 S.W.2d 929 (Tenn. 1976).

4. Failure to Give Notice of Special Election.

A failure to give notice of a special election as required by statute, in one county of a chancery division (now judicial district), though an election was actually held in nine of the 12 civil districts in that county, rendered the election in such county void, especially where there was a failure to hold the election in about two fifths of

the civil districts in the other counties of the division, and there were other irregularities, omissions, and misconduct. Barry v. Lauck, 45 Tenn. 588 (1868).

5. Insufficient Notice of Special Election.
A special election called to fill a vacancy in the office of chancellor may be declared void in an election contest for want of sufficient notice. Barry v. Lauck, 45 Tenn. 588 (1868).

6. Conspiracy to Defeat Contestant.
Under this section, if the chancellor determines that the defendants in a contest fraudulently conspired to defeat the contestant, it would be his duty to declare the election void and certify the matter to the governor, who in turn would order a reelection. Shoaf v. Bringle, 192 Tenn. 695, 241 S.W.2d 832 (1951).

7. Commission Under Void Election.
If the election which is being contested is declared void, the issuance of a commission by the governor to one apparently elected is without effect. Barry v. Lauck, 45 Tenn. 588 (1868).

8. Holding over After Election Declared Void.
The statutes do not contemplate that the person declared "elected" in a void election should continue in office for any period of time after the circuit court declares his election void and that decision becomes final or is upheld on appeal, and such person declared elected at the void election could not hold over. Southall v. Billings, 213 Tenn. 280, 375 S.W.2d 844 (1963).

2-17-114. Certification of judgment. — (a) A judgment confirming an election or declaring a person elected to an office commissioned by the governor shall be certified to the secretary of state. In all other cases, the judgment shall be certified to the tribunal before which the officer is required to qualify.

(b) A judgment declaring a tie shall be certified to the officer or body entitled to cast the deciding vote, if any, and, if none, to the officer or body authorized to fill the vacancy or order a new election.

(c) A judgment declaring an election void shall be certified to the officer or body authorized to fill the vacancy or order a new election. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1714.]

Textbooks. Gibson's Suits in Chancery (7th ed., Inman), § 569.

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

1. Application of Statute.
A person declared "elected" in a void election does not continue in office for any period of time after the circuit court declares his election void. Shumate v. Claiborne County, 183 Tenn. 182, 191 S.W.2d 441 (1946); Southall v. Billings, 213 Tenn. 296, 375 S.W.2d 844 (1963).

2-17-115. Malicious or frivolous contests. — Costs and a reasonable attorney's fee shall be assessed against the contestant or the appellant if the contest or the appeal is maliciously or frivolously prosecuted. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1715.]

Textbooks. Gibson's Suits in Chancery (7th ed., Inman), § 569.

2-17-116. Appeal. — Either party in a contest under § 2-17-101 may appeal to the supreme court. The procedure on appeal shall be governed by the Tennessee Rules of Appellate Procedure. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1716; Acts 1981, ch. 449, § 2.]

Textbooks. Tennessee Jurisprudence, 2 Tenn. Juris., Appeal and Error, § 30.

NOTES TO DECISIONS

ANALYSIS

1. Purpose of section.
2. Application of section.
3. Reversal after expiration of term.

1. Purpose of Section.

This section was enacted to obviate or remedy the decision in the case of Wade v. Murry, 34 Tenn. 50 (1854), which held that no appeal or writ of error would lie from the decision of the chancellor. Staples v. Brown, 113 Tenn. 639, 85 S.W. 254 (1904); Brown v. Hows, 163 Tenn. 138, 40 S.W.2d 1017 (1931).

2. Application of Section.

Appeal in election contests had before chancellor is authorized by this statute. Barham v. Denison, 159 Tenn. 226, 17 S.W.2d 692 (1929).

3. Reversal After Expiration of Term.

Where the contest over an office is erroneously dismissed upon demurrer in the lower court, the supreme court will not, upon reversal, remand the case for a new trial, if the term of office has expired, but will render judgment in favor of the contestant for the costs. Boring v. Griffith, 48 Tenn. 456 (1870); Tennessee v. Condon, 189 U.S. 64, 23 S. Ct. 579, 47 L. Ed. 709 (1903).

DECISIONS UNDER PRIOR LAW

ANALYSIS

1. Motion for new trial.
2. Bill of exceptions.
3. Scope of review.

1. Motion for New Trial.

Where an election contest was tried on oral testimony on order of the chancellor sitting as a special tribunal prior to modification by Code Supplement of 1950, such case was one of those tried irregularly on oral testimony reviewable only after a motion for a new trial has been made and acted on and the bill of exceptions presented to the chancellor and authenticated by him. Byrd v. Wright, 180 Tenn. 627, 177 S.W.2d 820 (1944).

2. Bill of Exceptions.

Where, in an election contest tried on oral testimony before a chancellor sitting as a special tribunal prior to the 1950 Code Supplement, the bill of exceptions was presented to the chancellor and authenticated by him at the time of the entry of the final decree, such bill of exceptions was not open to the objection that it was invalid because the chancellor had no inherent power as a special tribunal after the final determination of the case. Byrd v. Wright, 180 Tenn. 627, 177 S.W.2d 820 (1944).

3. Scope of Review.

In contested election cases involving (former) justices of the peace, and county officers, sheriffs and clerks of court, jurisdiction was exercised by the court as a court and on appeal in such cases, from the judgment of the court, the case is reviewable de novo. Barham v. Denison, 159 Tenn. 226, 17 S.W.2d 692 (1929).

In election contests coming to the supreme court from the circuit court, there is no justification for the practice of reviewing the evidence de novo; and hereafter such cases will not be so reviewed, because such cases are legal controversies and the statute providing for appeals in election contests as to judicial officers, triable before a chancellor, has no application. Brown v. Hows, 163 Tenn. 138, 40 S.W.2d 1017 (1931); Zirkle v. Stegall, 163 Tenn. 323, 43 S.W.2d 192 (1931), overruling Moore v. Sharp, 98 Tenn. 491, 41 S.W. 587 (1897); Shields v. McMahan, 112 Tenn. 1, 81 S.W. 597 (1903).

CHAPTER 18

CONTESTED ELECTION OF GOVERNOR

2-18-101. Determination by general assembly. — The procedure for deciding the election of governor in case of contest shall be: The two (2) houses of the general assembly shall, on a day of its organizational session designated by joint resolution, meet in joint convention in the hall of the house of representatives to open the returns of the election for governor, to determine the election, and to declare the result. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1801.]

Cross-References. Contested elections, ch. 17 of this title.

Governor chosen by electors of members of general assembly, Tenn. Const., art. III, § 2.

Tie vote for governor, general assembly casting, Tenn. Const., art. III, § 2.

Section to Section References. This chapter is referred to in § 2-8-108.

NOTES TO DECISIONS

1. Nature of Contest.

The contest as to the office of governor is sui generis. Shields v. Davis, 103 Tenn. 538, 53 S.W. 948 (1899).

2-18-102. Quorum — Vote — Adoption of rules of order — Power to compel attendance. — (a) A majority of the members of each house shall constitute a quorum. The speaker of the senate shall preside.

(b) Every member shall have one (1) vote, and the majority of the votes shall prevail on all questions to be determined by the joint convention.

(c) The joint session may be adjourned from time to time and rules of order made by it may be adopted and altered.

(d) A minority of the members of the joint convention shall have the power to compel the attendance of absentees by arrest on warrant issued and signed by the speaker of the senate, executed by the sergeant-at-arms of the senate or by any person authorized by the joint convention. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1802.]

Cross-References. Organization of senate and house of representatives, Tenn. Const., art. II, § 11.

2-18-103. Tellers. — Before the joint session, each house shall appoint two (2) tellers from different political parties. The tellers shall keep, certify, and deliver to the speaker of the senate a list of the votes in the joint convention. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1803.]

2-18-104. Examination of election returns. — (a) When the joint assembly has convened, the speaker of the senate shall, in the presence of the assembled members, open the returns of the election for governor. They shall be opened by counties in alphabetical order. As the returns of a county are

opened, they shall be handed to the tellers who shall make a list of the votes. Any member may inspect the returns while they are in the tellers' hands. The returns shall then be handed back to the speaker of the senate, who shall read them to the assembled members.

(b) As the returns from each county are read, the speaker shall call for objections by claimants of the office of governor other than the candidate who prevails on the face of the returns. Upon objection to any county's returns, the vote of that county shall not then be counted, but the returns shall, with the objections, be delivered to the speaker for safekeeping, and they shall not be further considered until all the counties have been disposed of in like manner.

(c) If no objections are made, the vote of the county under consideration shall be counted and shall be final except for objections permitted under § 2-18-106. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1804.]

Section to Section References. This section is referred to in § 2-18-117.

2-18-105. Aggregate vote when no objection — Resolution of election. — (a) After the returns of all the counties have been considered, if there is no objection by any claimant, the aggregate vote shall be announced by the speaker of the senate, and the person having the highest number of votes shall then be declared to be elected by resolution, which shall be in order and passed in substantially this form: "Resolved, That _____, having the highest number of votes at the election in November last, has been elected and shall be Governor of Tennessee."

(b) If it appears to the convention that the result would not be changed if all objections were sustained, the person having the highest number of votes shall be declared elected as in subsection (a). [Acts 1972, ch. 740, § 1; T.C.A., § 2-1805.]

Section to Section References. This section is referred to in § 2-18-114.

2-18-106. Committee on the governor's election. — (a) If it appears to the convention that to sustain any of the objections would change the result, a committee shall be appointed as the "Committee on the Governor's Election" and the candidate who prevails on the face of the returns shall then be permitted to file objections as were the other claimants.

(b) The committee shall be composed of seven (7) members of the house of representatives, appointed by the speaker of the house, not more than four (4) of whom may belong to the same political party, and five (5) members of the senate, appointed by the speaker of the senate, not more than three (3) of whom may belong to the same political party.

(c) Vacancies in the committee from death or other causes shall be filled by appointment by the speaker of the senate or the speaker of the house who appointed the original member.

(d) They shall elect one (1) of their number chair.

(e) Any seven (7) shall constitute a quorum, and a majority of a subcommittee shall constitute a quorum thereof. [Acts 1972, ch. 740, § 1; 1978, ch. 754, § 16; T.C.A., § 2-1806.]

Section to Section References. This section is referred to in § 2-18-104.

2-18-107. Presence of candidates — Objections and petitions — Answer. — (a) All persons receiving votes for governor and their attorneys may be present on the floor during the call of counties but only for the purpose of filing objections.

(b) When an objection is made, it shall be followed by a petition stating the grounds of objection clearly and concisely, making specific assignment of the grounds relied on other than the face of the returns, designating the counties, civil districts, wards, and precincts, with specifications as to the irregularities, fraud, error, mistake or illegalities relied upon. The petition shall be filed with the speaker or tellers, not later than the day following the day on which the call of the counties has been concluded.

(c) A copy of the petition of objection shall be served upon each claimant or left at the claimant's usual place of residence, within five (5) days after the filing of the petition, which service shall be sufficient. The copy may be served by the sergeant-at-arms of the senate or house or one (1) of the assistants of either, by any sheriff or the sheriff's deputy, or by any private person, but if served by a private person, the return showing service shall be on oath in writing.

(d)(1) Within five (5) days after the service of the copy, each person, other than the petitioner, claiming the office of governor by virtue of the election may file with the speaker or tellers an answer making specific assignments of the grounds relied upon and making counter-objections other than to the face of the returns, designating the counties, civil districts, wards, and precincts, with specifications as to the irregularities, fraud, error, mistake, or illegalities relied upon.

(2) The answer shall include specific denials of such assignments of charges by the petitioner as they may see proper.

(3) All charges not denied shall be taken as true.

(4) A copy of each answer shall be served on each claimant as in the case of the petition. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1807.]

2-18-108. Specific denials to answer. — (a) The petitioner shall, within two (2) days from the filing of an answer containing counter-objections, file such specific denials thereto as the petitioner may see proper. All charges not denied shall be taken as true.

(b) A copy of the petitioner's answer shall be served on each claimant as in the case of the petition. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1808.]

2-18-109. Powers and duties of committee. — (a) The objections, petitions and answers shall be referred to the committee.

(b) The committee shall take evidence and consider the objections.

(c) The committee and any subcommittee of it may:

(1) Send for and examine persons and papers;

(2) Issue compulsory process for them running to every county in the state, which may be executed by the sergeant-at-arms of either house or any

assistant sergeant-at-arms, or by any sheriff, deputy sheriff, or constable, or by any special agent appointed by the chair of the committee or by the chair of any subcommittee;

(3) Punish for contempt by fine and imprisonment;

(4) Employ stenographers;

(5) Sit for the taking of evidence at any place in Tennessee and, when in their judgment necessary, in four (4) subcommittees;

(6) Take depositions upon such notice and under such rules and regulations as they may prescribe in the absence of rules prescribed by the general assembly;

(7) Fix the time in which the evidence in chief and rebuttal shall be produced or taken and the time for argument; and

(8) Do all things proper and necessary to ascertain the facts and report on them.

(d) The evidence shall be taken within the forty (40) days next after the issues are made except that, if within forty (40) days the committee on the governor's election asks for further time, the general assembly may grant it. [Acts 1972, ch. 740, § 1; 1978, ch. 754, § 17; T.C.A., § 2-1809.]

2-18-110. Petition and answer to be verified — Oaths. — (a) The petition and answer shall be sworn to and stated to be true to the best of the person's knowledge, information and belief. The pleading shall make the issues but shall have no weight as evidence.

(b) The chair of the committee and the chairs of subcommittees may administer oaths to witnesses. [Acts 1972, ch. 740, § 1; 1978, ch. 754, § 18; T.C.A., § 2-1810.]

2-18-111. Adjournment pending determination of objections. — Pending the determination of objections, the two (2) houses may, from time to time, adjourn the joint convention, and resolve themselves into their respective houses, and they may proceed as if no such proceedings were pending. The adjournment may be to a day certain or subject to the call of the speaker of the senate. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1811.]

2-18-112. Report of committee. — The committee shall proceed with all convenient speed to file its report with the speaker of the senate. The evidence shall accompany the report. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1812.]

2-18-113. Consideration of report. — (a) When the report has been made, the speaker of the senate shall cause the members of both houses to be notified, in open session of each house, that the report has been made. The speaker of the senate shall fix the day for the consideration of the report.

(b) The members of both houses shall then assemble and consider the report and determine the election. They shall decide the questions involved and determine which person received the highest number of legal votes. A faithful and correct record of all the proceedings of the joint assembly shall be kept by the clerk of the senate, which, together with the reports of the committee, shall be entered upon the journal of the senate. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1813.]

2-18-114. Announcement of aggregate vote — Declaration of election by resolution. — Upon the decision, the speaker of the senate shall announce the aggregate vote of the persons voted for as corrected and determined by the joint assembly. The person having the highest number shall be declared to be elected by resolution as under § 2-18-105. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1814.]

2-18-115. Resolution evidence of election — Inauguration. — (a) The resolution shall be the evidence that the person therein named has been elected governor and is entitled to be inaugurated. A copy of the resolution certified by the speaker of the senate and the tellers shall be issued to such person.

(b) The governor-elect shall thereafter be inaugurated as soon as practicable, on a day to be designated by resolution of the general assembly. The oath of office shall be administered by the chief justice or an associate judge of the supreme court in the presence of the general assembly or a committee appointed by them.

(c) The governor's term of office shall date from January 15 next following the November in which the election was held. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1815.]

2-18-116. Finality of determination. — When the general assembly has determined the contest for governor under this chapter, the determination is final and conclusive. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1816.]

2-18-117. Bond — Enforcement of penalty. — (a) A claimant, before making objection under § 2-18-104, shall enter into bond and good security to be approved by the speakers of the senate and house of representatives, in the sum of twenty-five thousand dollars ($25,000), payable to the state of Tennessee, conditioned upon the faithful and bona fide prosecution of the contest.

(b)(1) If no bond is filed for approval with the speaker of the senate by twelve o'clock (12:00) noon prevailing time on December 15 after the election, there may be no contest of the election.

(2) If a bond is filed by that time, other claimants may file their bonds until twelve o'clock (12:00) noon prevailing time on the seventh day after the first bond is filed.

(c) The penalty of the bond shall not be enforced against a contestant and the contestant's securities unless the joint assembly concludes that the contest was not in good faith or was malicious or was made for political effect or was without reasonable cause, in which case the joint assembly shall so declare and order the enforcement of the penalty of the bond. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1817.]

CHAPTER 19

PROHIBITED PRACTICES

SECTION.

PART 1—PROHIBITED PRACTICES GENERALLY

PART 1—PROHIBITED PRACTICES GENERALLY

2-19-101. Interfering with nominating meeting or election. — A person commits a Class C misdemeanor if such person:

(1) Breaks up or attempts to break up any legally authorized political party nominating meeting or any election by force or violence;

(2) Assaults or attempts to assault the persons conducting the meeting or the election officials;

(3) Destroys or carries away or attempts to destroy or carry away a ballot box or voting machine; or

(4) Uses force or violence in any other way to prevent the fair and lawful conduct of the nominating meeting or election. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1901; Acts 1989, ch. 591, § 113.]

Cross-References. Conspiracy to violate election laws, penalty, § 39-12-103.

Defense force use to supervise, etc., election prohibited, § 58-1-402.

National guard influence of election prohibited, § 58-1-229.

Penalty for Class C misdemeanor, § 40-35-111.

Telephone cooperative elections, violations, and penalties, § 65-29-133.

Section to Section References. This part is referred to in § 65-29-133.

Textbooks. Tennessee Jurisprudence, 10 Tenn. Juris., Elections, § 26.

Comparative Legislation. Offenses and penalties:

Ala. Code § 17-22A-1.

Ark. Code § 7-1-103.

Ga. O.C.G.A. § 21-2-560 et seq.

Ky. Rev. Stat. Ann. § 119.005 et seq.

Miss. Code Ann. § 23-15-871 et seq.

Mo. Rev. Stat. § 115.629 et seq.

N.C. Gen. Stat. § 163-269 et seq.

Va. Code § 24.1-264 et seq.

Cited: Freeman v. Burson, 802 S.W.2d 210 (Tenn. 1990), rev'd 504 U.S. 191, 112 S. Ct. 1846, 119 L. Ed. 2d 5 (1992).

NOTES TO DECISIONS

1. Taking of Ballot Box.

Alleged offense in taking ballot box, lock and registration book from custody and control of election officials with pistol during election was punishable as breaking up an election with force or violence rather than as armed robbery. Mowery v. State, 209 Tenn. 250, 352 S.W.2d 435 (1961).

Collateral References. 26 Am. Jur. 2d Elections §§ 371-394.

29 C.J.S. Elections §§ 281, 323-356.

Elections ⇐ 309-332.

2-19-102. Violation of title. — A person commits a Class C misdemeanor if such person knowingly does any act prohibited by this title, or if such person knowingly fails to do any act which such person is required to do by this title, or if such person knowingly does any act with the intent that another shall do an act prohibited by this title. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1902; Acts 1989, ch. 591, § 113.]

Cross-References. Penalty for Class C misdemeanor, § 40-35-111.

Cited: State v. Mynatt, 684 S.W.2d 103 (Tenn. Crim. App. 1984).

NOTES TO DECISIONS

1. In General.

Inasmuch as a violation of this section constitutes a violation of the election title and a misdemeanor, as opposed to a civil infraction, it must be interpreted with the same severity as applies to other criminal statutes. State ex rel. Inman v. Brock, 622 S.W.2d 36 (Tenn.), cert. denied, 454 U.S. 941, 102 S. Ct. 477, 70 L. Ed. 2d 249 (1981).

2-19-103. Interference with another's duties or rights. — A person who knowingly does any act for the purpose of preventing any person's performance of such person's duties under this title or exercise of such person's

rights under this title commits a Class C misdemeanor. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1903; Acts 1989, ch. 591, § 113.]

Cross-References. Penalty for Class C misdemeanor, § 40-35-111.

2-19-104. Misconduct in performance of duties for purposes of misleading another. — A person commits a Class C misdemeanor who, with the purpose of misleading a person in the performance of such person's official duties under this title:

(1) Makes any written or oral false statement which such person does not believe to be true;

(2) Purposely creates a false impression in a written application required by this title by omitting information necessary to prevent statements therein from being misleading; or

(3) Submits or invites reliance on any writing which such person knows to be forged, altered or otherwise lacking in authenticity. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1904; Acts 1989, ch. 591, § 113.]

Cross-References. Penalty for Class C misdemeanor, § 40-35-111.

Section to Section References. This section is referred to in § 2-19-106.

2-19-105. False swearing or affirming. — A person to whom an oath is legally administered under this title commits perjury if such person knowingly and willfully swears or affirms falsely touching a matter material to the point in question. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1905.]

Cross-References. Perjury, § 39-16-702.

Section to Section References. This section is referred to in § 2-19-106.

2-19-106. Procurement or inducement to violate § 2-19-104 or § 2-19-105. — A person who procures or induces another to violate either § 2-19-104 or § 2-19-105 commits a Class D felony. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1906; Acts 1989, ch. 591, § 10.]

Cross-References. Penalty for Class D felony, § 40-35-111.

2-19-107. Illegal registration or voting. — A person commits a Class E felony who:

(1) Intentionally and knowing that such person is not entitled to, registers or votes in any manner or attempts to register or vote in any manner where or when such person is not entitled to under this title; or

(2) Votes in the primary elections of more than one (1) political party on the same day. [Acts 1972, ch. 740, § 1; 1975, ch. 308, § 2; T.C.A., § 2-1907; Acts 1989, ch. 591, § 11.]

Cross-References. False entries, § 2-19-109.

Penalty for Class E felony, § 40-35-111.

Section to Section References. This section is referred to in § 2-2-106.

Textbooks. Tennessee Jurisprudence, 10 Tenn. Juris., Elections, § 27.

NOTES TO DECISIONS

ANALYSIS

1. Sufficiency of indictment and proof.
2. Mistake of fact.
3. Completion of act of voting.
4. Voting more than once.
5. Election of United States representatives.
6. Primary elections.

1. Sufficiency of Indictment and Proof.

Indictment for illegal voting must charge the precise facts which disqualify the voter, and a charge that the defendant was not then and there a qualified voter in the county is insufficient. Pearce v. State, 33 Tenn. 63, 60 Am. Dec. 135 (1853).

In an indictment for illegal voting, the allegation, "he, the defendant, not being then and there a qualified voter in said county," is but a conclusion, it being necessary to allege the facts which disqualified the voter. Pearce v. State, 33 Tenn. 63, 60 Am. Dec. 135 (1853).

The indictment need not charge illegal vote knowingly cast, but the charge that it was illegally cast is sufficient, because knowledge is implied in the word "illegally"; but the state must prove on the trial that the defendant knowingly cast the illegal vote, or it must appear that in law he was chargeable with knowledge of the facts which made his vote illegal. State v. Haynorth, 35 Tenn. 64 (1855).

2. Mistake of Fact.

If the defendant was honestly mistaken in the existence of a state of facts which would make him a legal voter, he will be excused, as where he believed that he was 18 years of age. But if he knew his age, but honestly believed that, under the law, he was entitled to vote at the age of 18, he will be guilty of illegal voting. McGuire v. State, 26 Tenn. 54 (1846).

3. Completion of Act of Voting.

The act of voting is completed when the voter has deposited his ballot with the officer holding the election, and his name is announced and registered by the clerks with the sanction of the judges, and if the ballot is never passed into the box it is nonetheless a vote. Steinwehr v. State, 37 Tenn. 586 (1858).

4. Voting More Than Once.

The offense of "voting more than once" is committed by a person who knowingly deposits two or more folded tickets at one and the same time and place, whether they are ever passed into the box or not; and it is for the jury to determine whether such act was done by mistake or design. Steinwehr v. State, 37 Tenn. 586 (1858).

5. Election of United States Representatives.

Congress has, by various acts, so far adopted the election laws of the several states as to make all frauds and offenses committed against those laws offenses against the United States, when committed in any election in which a representative in congress is to be voted for. United States v. Carpenter, 41 F. 330 (D. Tenn. 1889).

6. Primary Elections.

Although many of the penal statutes relating to elections were enacted before primary election laws were adopted, the 1932 Code made them applicable to all elections. State v. Matthews, 173 Tenn. 302, 117 S.W.2d 2 (1939).

DECISIONS UNDER PRIOR LAW

1. Municipal Elections.

It was formerly held that it was not an indictable offense to vote illegally for the officers of a municipal corporation. State v. Liston, 28 Tenn. 603 (1849).

2-19-108. Unlawful possession of official registration or election supplies. — A person who knowingly possesses any official registration or election supplies, except as required or permitted by this title, commits a Class E felony. [Acts 1972, ch. 740, § 1; 1975, ch. 308, § 3; T.C.A., § 2-1908; Acts 1989, ch. 591, § 12.]

Cross-References. False entries on registration or documents, § 2-19-109.

Penalty for Class E felony, § 40-35-111.

2-19-109. False entries on official registration or election documents — Penalties. — A person who knowingly makes or consents to any false entry on any permanent registration, poll list, election tally sheet or any other

official registration or election document commits a Class E felony. [Acts 1972, ch. 740, § 1; 1975, ch. 308, §§ 4, 5; T.C.A., § 2-1909; Acts 1989, ch. 591, § 13.]

Cross-References. Penalty for Class E felony, § 40-35-111.

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

ANALYSIS

1. Evidence of handwriting.
2. Assessment of penalty.

1. Evidence of Handwriting.

Failure of trial judge to finally determine the genuineness of standards of writing offered in evidence for comparison with certain names falsely registered in registration records of voters and alleged to be in the handwriting of the defendants was prejudicial error in prosecution for conspiracy to violate the statutes relating to the registration of voters. Omohundro v. State, 172 Tenn. 48, 109 S.W.2d 1159 (1937).

2. Assessment of Penalty.

In a prosecution under one count for conspiracy to procure fraudulent registration of voters, and on a second count for the procurement of fraudulent registration, where the court found the defendants guilty under both counts, and assessed their punishment under the first count at a fine of $500 and six months' imprisonment, and under the second count a $50 fine and 30 days' imprisonment, and provided that the punishment should be cumulative, it was proper for the trial court to eliminate the $50 fine and 30 days' imprisonment assessed on the second count. Stanley v. State, 171 Tenn. 406, 104 S.W.2d 819 (1937).

Collateral References. 29 C.J.S. Elections § 326.

2-19-110. Abuse of voter assistance. — A person commits a Class C misdemeanor if such person assists any person in voting except as permitted by this title, or if such person knowingly casts any vote or consents to the casting of any vote contrary to the desire of the voter while otherwise lawfully assisting the voter in casting such person's vote or if, being an election official or other person otherwise lawfully assisting a voter, such person influences or attempts to influence the voter in casting such person's vote. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1910; Acts 1989, ch. 591, § 113.]

Cross-References. Penalty for Class C misdemeanor, § 40-35-111.

2-19-111. Unlawful examination, removal, rejection or destruction of marked ballots. — A person commits a Class C misdemeanor if, except as required or permitted by this title, such person intentionally opens and examines any voter's marked ballot or removes the ballot from the ballot box or prevents the ballot being placed in the ballot box or destroys or changes a voter's ballot. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1911; Acts 1989, ch. 591, § 113.]

Cross-References. Penalty for Class C misdemeanor, § 40-35-111.

2-19-112. Election officials — Civil liability. — If any person holding an election refuses to deliver to a person elected to any office a fair copy of the list of votes, when demanded according to law, or holds an election in any other manner than as directed by law, or neglects to make or to forward due returns thereof, such person shall forfeit and pay the sum of five hundred dollars ($500), to be recovered by action of debt in any court of record having cognizance thereof, with costs, one half (½) to the use of the state, the other one half (½) to such person who sues for the same. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1912.]

2-19-113. Willful or fraudulent violations by officials. — Any election official or member of a board or commission holding office under this title who willfully or fraudulently violates any of the provisions of this title made for the protection of elections commits a Class C misdemeanor. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1913; Acts 1989, ch. 591, § 113.]

Cross-References. Penalty for Class C misdemeanor, § 40-35-111.

NOTES TO DECISIONS

ANALYSIS

1. Errors of judgment.
2. Officer acting in good faith.
3. Failure to hold election.
4. Sufficiency of indictment.
5. Sufficiency of evidence.

1. Errors of Judgment.

Judges of elections are not liable in damages, at the suit of a legally qualified voter, for refusing to receive his vote, where they are not actuated by any fraudulent, corrupt, or malicious intention, but give their judgment upon the honest conviction that he is not, at the time, entitled to vote under the laws of the state regulating elections. They are unquestionably judicial officers, and, like other judicial officers, are not liable in damages for their mere errors of judgment in the discharge of their duties. Rail v. Potts, 27 Tenn. 225 (1847); State v. Staten, 46 Tenn. 233 (1869).

2. Officer Acting in Good Faith.

If the officer of the election exercising good faith and his best judgment is convinced that it would be impossible to hold the election according to the law, the law will excuse him from holding it illegally, and the correct test is not that the holding of the election was impossible but that having in view all of the facts and circumstances the officer thought that the holding of a legal election was impossible. Pemberton v. State, 187 Tenn. 497, 216 S.W.2d 13 (1948).

3. Failure to Hold Election.

An officer of election did not "designedly" fail to hold an election when because of failure of peace officers to leave the election room and because of disturbance being created he returned the ballot box to the county commissioner of elections with the report that the action of the peace officers made it impossible to hold the election. Pemberton v. State, 187 Tenn. 497, 216 S.W.2d 13 (1948).

4. Sufficiency of Indictment.

Indictment of judges of election averring that they were such judges is sufficient and it was not necessary to allege that they had been appointed judges and had undertaken the discharge of their duties. State v. Randles, 26 Tenn. 9 (1846).

Where violation of the election laws as charged in the indictment involved the passing on the qualification of voters and the failure to make proper determination as to the same, conviction was proper as to election judges charged with making no determinations but improper as to election official who had no authority to make any determination as to a voter's qualifications. Fox v. State, 171 Tenn. 226, 101 S.W.2d 1110 (1937).

5. Sufficiency of Evidence.

Where election judges did not avail themselves of records available to them in reference to voters and did not exercise their powers of examination to determine if certain prospective voters were qualified voters of the precinct and where such judges did not examine registration certificates of such persons there was sufficient evidence to support a conviction of violating the election laws against such defendants where in fact some of the persons presenting themselves to vote were not in fact qualified but were allowed to cast their ballot. Fox v. State, 171 Tenn. 226, 101 S.W.2d 1110 (1937).

Collateral References. Liability of public officer for breach of duty in respect of election or primary election laws. 153 A.L.R. 109.

2-19-114. Illegal act by official causing loss of ballots or invalidating election. — An election official or member of a board or commission holding office under this title commits a Class C misdemeanor if such person intentionally fails to do any official act required by law or does any illegal act, in relation to any election by which act or omission the votes taken at the election in any precinct are lost, or the electors thereof deprived of their suffrage at such election, or if such person intentionally does any act which renders such election void. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1914; Acts 1989, ch. 591, § 113.]

Cross-References. Penalty for Class C misdemeanor, § 40-35-111.

2-19-115. Violence and intimidation to prevent voting. — It is a Class C misdemeanor for any person, directly or indirectly, personally or through any other person:

(1) By force or threats to prevent or endeavor to prevent any elector from voting at any primary or final election;

(2) To make use of any violence, force or restraint, or to inflict or threaten the infliction of any injury, damage, harm or loss; or

(3) In any manner to practice intimidation upon or against any person in order to induce or compel such person to vote or refrain from voting, to vote or refrain from voting for any particular person or measure, or on account of such person having voted or refrained from voting in any such election. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1915; Acts 1989, ch. 591, § 113.]

Cross-References. Penalty for Class C misdemeanor, § 40-35-111.

Cited: Freeman v. Burson, 802 S.W.2d 210 (Tenn. 1990).

2-19-116. Misrepresentations on campaign literature or sample ballots — Penalty. — (a) No person shall print or cause to be printed or assist in the distribution or transportation of any facsimile of an official ballot, any unofficial sample ballot, writing, pamphlet, paper, photograph or other printed material which contains the endorsement of a particular candidate, group of candidates or proposition by an organization, group, candidate or other individual, whether existent or not, with the intent that the person receiving such printed material mistakenly believe that the endorsement of such candidate, candidates or proposition was made by an organization, group, candidate or entity other than the one(s) appearing on the printed material.

(b) A violation of this section is a Class C misdemeanor. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1916; Acts 1983, ch. 458, § 1; 1989, ch. 591, § 113.]

Cross-References. Penalty for Class C misdemeanor, § 40-35-111.

Pretrial diversion, title 40, ch. 15.

Law Reviews. Selected Tennessee Legislation of 1983 (N. L. Resener, J. A. Whitson, K. J. Miller), 50 Tenn. L. Rev. 785 (1983).

2-19-117. Procuring illegal vote. — It is a Class E felony for any person to procure, aid, assist, counsel or advise another to vote in any convention, primary or final election, knowing such person is disqualified. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1917; Acts 1989, ch. 591, § 14.]

Cross-References. Penalty for Class E felony, § 40-35-111.

2-19-118. Tampering with, mutilating or defacing voting machine — Penalty. — (a) A person who intentionally tampers with, mutilates or defaces a voting machine owned or used by a county or municipality commits an offense.

(b) This section shall not be construed to prohibit a person from performing a duty imposed by law with respect to a voting machine.

(c) A violation of this section is a Class E felony. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1918; Acts 1989, ch. 591, § 113; 1994, ch. 859, § 11.]

Cross-References. Penalty for Class E felony, § 40-35-111.

2-19-119. Violation of § 2-7-111 while boundary signs are posted. — A person commits a Class C misdemeanor if such person violates § 2-7-111 while boundary signs are posted. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1919; Acts 1989, ch. 591, § 113.]

Compiler's Notes. This section and § 2-7-111 were held unconstitutional by the Tennessee Supreme Court in Freeman v. Burson, 802 S.W.2d 210 (Tenn. 1990). However, the United States Supreme Court reversed, upholding the validity of both statutes. See heading "Constitutionality" under Notes to Decisions.

Cross-References. Penalty for Class C misdemeanor, § 40-35-111.

NOTES TO DECISIONS

1. Constitutionality.

The state supreme court held § 2-7-111 was not narrowly tailored to advance the state's interest, and therefore violated the First Amendment. However, the U.S. Supreme Court held that this statute was constitutional. In reversing, the U.S. Supreme Court held that the state has a compelling interest in protecting voters from confusion and undue influence, and that the 100-foot boundary established by these sections was narrowly enough tailored to this interest, so as to be valid under the First and Fourteenth Amendments to the U.S. Constitution. Freeman v. Burson, 802 S.W.2d 210 (Tenn. 1990), rev'd, 504 U.S. 191, 112 S. Ct. 1846, 119 L. Ed. 2d 5 (1992).

2-19-120. Political communications, advertising and solicitations — Contents — Applicability — Penalties. — (a) Whenever any person makes an expenditure for the purpose of financing a communication that expressly advocates the election or defeat of a clearly identified candidate or measure, as defined by § 2-10-102, or that solicits any contribution, through any broadcasting station, newspaper, magazine, outdoor advertising facility, poster, yard sign, direct mailing or any other form of general public political advertising, a disclaimer meeting the requirements of subdivision (a)(1), (2), (3) or (4) shall appear and be presented in a clear and conspicuous manner to give the reader,

observer or listener adequate notice of the identity of persons who paid for and, where required, who authorized the communication. Such person is not required to place the disclaimer on the front face or page of any such material, as long as a disclaimer appears within the communication, except on communications, such as billboards, that contain only a front face.

(1) Such communication, including any solicitation, if paid for and authorized by a candidate, an authorized committee of a candidate, or its agent shall clearly state that the communication has been paid for by the authorized political committee, in addition to the identity of the person who is the head of such committee, or the identity of the treasurer of such committee.

(2) Such communication, including any solicitation, if authorized by a candidate, an authorized committee of a candidate or an agent thereof, but paid for by any other person, shall clearly state that the communication is paid for by such other person and is authorized by such candidate, authorized committee or agent.

(3) Such communication, including any solicitation, if made on behalf of or in opposition to a candidate, but paid for by any other person and not authorized by a candidate, authorized committee of a candidate or its agent, shall clearly state that the communication has been paid for by such person and is not authorized by any candidate or candidate's committee.

(4)(A) For solicitations directed to the general public on behalf of a political committee which is not an authorized committee of a candidate, such solicitation shall clearly state the full name of the person who paid for the communication.

(B) For purposes of this section, whenever a separate segregated fund solicits contributions to the fund from those persons it may solicit, such communication shall not be considered a form of general public advertising. Such advertisements shall also include the name of the printer of such advertisement, and the identity of the person who paid for the advertisement.

(b)(1) If any person makes an expenditure for the purposes of financing a communication that expressly advocates conveying a position on an issue, which is the position advocated in such communication, to a governmental agency or official, then such person shall include the disclaimer required in subdivision (a)(1), (2), (3) or (4), if appropriate, or the disclaimer in subdivision (b)(2). Such person is not required to place the disclaimer on the front face or page of any such material, as long as a disclaimer appears within the communication, except on communications, such as billboards, that contain only a front face.

(2) Such communication shall clearly state the name of the person purchasing the communication, or the name of the organization purchasing the communication, and the name of the person who is the head of such organization.

(3) The requirements of this section do not apply to bumper stickers, pins, buttons, pens, novelties, and similar small items upon which the disclaimer cannot be conveniently printed.

(c) A violation of this section is a Class C misdemeanor. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1920; Acts 1987, ch. 395, § 1; 1989, ch. 591, § 113; 1990, ch. 812, §§ 1-3; 1991, ch. 436, § 1; 1992, ch. 666, §§ 1, 2.]

Cross-References. Penalty for Class C misdemeanor, § 40-35-111.

Textbooks. Tennessee Jurisprudence, 10 Tenn. Juris., Elections, § 26.

Law Reviews. The Abolition of Anonymity — Distribution of Publications Act, 40 Tenn. L. Rev. 301.

Attorney General Opinions. Prohibition against anonymous campaign literature violates free speech clause, OAG 95-090 (8/29/95).

Cited: Bemis Pentecostal Church v. State, 731 S.W.2d 897 (Tenn. 1987).

NOTES TO DECISIONS

1. Constitutionality.

This section is not overly broad. State v. Acey, 633 S.W.2d 306 (Tenn. 1982).

2-19-121. Candidate bargaining for support. — It is unlawful for any candidate for nomination or election in any state, county, city or district office, to expend, pay, promise, or loan or become pecuniarily liable in any way for money or other thing of value, either directly or indirectly, or to agree to enter into any contract with any person to vote for or support any particular policy or measure, in consideration of the vote or support, moral or financial, of such person. A violation of this section shall be punished as provided in § 2-19-123. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1921.]

Section to Section References. This section is referred to in §§ 2-19-123, 2-19-124.

2-19-122. Demanding candidate make promise. — It is unlawful for any person to demand that any candidate for nomination or office shall promise or agree in advance to support any particular individual, policy or measure, in consideration of the vote or support, financial or moral, of such person, in any election, primary or nominating convention. A violation of this section shall be punished as provided in § 2-19-123. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1922.]

Section to Section References. This section is referred to in §§ 2-19-123, 2-19-124.

2-19-123. Penalty for violation of § 2-19-121 or § 2-19-122. — A violation of any of the provisions of § 2-19-121 or § 2-19-122 is a Class C misdemeanor. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1923; Acts 1989, ch. 591 § 13.]

Cross-References. Penalty for Class C misdemeanor, § 40-35-111.

2-19-124. Exceptions to § 2-19-121 or § 2-19-122. — Nothing in § 2-19-121 or § 2-19-122 shall render illegal any expenditures made by any candidate, or by others, for or on the candidate's behalf, to employ clerks or stenographers in the candidate's campaign, for the printing and advertising therein, or the seeking of suitable halls for public speaking or meetings, or suitable headquarters, stationery and stamps, or the actual traveling expenses of such candidate or the candidate's supporters. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1924.]

2-19-125. Bribing election officials. — It is unlawful for any person, directly or indirectly, personally or through any other person, to give or offer to give a bribe to any election official or to any administrator of elections or to any member of a board or commission holding office under this title as a consideration for any act done or omitted to be done contrary to such official's official duty under this title. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1925.]

Compiler's Notes. References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

Cross-References. Penalty for violation of section, § 2-19-128.

Section to Section References. Sections 2-19-125 — 2-19-127 are referred to in § 2-19-128.

Textbooks. Tennessee Jurisprudence, 5 Tenn. Juris., Bribery, § 2.

2-19-126. Bribing voters. — It is unlawful for any person, directly or indirectly, personally or through any other person to:

(1) Pay, loan, contribute, or offer or promise to pay, loan or contribute any money, property, or other valuable thing, to or for any voter, or to or for any other person, to induce such voter or any voter to vote or refrain from voting in any political convention, primary or final election of any kind or character, or to induce such voter or voters to vote or refrain from voting at any such convention, primary or final election for or against any particular person or measure, or on account of any voter having voted for or against any particular person or measure, or having gone to or remained away from the polls at any such convention, primary or final election;

(2) Give, offer, or promise any place, office or employment, or promise or procure any place, office or employment, to or for any voter, or to or for any other person, in order to induce such voter to vote or refrain from voting at any convention, primary or final election, or to induce any voter at such convention or primary or final election to vote or refrain from voting for any particular person or measure;

(3) Advance or pay or cause to be paid any money or other valuable thing to or for the use of any voter, or to or for the use of any other person, with the intent that the same or any part thereof shall be used in bribery at any primary or final election, or otherwise unlawfully used at, concerning, or in connection with any such primary or final election; or knowingly pay or cause to be paid any money or other valuable thing in discharge or repayment of money or other valuable thing wholly or in part expended in bribery or other unlawful use at or in connection with any such primary or final election; or

(4) Advance, pay or cause to be paid, as expenses or otherwise, to or for the use of any person, any money or other valuable thing in order to induce such person or any person to to work for, solicit or seek to influence votes for or against any particular person or measure, at or in connection with any convention, primary or final election; or induce such person or persons to procure, solicit or influence any voter to attend, leave, or remain away from any such convention, primary or final election; or pay or cause to be paid any money or other valuable thing to or for the use or benefit of any person in discharge or payment of or for time, labor, expenses, or services alleged to have been spent, performed, incurred, or rendered for or against any person, at or in

connection with any such convention, primary or final election; provided, that this shall not include payment of expenses for soliciting attendance of any person upon party conventions, primaries, or final elections; and provided further, that nothing herein shall be construed to prohibit expenditures otherwise allowed by law. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1926.]

Cross-References. Penalties against corporations and officers for violation of section, § 2-19-140.
Penalty for violation of section, § 2-19-128.
Section to Section References. This section is referred to in § 2-19-140.
Textbooks. Tennessee Jurisprudence, 5 Tenn. Juris., Bribery, § 2.
Cited: State ex rel. Anderson v. Fulton, 712 S.W.2d 90 (Tenn. 1986).

2-19-127. Voter accepting bribe. — It is unlawful for any person, directly or indirectly, personally or through any other person, to:

(1) Receive, agree to receive, or contract for, before or during any primary or final election or convention provided by law, any money, gift, loan, or other valuable consideration, or any office, place or employment for such person or for any other person, for voting or agreeing to vote, or for going to or remaining or agreeing to remain away from the polls, or refraining or agreeing to refrain from voting for any particular person or measure, at or in connection with any such convention, primary or election; or

(2) Receive any money or other valuable thing during or after any convention, primary or final election provided by law, on account of such person or any other person, for voting or refraining from voting for any person or measure, or for going to the polls or remaining away from the polls at any such convention, primary or final election, or on account of having induced any person to vote or refrain from voting for any particular person or measure at any such convention, primary or final election. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1927.]

Cross-References. Penalty for violation of section, § 2-19-128.
Textbooks. Tennessee Jurisprudence, 5 Tenn. Juris., Bribery, § 2.
Cited: Taylor v. Nashville Banner Publishing Co., 573 S.W.2d 476 (Tenn. Ct. App. 1978); State ex rel. Anderson v. Fulton, 712 S.W.2d 90 (Tenn. 1986).

2-19-128. Penalty for violation of §§ 2-19-125 — 2-19-127. — Any person convicted of any of the offenses mentioned in §§ 2-19-125 — 2-19-127 commits a Class C felony. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1928; Acts 1989, ch. 591, § 9.]

Cross-References. Penalty for Class C felony, § 40-35-111.
Textbooks. Tennessee Jurisprudence, 5 Tenn. Juris., Bribery, § 2.
Cited: State ex rel. Anderson v. Fulton, 712 S.W.2d 90 (Tenn. 1986).

2-19-129. Betting on election — Penalty. — A person commits a Class C misdemeanor if such person makes any bet or wager of money or other valuable thing upon any election. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1929; Acts 1989, ch. 591, § 113.]

Cross-References. Limitation of prosecution, § 40-2-102.
Penalty for Class C misdemeanor, § 40-35-111.

Textbooks. Tennessee Jurisprudence, 13 Tenn. Juris., Gaming, Gambling and Gambling Contracts, § 5.

NOTES TO DECISIONS

ANALYSIS

1. In general.
2. Presidential election.
3. Party primary.
4. Elections in other states.
5. Past elections.
6. Note for payment of election bet.
7. Sufficiency of indictment.
8. Variance between indictment and proof.

1. In General.

Betting on elections is not technically gaming, and statutes regulating it are not required to be construed remedially. Deshazo v. State, 23 Tenn. 275 (1843).

A sale of goods above their market value, to be paid for when a particular candidate shall be elected at an election then pending, or to be paid for or not upon the contingency of the result of a pending election, is betting on an election; but the testimony must show that the goods were sold at a price above their market value. Quarles v. State, 24 Tenn. 561 (1845); Smith v. Stephens, 37 Tenn. 253 (1857); Somers v. State, 37 Tenn. 438 (1858).

2. Presidential Election.

Betting on the result of the presidential election is within both the words and object of this section. Quarles v. State, 24 Tenn. 561 (1845); Somers v. State, 37 Tenn. 438 (1858).

3. Party Primary.

A party primary election voluntarily arranged and managed by the county primary representatives was not an "election" within the intendment of this section. Mathes v. State, 173 Tenn. 511, 121 S.W.2d 548 (1938).

4. Elections in Other States.

Betting in this state on an election held in another state is not indictable. State v. McLelland, 36 Tenn. 437 (1857).

5. Past Elections.

Betting on the result of an election held in this state, after the election has been held, is not indictable. State v. McLelland, 36 Tenn. 437 (1857).

6. Note for Payment of Election Bet.

A note given to secure the payment of money won on election is void and this is so whether the persons wagering were electors or not, and whether the wager was made before or after election. Russell v. Pyland, 21 Tenn. 131, 36 Am. Dec. 307 (1840).

7. Sufficiency of Indictment.

Indictment for betting on an election is good where it charges that there was pending an election for governor of the state, and that the defendants, while the election was pending, did bet and wager with each other upon the event of the election, for the word "event" is as expressive as the word "result." State v. Cross, 21 Tenn. 301 (1841).

Indictment for betting on presidential election is good, where it charges that a bet was made upon the presidential candidates, instead of the electors. Porter v. State, 37 Tenn. 358 (1858); Somers v. State, 37 Tenn. 438 (1858).

8. Variance Between Indictment and Proof.

Where the indictment charged that an election was pending in Tennessee, for president and vice-president of the United States, and that the defendant did bet, hazard, and wager certain property named, upon the election, and the proof was that the bet was upon the result in one county of the state, it was held that the variance was not fatal. Somers v. State, 37 Tenn. 438 (1858).

2-19-130. Candidate betting with voter. — It is a Class C misdemeanor for any candidate for public office, before or during any primary or final election provided by law, to make any bet or wager with a voter, or to take a share or interest in, or in any manner become a party to any such bet or wager, or provide or agree to provide any money to be used by another in making such bet or wager, upon any event or contingency whatever, arising out of such election. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1930; Acts 1989, ch. 591, § 113.]

Cross-References. Penalty for Class C misdemeanor, § 40-35-111.

2-19-131. Betting with voter to procure a challenge or to prevent him from voting. — It is a Class C misdemeanor for any person, directly or indirectly, to make a bet or wager with a voter, depending upon the result of any primary or final election provided by law, with the intent thereby to procure the challenge of such voter, or to prevent the voter from voting at such election. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1931; Acts 1989, ch. 591, § 113.]

Cross-References. Penalty for Class C misdemeanor, § 40-35-111.

2-19-132. Corporate funds — Improper use in election. — (a) It is unlawful for the executive officers or other representatives of any corporation doing business within this state, to use any of the funds, moneys, or credits of the corporation for the purpose of aiding either in the election or defeat in any primary or final election, of any candidate for office, national, state, county, or municipal, or in any way contributing to the campaign fund of any political party, for any purpose whatever.

(b) The prohibition of subsection (a) does not apply to a contribution made by a national committee of a political party as defined in 2 U.S.C. § 431(14) and (16), which has incorporated in accordance with 11 C.F.R. § 114.12(a), when such committee contributes to a state political party executive committee, established by chapter 13, part 1 of this title, if the funds contributed do not contain any corporate contributions to the national committee of the political party. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1932; Acts 1989, ch. 357, § 1; 1990, ch. 841, § 1.]

Code Commission Notes. Constitutionality, OAG 85-081 (3/14/85); OAG 86-36 (2/18/86).

Section to Section References. This section is referred to in § 2-19-133.

Attorney General Opinions. Corporate contributions to political parties, OAG 96-120 (9/19/96).

Collateral References. Power of corporation to make political contribution or expenditure under state law. 79 A.L.R.3d 491.

2-19-133. Penalty for improper use of corporate funds. — Every executive officer, agent, or other representative of any corporation, doing business within this state, who knowingly consents to, approves, or aids in the use of the funds of a corporation, for any of the purposes mentioned in § 2-19-132(a) commits a Class C misdemeanor. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1933; Acts 1989, ch. 591, § 113; 1990, ch. 841, § 2.]

Cross-References. Penalty for Class C misdemeanor, § 40-35-111.

2-19-134. Coercing or directing employees to vote for measure, party, or person — Penalty. — (a) It is unlawful for any person to coerce or direct any employee to vote for any measure, party or person who may be a candidate for any office, or for any person who may be a candidate for nomination for any office, to threaten the discharge of such employee if the employee votes or does not vote for any such candidate for nomination or for office, or for any particular policy or measure.

(b) It is unlawful to discharge any employee on account of such employee's exercise or failure to exercise the suffrage, or to give out or circulate any

statement or report calculated to intimidate or coerce any employee to vote or not to vote for any candidate or measure.

(c) A violation of this section is a Class C misdemeanor. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1934; Acts 1989, ch. 591, § 113.]

Cross-References. Penalties against corporations and officers for violation of section, § 2-19-140.

Penalty for Class C misdemeanor, § 40-35-111.

Section to Section References. This section is referred to in § 2-19-140.

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

1. Constitutionality.

A statute similar to this section which applied to corporations only was declared unconstitutional as class legislation. State v. Nashville, C. & St. L. Ry., 124 Tenn. 1, 135 S.W. 773 (1910).

Collateral References. Suspension or expulsion of member of labor union for refusal to pay assessment imposed for purpose of promoting or defeating contemplated legislation as violation of statute against intimidation of voters. 175 A.L.R. 397.

2-19-135. Threatening work stoppage as a result of election. — It is a Class C misdemeanor for any employer, within ninety (90) days of any election or primary provided for by law, to put up or otherwise exhibit in such employer's factory, workshop, mine, mill, boardinghouse, office, or other establishment or place where employees may be working or may be present in the course of their employment, any handbill, notice, or placard containing any threat, notice or information that in case any particular ticket or candidate shall or shall not be elected, work in that establishment shall cease in whole or in part, or the wages or number of workers be reduced, or other threats, express or implied, intended or calculated to influence the political opinions or actions of the employees. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1935; Acts 1989, ch. 591, § 113.]

Cross-References. Penalty for Class C misdemeanor, § 40-35-111.

2-19-136. Grand jury witness immunity. — When any person, without such person's contrivance or procurement, is sent as a witness before the grand jury and is examined before them touching offenses under this chapter, no person against whom such person's evidence is given can afterwards be used as a witness against the person when on trial for an offense under the provisions of this chapter committed previous to the person's being examined as a witness as aforementioned. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1944.]

Collateral References. Self-incrimination before grand jury investigating election. 38 A.L.R.2d 225.

2-19-137. Violators as witnesses — Exemption from prosecution. — A person offending against any of the provisions of this chapter shall be a competent witness against any other person violating any provisions of this chapter, and may be compelled to attend and testify upon any trial, hearing, proceeding, or investigation in the same manner as any other person, but the testimony so given shall not be used in any prosecution or proceeding, civil or criminal, against the person so testifying, except for perjury in giving such testimony, and a person so testifying shall not thereafter be liable to indictment, prosecution, or punishment for the offense with reference to which such testimony was given, and may plead or prove the giving of the testimony accordingly in bar of such an indictment or prosecution. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1945.]

NOTES TO DECISIONS

1. Application of Section.

The application of former, similar section was limited to criminal trials, hearings, proceedings and investigations of some offender against the statutes, and one could not be compelled to testify or be punished for contempt for failure to testify, in a civil proceeding growing out of a fraudulent election. Lindsay v. Allen, 113 Tenn. 517, 82 S.W. 648 (1904).

2-19-138. Defects or irregularities in conventions or elections no defense. — No defect or irregularity in calling any political convention, or any primary or final election, nor any irregularity in the proceedings or organization or conduct thereof, shall be available as a defense under the provisions of this chapter. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1946.]

2-19-139. Permitted expenses. — (a) Nothing herein shall be construed to prevent a candidate in any political convention or in any primary or final election, or any person, from employing and maintaining a proper clerical or office force so employed and maintained in good faith, nor to prevent any political parties, candidates, nominees, and organizations from disseminating literature and defraying the expense of public speakers, nor from announcing any candidacy in any newspaper.

(b) Nothing in this chapter shall be construed to prohibit the hiring of conveyances for voters who may be sick or otherwise unable to go to the polls; provided, that such expenses shall in no case exceed those allowed by law. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1947.]

2-19-140. Penalty against corporation and officers. — (a) Any corporation offending against the provisions of this chapter may be found guilty, and it and its officers through whom such offense was committed shall be fined and the officers imprisoned as other persons under the provisions hereof.

(b) Any corporation violating any of the provisions of § 2-19-126 or of § 2-19-134 shall in addition forfeit its charter and right to do business in this state. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1948.]

Cross-References. Violation of title, § 2-19-102.

2-19-141. Disposition of fines. — All fines collected under the provisions of this chapter shall be turned into the school fund. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1949.]

2-19-142. Knowingly publishing false campaign literature. — It is a Class C misdemeanor for any person to publish or distribute or cause to be published or distributed any campaign literature in opposition to any candidate in any election if such person knows that any such statement, charge, allegation, or other matter contained therein with respect to such candidate is false. [Acts 1974, ch. 704, § 1; T.C.A., § 2-1950; Acts 1989, ch. 591, § 113.]

Cross-References. Penalty for Class C misdemeanor, § 40-35-111.

2-19-143. Suffrage for persons convicted of infamous crimes. — The following provisions shall govern the exercise of the right of suffrage for those persons convicted of an infamous crime:

(1) No person who has been convicted of an infamous crime, as defined by § 40-20-112, in this state shall be permitted to register to vote or vote at any election unless such person has been pardoned by the governor, or the person's full rights of citizenship have otherwise been restored as prescribed by law. However, the governor may attach to any such pardon a special condition that such person shall not have the right of suffrage until a date certain in the future, or until the expiration of the pardoned sentence, whichever period of time is less.

(2) No person who has been convicted in federal court of a crime or offense which would constitute an infamous crime under the laws of this state, regardless of the sentence imposed, shall be allowed to register to vote or vote at any election unless such person has been pardoned or restored to the full rights of citizenship by the president of the United States, or the person's full rights of citizenship have otherwise been restored in accordance with federal law, or the law of this state.

(3) No person who has been convicted in another state of a crime or offense which would constitute an infamous crime under the laws of this state, regardless of the sentence imposed, shall be allowed to register to vote or vote at any election in this state unless such person has been pardoned or restored to the rights of citizenship by the governor or other appropriate authority of such other state, or the person's full rights of citizenship have otherwise been restored in accordance with the laws of such other state, or the law of this state.

(4) The provisions of this section, relative to the forfeiture and restoration of the right of suffrage for those persons convicted of infamous crimes, shall also apply to those persons convicted of crimes prior to May 18, 1981, which are infamous crimes after May 18, 1981. [Acts 1981, ch. 345, §§ 2, 8; 1983, ch. 207, § 1.]

Compiler's Notes. Portions of this section concerning retroactive disenfranchisement of convicted felons whose crimes were not infamous when convicted but were after May 18, 1981, have been held unconstitutional. See Notes to Decisions, 1. Constitutionality. Gaskin

v. Collins, 661 S.W.2d 865 (Tenn. 1983).

Cross-References. Acts purging registration, § 2-2-106.

Duties of election coordinator, § 2-11-202.

Judgment of infamy, § 40-20-112.

Notice of infamy, § 40-20-113.

Qualified voters, § 2-2-102.

Registration information, § 2-2-116.

Restoration of suffrage, §§ 2-2-139, 40-29-101.

Textbooks. Tennessee Jurisprudence, 6 Tenn. Juris., Citizenship, § 2.

Law Reviews. Selected Tennessee Legislation of 1983 (N. L. Resener, J. A. Whitson, K. J. Miller), 50 Tenn. L. Rev. 785 (1983).

Cited: Tyler v. Collins, 709 F.2d 1106 (6th Cir. 1983).

NOTES TO DECISIONS

1. Constitutionality.

Retroactive disenfranchisement of felons whose crimes were not infamous at time of conviction but were made infamous later when the scope of infamous crimes was expanded was unconstitutional and violated Tenn. Const., art. I, § 5. Gaskin v. Collins, 661 S.W.2d 865 (Tenn. 1983).

This section does not result in the unlawful dilution of the black vote in violation of the federal constitution or the federal Voting Rights Act. Wesley v. Collins, 605 F. Supp. 802 (M.D. Tenn. 1985), aff'd, 791 F.2d 1255 (6th Cir. 1986); Wesley v. Collins, 791 F.2d 1255 (6th Cir. 1986).

2-19-144. Campaign advertising. — (a) It is unlawful for any person to place or attach any type of show-card, poster, or advertising material or device, including election campaign literature, on any kind of poles, towers, or fixtures of any public utility company, whether privately or publicly owned or as defined in § 65-4-101, unless legally authorized to do so.

(b) [Deleted by 1997 amendment.] [Acts 1983, ch. 353, §§ 1-4; Acts 1997, ch. 45, § 1.]

Amendments. The 1997 amendment deleted (b).

Effective Dates. Acts 1997, ch. 45, § 2. April 8, 1997.

Section to Section References. This section is referred to in § 49-6-2109.

PART 2—OFFENSES BY PUBLIC OFFICERS AND EMPLOYEES ("LITTLE HATCH ACT")

2-19-201. Definitions. — As used in this part, unless the context otherwise requires:

(1) "Election" includes all elections, local, municipal, primary, general, state, federal and special and any election in the state or any county, municipality or other political subdivision thereof, but does not include referenda or issues submitted to a vote of the people, political convention or caucus;

(2) "Public funds" and "public lands, offices, buildings, vehicles and facilities" include those owned and supported principally by public money appropriated from the state treasury; and

(3) "Public officers and employees" means all employees of the executive branch of the state government, or any department, division, or agency thereof, and all appointed officers and employees of any educational institution, establishment, corporation or agency supported principally by state funds. Popularly elected officials, officials elected by the general assembly, qualified candidates for public office, teachers, as defined by § 49-1501 [repealed], members of the governor's cabinet, and members of the governor's staff are expressly excluded from the provisions of this part, except for the provisions of § 2-19-202. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1936.]

Compiler's Notes. Section 49-1501, referred to in subdivision (3), was repealed by Acts 1972, ch. 814, § 18. Prior to its repeal § 49-1501 defined "teacher" as follows: "'Teacher' shall mean any person employed in a public school as a teacher, helping teacher, librarian, principal, or supervisor, and shall include any superintendent of public schools, or administrative officer of a department of education, or of any educational institution supported in whole or in part by and under the control of the state. In all cases of doubt, the board of trustees hereinafter defined shall determine whether any person is a teacher as defined in this chapter."

Cross-References. County Sheriff's Civil Service Law, political activity of persons in classified service restricted, § 8-8-419. .

Extortion, § 39-14-112.

2-19-202. Interference with election or nomination. — (a) It is unlawful for any public officer or employee to use such person's official position, authority or influence to interfere with an election or nomination for office or directly or indirectly attempt to intimidate, coerce or command any other officer or employee to vote for or against any measure, party or person, or knowingly receive or pay assessments of any kind or character for political purposes or for election expenses from any other officer or employee.

(b) It is the intent of this section to prohibit any political intimidation or coercion of any public officer or employee. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1937.]

Section to Section References. This section is referred to in § 2-19-201.

2-19-203. Soliciting contributions for political purposes. — (a) It is unlawful for any public officer or employee knowingly to solicit directly or indirectly any contribution of money, thing of value, facilities or services of any person who has received contracts, compensation, employment, loans, grants or benefits, or any person whose organization, agency or firm has received such benefits financed by public funds, state, federal or local, for political purposes or campaign expense.

(b)(1) As used in this subsection, unless the context otherwise requires, "contribution" means any advance, conveyance, deposit, distribution, transfer of funds, loan, loan guaranty, payment, gift, pledge or subscription, of money or thing of value, including, but not limited to, use of a facility or provision of personal services, for use on behalf of any candidate for political office, or for any political purpose or campaign expense.

(2) It is unlawful knowingly to solicit, accept, or collect, directly or indirectly, any contribution from a public officer or employee if the solicitor or the solicitor's principal is, directly or indirectly, in a supervisory capacity over such officer or employee or is otherwise able to control the retention, promotion, demotion, or terms or conditions of employment of such officer or employee.

(3) The provisions of this subsection shall not be construed to prevent voluntary contributions from political action committees and associations of public officers and/or employees. [Acts 1972, ch. 740, § 1; 1979, ch. 280, § 1; T.C.A., § 2-1938.]

2-19-204. Promises of benefits for political activity. — It is unlawful for any public officer or employee, directly or indirectly, to promise employment, position, work, compensation, contracts, loans, grants, appropriations or other benefits provided principally from public funds as a consideration, favor or

reward for any political activity, support or opposition to any candidate, party or measure in any election. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1939.]

2-19-205. Deprivation, attempts to deprive, or threats to deprive persons of benefits. — It is unlawful for any public officer or employee, directly or indirectly, to deprive, attempt to deprive, or threaten to deprive any person of employment, position, work, compensation, contracts, loans, grants, appropriations or benefits provided principally from public funds for any political activity, support or opposition to any candidate, party or measure in any election. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1940.]

2-19-206. Use of state-owned property for campaign advertising or activities. — (a) It is unlawful for any elected or appointed official of the state, or any employee of the state or any department, division or agency thereof, to display campaign literature, banners, placards, streamers, stickers, signs or other items of campaign or political advertising on behalf of any party, committee or agency or candidate for political office, on the premises of any building or land owned by the state, or to use any of the facilities of the state, including equipment and vehicles, for such purposes.

(b) It is unlawful to use public buildings or facilities for meetings or preparation of campaign activity in support of any particular candidate, party or measure unless reasonably equal opportunity is provided for presentation of all sides or views, or reasonably equal access to the buildings or facilities is provided all sides. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1941.]

2-19-207. Political activity interfering with state business. — (a) It is unlawful for any person employed by the state to engage actively in a political campaign on behalf of any party, committee, organization, agency or political candidate, or to attend political meetings or rallies or to otherwise use such person's official position or employment to interfere with or affect the result of any regular or special primary election conducted within the state, or to perform political duties or functions of any kind not directly a part of such person's employment, during those hours of the day when such person is required by law or administrative regulation to be conducting the business of the state.

(b)(1) Nothing in this section shall be construed to deprive any official or employee of the state from voting for the party or candidate of such person's choice or to deprive such person of the right to express such person's personal opinion concerning any political subject, party or candidate.

(2) Elected officials, state employees on leave or during those hours not required by law or administrative regulation to be conducting the business of the state, persons duly qualified as candidates for public office and teachers, as defined in § 49-1501 [repealed], are expressly excluded from the provisions of this section.

(3) No rule or regulation which has been promulgated or shall be promulgated by any department, division, agency, or bureau of state government shall be more restrictive of the political activity of state employees on leave or during those hours not required by law or administrative regulation to be conducting

the business of the state than those restrictions already set forth in this section. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1942; Acts 1982, ch. 822, § 1.]

Compiler's Notes. Section 49-1501, referred to in subsection (b)(2), was repealed by Acts 1972, ch. 814, § 18. Prior to its repeal § 49-1501 defined "teacher" as follows: "'Teacher' shall mean any person employed in a public school as a teacher, helping teacher, librarian, principal, or supervisor, and shall include any superintendent of public schools, or administrative officer of a department of education, or of any educational institution supported in whole or in part by and under the control of the state. In all cases of doubt, the board of trustees hereinafter defined shall determine whether any person is a teacher as defined in this chapter."

Cross-References. Noninstructional public school personnel eligible to run for public office, § 49-5-301.

2-19-208. Penalty for violations by public officers and employees. — A violation of this part is a Class C misdemeanor. [Acts 1972, ch. 740, § 1; T.C.A., § 2-1943; Acts 1989, ch. 591, § 113.]

Cross-References. Penalty for Class C misdemeanor, § 40-35-111.

TITLE 4

STATE GOVERNMENT

CHAPTER 36

HORSE RACING

SECTION.

PART 1—GENERAL PROVISIONS

SECTION.

PART 4—LOCAL OPTION

PART 1—GENERAL PROVISIONS

4-36-101. Short title. — This chapter shall be known and may be cited as the "Racing Control Act of 1987." [Acts 1987, ch. 311, § 1.]

Cross-References. Aggravated gambling promotion, § 39-17-504.

Equine activities; liability, title 44, ch. 20.

Gambling, § 39-17-502.

Gambling promotion, § 39-17-503.

Section to Section References. This chapter is referred to in § 44-20-104.

Comparative Legislation. Horse racing:

Ala. Code, § 11-65-1 et seq.

Ark. Code § 23-110-101 et seq.

Ky. Rev. Stat. Ann. § 230.070 et seq.

Mo. Rev. Stat. § 313.500 et seq.

Va. Code § 59.1-364 et seq.

Cited: Mid-South Indoor Horse Racing, Inc. v. Tennessee State Racing Comm'n, 798 S.W.2d 531 (Tenn. Ct. App. 1990).

Collateral References. 38 Am. Jur. 2d Gambling § 10 et seq.

38 C.J.S. Gaming § 2.

Pari-mutuel and similar betting methods on race as game of chance or gambling. 52 A.L.R. 74.

Gaming ⇨ 3, 4, 6, 63.

4-36-102. Legislative intent. — It is the intention and policy of the general assembly to encourage legitimate occupations, and legitimate sporting events with pari-mutuel wagering in this state in a manner consistent with the health, safety and welfare of the people. To further this policy, the intent of this chapter is to vest the Tennessee racing commission with plenary power to control and regulate racing in Tennessee, with full recognition of the statement that racing is a privilege and is not a right. In keeping with this policy, the racing commission shall maintain racing events with the appearance and the fact of complete honesty and the highest integrity. [Acts 1987, ch. 311, § 2.]

NOTES TO DECISIONS

1. Power of Commission.

By its grant of "plenary power," the general assembly has imbued the commission with complete and unqualified power over horse racing, subject only to constitutional limits. Mid-South Indoor Horse Racing, Inc. v. Tennessee State Racing Comm'n, 798 S.W.2d 531 (Tenn. Ct. App. 1990).

4-36-103. Definitions. — As used in this chapter, unless the context otherwise requires:

(1) "Association" means, as the context requires, any person applying to the Tennessee state racing commission for a license to conduct a race meeting or any person licensed by the commission to engage in the conduct of a race meeting.

(2) "Breakage" means the odd cents by which the amount payable on each dollar wagered exceeds a multiple of ten cents (10¢);

(3) "Commission" means the Tennessee state racing commission created by § 4-36-201;

(4) "Horse" means any type of horse, including, but not limited to, Appaloosa, Arabian, Standardbred, Quarter Horse or Thoroughbred;

(5) "Municipality" means any incorporated municipality having a population greater than one hundred thousand (100,000) according to the 1980 federal census or any subsequent federal census;

(6) "Public employee" means any individual who receives compensation from the state or any political subdivision thereof or any public governmental authority or corporation established for the performance of public functions;

(7) "Public official" means an elected or appointed person in the executive, legislative or judicial branch of the state or any political subdivision thereof;

(8) "Race meeting" means the whole period of time, whether consecutive dates or otherwise, for which an association has been granted a license by the commission;

(9) "Host facility" means the racetrack at which the race is run or the facility which is designated as the host facility if the race is run in a jurisdiction which is not participating in the interstate combined wagering pool;

(10) "Host jurisdiction" means the jurisdiction in which the host facility is located;

(11) "Interstate combined wagering pool" means a pari-mutuel pool established in one jurisdiction which is combined with comparable pari-mutuel pools from one (1) or more other jurisdictions for the purpose of establishing payoff prices in the various participating jurisdictions;

(12) "Jurisdiction" means that governmental entity which regulates pari-mutuel wagering at the national, state, or local level in the United States, its territories or possessions, or in any other country;

(13) "Live race" means a horse race which is actually run on an association's track;

(14) "Person" means any individual, association, partnership, joint venture, corporation, governmental entity or instrumentality thereof, or any other organization or entity;

(15) "Simulcast race" means, according to the context, either the broadcast from an association of a live race, simultaneously with its running, or the receipt by an association of a broadcast of a race conducted at a track in the United States, simultaneously with its running;

(16) "Take-out" means that portion of a wager which is deducted from or not included in the pari-mutuel pool, and which is distributed to persons other than those placing wagers;

(17) "Dark day" means a day on which the association does not conduct live racing on its track surface;

(18) "Enclosure" means the real property and appurtenances and improvements thereto which is contiguous or adjacent to the association's racing surface and is owned, leased or otherwise possessed by the association for purposes related to its conduct of pari-mutuel wagering;

(19) "Fair" means a county, district or division fair as defined in § 43-21-104, which qualifies for state aid grants under § 43-21-102;

(20) "Premises" means any real property and the appurtenances and improvements thereto which is owned, leased or otherwise possessed by the association for purposes related to its conduct of pari-mutuel wagering; and

(21) "Satellite teletheater" or "satellite simulcast teletheater" means a facility, operated by an association which has been granted a race meeting license, at a location separate from the enclosure for the purpose of displaying and accepting wagers on simulcast races. A satellite teletheater shall have amenities similar in quality to the association's grandstand and clubhouse facilities. [Acts 1987, ch. 311, § 3; 1993, ch. 248, § 1; 1996, ch. 1080, § 1.]

Amendments. The 1996 amendment rewrote (1), which read: "Association" means any person licensed by the Tennessee state racing commission and engaged in the conduct of a recognized race meeting. An association may be construed to include any county fair as defined in § 43-21-104. No county fair shall conduct a race meeting for more than three (3) days, and no county fair within fifty (50) miles of another association shall be granted a license to conduct a race meeting at the same time as any other association;"; rewrote (15) which read: "Simulcast race" means, according to the context, either the broadcast from an association of a live race, simultaneously with its running, or the receipt by an association of a broadcast of a race, simultaneously with its running; and"; and added (17)-(21).

Effective Dates. Acts 1996, ch. 1080, § 10. May 21, 1996. Acts 1996, ch. 1080, § 10 provided that the act take effect upon passage. The act was returned without the governor's signature and became effective under the provisions of Tenn. Const., art. III, § 18.

Attorney General Opinions. Simulcasts of greyhound races, OAG 93-55 (8/25/93).

Part 4—Local Option

4-36-401. Local referendum on pari-mutuel wagering. — (a) Upon enactment, a county or municipal legislative body may by resolution or ordinance call a referendum on whether racing with pari-mutuel wagering

shall be permitted in that county or municipality. Upon approval by the county or municipal legislative body, the county election commission shall call a referendum at the next regularly scheduled county-wide or municipality-wide general election on the question of whether horse racing with pari-mutuel wagering shall be permitted in that county or municipality. The question to be placed on the ballot shall read as follows:

Shall (here insert name of county or municipality) permit pari-mutuel wagering on horse racing?

FOR ____ AGAINST ____

(b) As an alternative to a county or municipality by resolution or ordinance calling a referendum, a petition signed by the residents of a county or municipality, as the case may be, equal to or exceeding a number amounting to ten percent (10%) of the votes cast for sheriff at the last preceding August general election shall require the county election commission to place the question stated in subsection (a) on the ballot at the next regularly scheduled election. No referendum under this chapter may be placed on the same ballot or conducted on the same day of a primary election. Such petition shall be addressed to the county election commission of such county, or county in which such municipality is located, and shall read, except for such address, substantially as follows:

"We, registered voters of (here insert name of county or municipality, as the case may be), hereby request the holding of a referendum on the question of whether horse racing with pari-mutuel wagering shall be permitted."

Such petition may be in two (2) or more parts.

(c)(1) If a county or municipality, except as provided in subdivision (c)(2), conducts a referendum under the provisions of this section and the number of qualified votes cast negative to the racing proposition exceeds sixty percent (60%) of the total number of votes cast in the election, no further racing proposition shall be placed on the ballot in that locality for a period of ten (10) years from the date of the previous election.

(2) If a county or municipality as specified below conducts a referendum under the provisions of this section and the number of qualified votes cast negative to the racing proposition exceeds sixty percent (60%) of the total number of votes cast in the election, no further racing proposition shall be placed on the ballot in that locality for a period of four (4) years from the date of the previous election. The provisions of this subdivision (c)(2) shall apply only in counties having populations according to the 1980 federal census or any subsequent federal census of:

not less than	nor more than
4,700	4,800
7,400	7,500
8,600	8,700
9,400	9,500
13,700	13,800
24,200	24,300

not less than	nor more than
24,400	24,500
41,800	41,900

(d) No provision in this chapter shall be construed as requiring the approval of any track. A determination of the commission as to whether or not to approve a proposed track shall be in the sole discretion of the commission and shall be subject to judicial review only in the event of official misconduct.

(e) After May 21, 1996, a county or municipal legislative body may by resolution or ordinance call a referendum on whether pari-mutuel wagering on horse racing shall be permitted at a satellite simulcast teletheater located in that county or municipality. Upon approval by the county or municipal legislative body, the county election commission shall call a referendum at the next regularly scheduled county-wide or municipality-wide general election on the question of whether pari-mutuel wagering on horse racing at a satellite simulcast teletheater shall be permitted in that county or municipality. The question to be placed on the ballot shall read as follows:

Shall (here insert name of county or municipality) permit pari-mutuel wagering on horse racing at satellite teletheaters?

FOR_____ AGAINST_____

(f) As an alternative to a county or municipality by resolution or ordinance calling a referendum, a petition signed by the residents of a county or municipality, as the case may be, equal to or exceeding a number amounting to ten percent (10%) of the votes cast for sheriff at the last preceding August general election shall require the county election commission to place the question stated in subsection (e) on the ballot at the next regularly scheduled election. Such petition shall be addressed to the county election commission of such county, or county in which such municipality is located, and shall read, except for such address, substantially as follows:

"We, registered voters of (here insert name of county or municipality, as the case may be), hereby request the holding of a referendum on the question of whether pari-mutuel wagering on horse racing shall be permitted at satellite teletheaters."

Such petition may be in two (2) or more parts. [Acts 1987, ch. 311, § 32; 1988, ch. 835, §§ 1, 2; 1988, ch. 950, §§ 3, 4; 1996, ch. 1080, § 7.]

Amendments. The 1996 amendment added (e) and (f).

Effective Dates. Acts 1996, ch. 1080, § 10. May 21, 1996. Acts 1996, ch. 1080, § 10 provided that the act take effect upon passage. The act was returned without the governor's signature and became effective under the provisions of Tenn. Const., art. III, § 18.

Attorney General Opinions. Simulcasts of greyhound races, OAG 93-55 (8/25/93).

Pari-mutuel betting on simulcast races, OAG 95-014 (3/8/95).

NOTES TO DECISIONS

ANALYSIS

1. Nature of ownership.
2. Scope of review.

1. Nature of Ownership.

Ownership of a race track where pari-mutuel wagering is permitted is not a fundamental or natural right. It is a privilege conferred by the state. Mid-South Indoor Horse Racing, Inc. v. Tennessee State Racing Comm'n, 798 S.W.2d 531 (Tenn. Ct. App. 1990).

2. Scope of Review.

The general assembly was aware of the common law offense of "official misconduct" when it

enacted the Racing Control Act of 1987 and it intended that the scope of subsection (d) should be synonymous with the well-recognized common law meaning of the term. Mid-South Indoor Horse Racing, Inc. v. Tennessee State Racing Comm'n, 798 S.W.2d 531 (Tenn. Ct. App. 1990).

Subsection (d) entitles an applicant for an initial race meeting license to seek judicial review of the commission's denial of its application. However, the court can only review the commission's action to determine whether it was tainted by the official misconduct of the commission or any of its members or staff. Mid-South Indoor Horse Racing, Inc. v. Tennessee State Racing Comm'n, 798 S.W.2d 531 (Tenn. Ct. App. 1990).

The courts should vacate any decision found to be affected by official misconduct with regard to the processing or consideration of an application. Mid-South Indoor Horse Racing, Inc. v. Tennessee State Racing Comm'n, 798 S.W.2d 531 (Tenn. Ct. App. 1990).

4-36-402. Annexation of approved track locations — Designation of taxes. — If a municipality annexes a track location after its approval by the commission, the commission shall designate the portion of the tax provided for in § 4-36-306(b)(3), to be paid to the municipality and the portion to be paid to the county. [Acts 1987, ch. 311, § 33.]

Cited: Mid-South Indoor Horse Racing, Inc. v. Tennessee State Racing Comm'n, 798 S.W.2d 531 (Tenn. Ct. App. 1990).

TITLE 5

COUNTIES

CHAPTER 1

GENERAL PROVISIONS

SECTION.

PART 1—COUNTIES GENERALLY

5-1-104. County officers — Filling vacancies. — (a) Each organized county shall have, in addition to the judicial officers elected by the qualified voters or by the county legislative body, such other officers as are authorized by law to manage county business.

(b)(1) Vacancies in county offices required by the Constitution of Tennessee or by any statutory provision to be filled by the people shall be filled by the county legislative body, and any person so appointed shall serve until a successor is elected at the next general election, as defined in § 2-1-104, in the county and is qualified; provided, that the candidates have sufficient time to qualify for the office, as provided for in § 2-14-106.

(2) If the vacancy occurs after the time for filing nominating petitions for the party primary election and more than sixty (60) days before the party primary election, then nominees of political parties shall be selected in such primary election and a successor elected in the August general election. If the vacancy occurs less than sixty (60) days before the party primary election but sixty (60)

days or more before the August election, then nominees of political parties shall be selected by party convention and a successor elected in the August election. If the vacancy occurs less than sixty (60) days before the August election but sixty (60) days or more before the November election, then nominees of political parties shall be selected by party convention and a successor elected in the November election.

(3) Independent candidates and candidates nominated by any political party for such vacancies shall qualify by filing all nominating petitions no later than twelve o'clock (12:00) noon, prevailing time on the fifty-fifth day before such election.

(c) Notwithstanding any provision of law or any provision of any charter of a metropolitan government to the contrary, whenever an election is held to fill a vacancy in a county office which is elected from districts, including, but not limited to county school board members, county legislative body members, county highway commissions, and constables, the county legislative body may provide by resolution duly certified to the county election commission that persons qualifying as candidates shall be elected from the most recently adopted reapportionment plan in the county. If the county legislative body requires the election to be held using districts as adopted in the most recently adopted reapportionment plan in the county, the county legislative body shall specify to the county election commission which district shall be used to fill the vacancy by election. In the absence of a resolution requiring the latest reapportionment plan be used and specifying which district shall be used for the election, the election shall be held using the district as constituted for the election of the vacated incumbent. [Code 1858, § 406 (deriv. Const. 1834, art. 7, § 1); impl. am. Acts 1870, ch. 98, § 1; Shan., § 498; Code 1932, § 744; Acts 1975, ch. 354, § 1; 1978, ch. 934, §§ 2, 24; 1979, ch. 10, §§ 1, 2; T.C.A. (orig. ed.), § 5-104; Acts 1981, ch. 314, § 1; 1981, ch. 318, § 1; 1992, ch. 707, § 1; 1997, ch. 558, §§ 24, 25.]

Compiler's Notes. Acts 1992, ch. 707, § 2 provided that the 1992 amendment by that act (subsection (c)) applies to elections for office for which the qualifying deadline occurs after April 13, 1992.

Acts 1997, ch. 558, § 34 provided that the act take effect upon becoming a law. The act was returned without the governor's signature and became effective under the provisions of Tenn. Const., art. III, § 18.

Amendments. The 1997 amendment substituted "sixty (60)" for "forty-five (45) days" throughout (b)(2) and substituted "fifty-fifth" for "fortieth" in (b)(3).

Effective Dates. Acts 1997, ch. 558, § 34. June 25, 1997.

Cross-References. County and other public officers and employees, title 8.

Filling a vacancy in the office of constable, § 8-10-118.

Methods of nomination for office, § 2-13-203.

Nominating petitions, filing requirements and deadlines, § 2-5-101.

Officers elected by county legislative body, § 5-5-111.

Public administrators, guardians and trustees, title 30, ch. 1, part 4.

Special elections, title 2, ch. 14.

Section to Section References. This section is referred to in §§ 5-5-102, 5-5-103, 8-8-106, 8-8-107, 8-10-118, 8-11-101, 8-13-101, 16-15-210, 18-6-101.

Textbooks. Tennessee Jurisprudence, 8 Tenn. Juris., Counties, § 13.

Attorney General Opinions. Vacancies on county commission's or county boards of education before 1992 elections, OAG 91-98 (12/5/91).

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

1. County Ranger.
It was not necessary that each county elect a ranger. Gentry v. Howard, 288 F. Supp. 495 (E.D. Tenn. 1968).

CHAPTER 5

COUNTY LEGISLATIVE BODIES

SECTION.

PART 1—SUBSTANTIVE PROVISIONS

PART 2—TRANSITIONAL PROVISIONS

PART 1—SUBSTANTIVE PROVISIONS

5-5-101. Basic legislative unit — Name changes. — (a) The county legislative body is established as a basic legislative unit of each county of this state; provided, that the provisions of this subsection shall not apply to counties which have heretofore adopted the metropolitan form of government.

(b) Effective September 1, 1978, except in any county organized under the consolidated government provisions of article XI, § 9 of the Constitution of Tennessee, the quarterly county court, county council and any other forms of county legislative bodies are abolished and all legislative powers that remained with such court, council and other forms of legislative bodies are hereby vested in the county legislative body. The county legislative body is further vested with all legislative powers and duties vested in justices of the peace prior to May 11, 1978.

(c) References to the quarterly county court, county council or other county legislative body appearing elsewhere in this code shall be deemed references to the county legislative body.

(d) References to the magistrates, justices of the peace, members or membership of such court, council or body appearing elsewhere in this code shall be deemed references to the members of the county legislative body. [Code 1858, §§ 4179, 4180, 4186 (deriv. Acts 1794, ch. 1, § 44; 1835-1836, ch. 6, § 1; 1837-1838, ch. 135, § 1); Acts 1875, ch. 70, §§ 1-3; integrated in Shan., § 5992; Code 1932, § 10193; Acts 1967, ch. 235, § 1; T.C.A. § 5-528; Acts 1978, ch. 934, §§ 7, 9; 1979, ch. 69, § 1; T.C.A. (orig. ed.), § 5-501.]

Cross-References. County government, Tenn. Const., art. VII, § 1.

Section to Section References. This chapter is referred to in §§ 5-5-103, 5-5-202, 5-5-203, 5-6-205.

Textbooks. Tennessee Jurisprudence, 8 Tenn. Juris., Counties, § 11.

Law Reviews. General Sessions Courts: Origin and Recent Legislation (Paul M. Bryan and Isadore B. Baer), 24 Tenn. L. Rev. 667.

Comparative Legislation. County legislative bodies:

Ala. Code § 11-3-1 et seq.

Ark. Code § 14-14-801 et seq.

Ga. O.C.G.A. § 36-5-20 et seq.

Ky. Rev. Stat. Ann. § 67.010 et seq.

Miss. Code Ann. § 19-3-1 et seq.

Mo. Rev. Stat. § 49.010 et seq.

N.C. Gen. Stat. § 153A-25 et seq.

Va. Code § 15.1-37.4 et seq.

Cited: Seals v. Quarterly County Court, 496 F.2d 76 (6th Cir. 1974); State ex rel. Maner v. Leech, 588 S.W.2d 534 (Tenn. 1979); State ex rel. Weaver v. Ayers, 756 S.W.2d 217 (Tenn. 1988).

NOTES TO DECISIONS

Decisions Under Prior Law

1. In General.

For cases discussing former distinctions among county courts, see Johnson v. Brice, 112 Tenn. 59, 83 S.W. 791 (1903); Murray v. State ex rel. Luallen, 115 Tenn. 303, 89 S.W. 101, 5 Ann. Cas. 687 (1905); Davis v. Williams, 158 Tenn. 34, 12 S.W.2d 532 (1928).

For cases discussing the jurisdiction and powers of the former quarterly county courts, see Johnson v. Brice, 112 Tenn. 59, 83 S.W. 791 (1903); Murray v. State ex rel. Luallen, 115 Tenn. 303, 89 S.W. 101, 5 Ann. Cas. 687 (1905); Southern R.R. v. Hamblen County, 115 Tenn. 526, 92 S.W. 238 (1905); State v. True, 116 Tenn. 294, 95 S.W. 1028 (1905); State ex rel. Thompson v. Read, 152 Tenn. 442, 278 S.W. 71 (1925); Davis v. Williams, 158 Tenn. 34, 12 S.W.2d 532 (1928); State ex rel. Webster ex rel. Strader v. Word, 508 S.W.2d 539 (Tenn. 1974).

For other cases discussing the former quarterly county courts, see Brooks v. Claiborne County, 67 Tenn. 43 (1874); Heard v. Elliott, 116 Tenn. 150, 92 S.W. 764 (1905); State ex rel. Jones v. Howard, 139 Tenn. 73, 201 S.W. 139 (1917); Reeder v. Trotter, 142 Tenn. 37, 215 S.W. 400 (1919); Hyden v. Baker, 286 F. Supp. 475 (M.D. Tenn. 1968).

Collateral References. 56 Am. Jur. 2d Municipal Corporations, Counties, and Other Political Subdivisions § 189 et seq.

20 C.J.S. Counties, § 34 et seq.

Liability of municipality or other governmental unit for failure to provide police protection. 46 A.L.R.3d 1084.

Counties ⇐ 38 et seq.

5-5-102. Membership. — (a)(1) The county legislative body shall be composed of not less than nine (9) nor more than twenty-five (25) members.

(2) There shall be at least nine (9) districts in the county legislative body in Class 2 counties as established by § 8-24-101.

(b) Members shall reside within and be qualified voters of the districts which they represent.

(c)(1) Notwithstanding any provision of the law to the contrary, any county employee, otherwise qualified to serve as a member of the county legislative

body, shall not be disqualified from such legislative office by reason of being a county employee.

(2) No person elected or appointed to fill the office of county executive, sheriff, trustee, register, county clerk, assessor of property, or any other county-wide office filled by vote of the people or the county legislative body, shall also be nominated for or elected to membership in the county legislative body.

(3) If any member of the county legislative body accepts the nomination as a candidate for the office of county executive, sheriff, trustee, register, county clerk, superintendent of roads, superintendent of schools, circuit court clerk, assessor of property, judge of a court of general sessions or seat in the general assembly, when such office is being filled by the county legislative body, such member shall automatically become disqualified to continue in office as a member of the county legislative body, and a vacancy on the body shall exist.

(4)(A) Any member of a local governing body of a county or a municipality who is also an employee of such county or municipality may vote on matters in which such member has a conflict of interest if the member informs the governing body immediately prior to the vote as follows: "Because I am an employee of (name of governmental unit), I have a conflict of interest in the proposal about to be voted. However, I declare that my argument and my vote answer only to my conscience and to my obligation to my constituents and the citizens this body represents."

(B) In the event a member of a local governing body of a county or a municipality has a conflict of interest in a matter to be voted upon by the body, such member may abstain for cause by announcing such to the presiding officer. Any member of a local governing body of a county or municipality who abstains from voting for cause on any issue coming to a vote before the body shall not be counted for the purpose of determining a majority vote.

(C) The vote of any person having a conflict of interest who does not inform the governing body of such conflict as provided in subdivision (c)(4)(A) shall be void if challenged in a timely manner. As used in this section, "timely manner" means during the same meeting at which the vote was cast and prior to the transaction of any further business by the body.

(D) Nothing in this subdivision (c)(4) shall be construed as altering, amending or otherwise affecting the provisions of § 12-4-101(a). In the event of any conflict between this subdivision (c)(4) and § 12-4-101(a), the provisions of § 12-4-101(a) shall prevail.

(d) No more than three (3) members shall be elected from any one (1) district.

(e)(1) Members shall serve terms of four (4) years or until their successors are elected and qualified.

(2) Members of the county legislative body shall be elected in the regular August election in 1978 and every four (4) years thereafter.

(f) The members of the county legislative body shall be known individually as county commissioners and collectively as the board of county commissioners.

(g) The term of office for members of the county legislative body shall begin on September 1 next succeeding their election.

(h)(1) The county legislative body shall have discretionary authority to determine whether each office in multi-member districts will be separately designated on the ballot, with candidates required to run and to be elected on the basis of such separately designated offices within the district.

(2) No candidate shall qualify for more than one (1) such separately designated office within a multi-member district.

(3) In Class 2 counties as established by § 8-24-101, each office in multi-member districts shall be separately designated on the ballot, and candidates shall run and be elected on the basis of such separately designated offices within the district.

(i) If a vacancy shall occur in the office of a member of the county legislative body, the vacancy shall be filled as provided for in § 5-1-104(b). [Acts 1978, ch. 934, §§ 8, 10; 1979, ch. 175, § 1; T.C.A., § 5-502; Acts 1980, ch. 658, § 1; 1980, ch. 785, § 1; 1981, ch. 143, § 1; 1981, ch. 219, § 1; 1981, ch. 293, § 1; 1981, ch. 318, § 2; 1986, ch. 765, §§ 1-3.]

Cross-References. Composition of county legislative body, Tenn. Const., art. VII, § 1.

Filling of vacancies in county offices, Tenn. Const., art. VII, § 2.

Section to Section References. This section is referred to in § 8-16-101.

Textbooks. Tennessee Jurisprudence, 8 Tenn. Juris., Counties, § 11.

Cited: State ex rel. Weaver v. Ayers, 756 S.W.2d 217 (Tenn. 1988).

NOTES TO DECISIONS

ANALYSIS

1. Constitutionality.
2. Term of office.
3. Legislative purpose.
4. Election from county at large.
5. Residence in district.
6. Nomination of commissioner for office.
7. Appointments to office.

1. Constitutionality.

Where the general assembly has made a permanent, general provision, applicable in nearly 90 of the counties, giving the local legislative bodies discretion as to the method of election of their members, it could not properly make different provisions for two of the counties, by population bracket; such legislation is not authorized by either Tenn. Const., art. VII or art. XI, § 9. Leech v. Wayne County, 588 S.W.2d 270 (Tenn. 1979) (declaring unconstitutional former portions of this section).

When properly construed there is no conflict between this statute's provisions for filling vacancies and Tenn. Const., art. VII, § 1. Both the constitutional provision and the statute provide for the vacancy to be filled by the legislative body. Marion County Bd. of Comm'rs v. Marion County Election Comm'n, 594 S.W.2d 681 (Tenn. 1980).

2. Term of Office.

It is implicit in this provision that those selected at a special election will serve only until the next regular election. Marion County Bd. of Comm'rs v. Marion County Election Comm'n, 594 S.W.2d 681 (Tenn. 1980).

3. Legislative Purpose.

The overriding legislative purpose was to provide a mechanism for the selection of successor county commissioners designed, on the one hand, to ensure that the people had continuing representation, and on the other, to give maximum opportunity for the public to exercise its choice. Hence, the remaining members of the legislative body name a temporary successor and the people fill the vacancy on the date of a primary or the date of a referendum election. Marion County Bd. of Comm'rs v. Marion County Election Comm'n, 594 S.W.2d 681 (Tenn. 1980).

4. Election from County at Large.

A county reapportionment plan providing for election from the county at large was unconstitutional. State ex rel. Jones v. Washington County, 514 S.W.2d 51, aff'd, 514 S.W.2d 57 (Tenn. 1974).

5. Residence in District.

Residence in the district from which elected is required in order to remain in office and upon changing residence to a place outside the district the office becomes vacated. Bailey v. Greer, 63 Tenn. App. 13, 468 S.W.2d 327 (1971).

The question of whether a member of the county legislative body has removed from the

district from which elected is a question of fact. Bailey v. Greer, 63 Tenn. App. 13, 468 S.W.2d 327 (1971).

6. Nomination of Commissioner for Office.

This section permits county legislative bodies to nominate one of their own members for a vacancy in office, but prevents the nominee from voting for himself by divesting him of his commission seat upon his acceptance of the nomination. Jackson v. Hensley, 715 S.W.2d 605 (Tenn. Ct. App. 1986).

7. Appointments to Office.

This section overrules State ex rel. v. Thompson, 193 Tenn. 395, 246 S.W.2d 59 (1952), which held: "it is contrary to public policy to permit an officer having an appointing power to use such power as a means of conferring an office upon himself, or to permit an appointing body to appoint one of its own members." Jackson v. Hensley, 715 S.W.2d 605 (Tenn. Ct. App. 1986).

Determination whether deputy appointed interim successor under § 8-48-111 or trustee subsequently elected by county commission is entitled to serve as trustee is to be determined in a quo warranto proceeding rather than by a declaratory judgment proceeding. Jackson v. Hensley, 715 S.W.2d 605 (Tenn. Ct. App. 1986).

DECISIONS UNDER PRIOR LAW

1. In General.

For a case discussing at-large elections of former justices of the peace, see State ex rel. Peel v. Shelby County, 564 S.W.2d 371 (Tenn. Ct. App. 1976).

5-5-103. Officers. — (a) In counties electing a county executive as provided in § 5-6-102(1) and (3), there shall be a chair and chair pro tempore.

(b)(1) The legislative body, at its first session on or after September 1 of each year, shall elect from its membership a chair and a chair pro tempore; provided, that the county legislative body may elect the county judge or county executive to be its chair; provided further, that such election shall confer no additional powers or authority to the chair so elected other than as presiding officer that are not otherwise provided by law.

(2) If any county commission elects as its chair the county executive, and such county executive accepts the position of chair of the county commission, then the county executive shall relinquish the county executive's veto power, as provided in § 5-6-107, for so long as the county executive remains chair of the county commission.

(3) In counties having a population of not less than eight thousand four hundred (8,400) nor more than eight thousand five hundred (8,500) according to the 1970 or any subsequent federal census, having a county administrator who was empowered by private act prior to September 1, 1978 to preside over the county legislative body, such county administrator shall continue to preside as chair, notwithstanding the provisions of chapters 5 and 6 of this title, nor shall the county administrator have the power of veto over legislation passed by the county legislative body, the provisions of chapters 1, 5 and 6 of this title notwithstanding.

(4) This subsection (b) does not apply to:

(A) Counties with a population between two hundred fifty thousand (250,000) and three hundred thousand (300,000);

(B) Any county having a population of not less than two hundred seventy-six thousand (276,000) nor more than two hundred seventy-seven thousand (277,000) according to the 1970 federal census or any subsequent federal census; or

(C) Counties with a population in excess of six hundred thousand (600,000) by the 1970 federal census.

(c) The chair of the legislative body shall preside over the sessions of the legislative body.

(d) When the regular chair is unable or fails to attend the meetings of the legislative body, the regular chair shall notify the chair pro tempore, and the chair pro tempore shall attend, discharge the duties of the office, and be vested with all the powers of the regular chair while engaged therein.

(e) The compensation of the chair and chair pro tempore shall be fixed by the legislative body, but such compensation, if fixed on a per diem basis, shall not be less than the amount fixed for the members of the legislative body; provided further, that the compensation of the chair pro tempore shall not exceed the compensation allowed the chair for like services.

(f) In the absence of the chair and the regular chair pro tempore, the county legislative body may appoint, temporarily, a chair pro tempore to preside over the meeting who is vested with all the powers, for this purpose and for the time being, of the regular chair, or regular chair pro tempore.

(g) In the event the county executive is absent or intends to be absent for more than twenty-one (21) days, or is incapacitated or otherwise unable to perform the duties of the county executive's office, the county legislative body shall appoint the chair to serve until the absence or disability is removed. Any contest of disability or its removal shall be adjudicated in the chancery court of such county. While the chair is serving as county executive, the chair pro tempore shall preside over sessions of the legislative body.

(h) The chair of the county legislative body may designate, from time to time, another member of the county legislative body to sit in the chair's place on any board, authority or commission that the chair serves upon by virtue of holding the office of chair of the county legislative body. Any such designee shall have such powers, including the power to vote, as are otherwise conferred upon the chair of the county legislative body when serving upon such board, authority or commission. At any such meeting attended by the chair of the county legislative body, only the chair of the county legislative body shall exercise voting power.

(i)(1) If the office of the county executive should become vacant pursuant to § 8-48-101, the chair, or if the county executive served as the chair, the chair pro tempore shall serve as interim county executive until the vacancy is filled pursuant to § 5-1-104. The interim county executive shall have the same powers, duties and bond as provided by chapter 6 of this title.

(2) The provisions of this subsection shall not apply if the method of filling the vacancy in the office of the county executive is established by a metropolitan charter or a private act. [Acts 1978, ch. 934, § 11; 1979, ch. 54, § 1; T.C.A., § 5-503; Acts 1981, ch. 384, §§ 1-3; 1985, ch. 163, § 1; 1996, ch. 831, § 1.]

Amendments. The 1996 amendment added (i).

Effective Dates. Acts 1996, ch. 831, § 2. April 29, 1996.

Section to Section References. This section is referred to in §§ 5-6-107, 5-9-307.

5-5-104. Regular meetings. — (a) Regular meetings of each county legislative body shall be held at the time, day and place set by resolution of each legislative body.

(b) There shall be at least four (4) regular meetings of the county legislative body each year.

(c) Special meetings of the county legislative body may be called by the county executive or by petition of a majority of the members of the county legislative body in accordance with § 5-5-105.

(d) No business shall be transacted, or any appointment made, or nominations confirmed, except in public session.

(e) The provisions of this section shall not apply to any Class 1 county established by § 8-24-101, which has by private act adopted regular meetings of its legislative body and procedures for calling special meetings of such body. [Code 1858, § 4181 (deriv. Acts 1837-1838, ch. 135, § 1); Shan., § 5993; mod. Code 1932, § 10194; Acts 1951, ch. 266, § 1; 1965, ch. 50, § 1; 1967, ch. 91, § 1; T.C.A. (orig. ed.), § 5-502; Acts 1978, ch. 934, § 12; T.C.A. (orig. ed.), § 5-504.]

Textbooks. Tennessee Jurisprudence, 2 Tenn. Juris., Appeal and Error, § 232; 8 Tenn. Juris., Counties, § 11.

5-5-105. Special meetings. — (a)(1) The county executive has the power to convene the legislative body in special session when, in the county executive's opinion, the public necessities require it.

(2) Upon application to the chairperson of the legislative body in writing by the county executive or by a majority of the members of such body, then in that instance, it shall be mandatory for the chairperson to call a special session of such body.

(3) The convening date of such body shall not be more than fifteen (15) days nor less than forty-eight (48) hours from the time of the filing of such application with the chairperson.

(4) The provisions of this subsection (a) shall not apply to counties of Class 1 as established by § 8-24-101.

(b)(1) The county executive shall be authorized to call a special session of the county legislative body for emergency purposes only by publication in a newspaper published in the county, and by personal notification to the members of the county legislative body at least two (2) days before the time of the convening of the county legislative body, in any county which authorizes its county executive to act in accordance with the provisions of this subsection (b), by a two-thirds (⅔) vote of the county legislative body.

(2) The call or notice shall specify the objects and purposes for which such special session is called, and no other business but that embraced in such call shall be transacted during such special session.

(3) The provisions of this subsection (b) shall apply only to any county having a population not less than two hundred eighty-seven thousand seven hundred (287,700) and not greater than two hundred eighty-seven thousand eight hundred (287,800) according to the 1980 federal census or any subsequent census.

(c)(1) The call shall be made by publication in some newspaper published in the county, or by personal notices sent by the county clerk, at least five (5) days before the time of the convening of the county legislative body, which call or

notice shall specify the objects and purposes for which the special session is called, and no other business but that embraced in the call shall be transacted during the sitting of the special term.

(2) In the event no newspaper is published in the county, the notice shall be by personal service upon all the members of the county legislative body, such service to contain the purpose for which the body is convened, and to be at least five (5) days before the time for convening. [Acts 1889, ch. 257, § 1-3; Shan., §§ 5997-5999; Code 1932, §§ 10195-10197; Acts 1957, ch. 16, § 1; T.C.A. (orig. ed.), §§ 5-503, 5-504; Acts 1978, ch. 934, §§ 13, 15; impl. am. Acts 1978, ch. 934, §§ 22, 36; Acts 1979, ch. 11, § 1; T.C.A. (orig. ed.), § 5-505; Acts 1983, ch. 241, §§ 1-3.]

Section to Section References. This section is referred to in § 5-5-104.

Textbooks. Tennessee Jurisprudence, 19 Tenn. Juris., Municipal, State and County Securities, § 10.

NOTES TO DECISIONS

ANALYSIS

1. Scope of business at special session.
2. Election of highway commissioner.
3. Issuance of bonds.

1. Scope of Business at Special Session.

Business transacted by county legislative body at called session must be limited to that specified and embraced in the call. McDaniel v. Monroe County, 10 Tenn. App. 109 (1929).

Where "call" for special meeting of county legislative body stated that it was for purpose of raising the tax rate for the county, an order made to employ attorneys in a suit arising out of the tax levy was void as not being embraced in the "call," and the attorneys could not collect on such order. McDaniel v. Monroe County, 10 Tenn. App. 109 (1929).

2. Election of Highway Commissioner.

At a special session properly called, a highway commissioner may be elected to succeed one holding over. State ex rel. Kempson v. Moore, 167 Tenn. 170, 67 S.W.2d 151 (1934).

3. Issuance of Bonds.

At a properly called special session the county legislative body may authorize the issuance of bonds. Walmsley v. Franklin County, 133 Tenn. 579, 182 S.W. 599 (1915).

5-5-106. Attendance at meetings. — Every member of the county legislative body shall be required to attend each and every session of the body, and allowed to vote and draw pay for attendance. [Acts 1887, ch. 236, § 1; Shan., § 6000; Code 1932, § 10198; Acts 1978, ch. 934, § 15; T.C.A. (orig. ed.), § 5-506.]

NOTES TO DECISIONS

1. Combination to Prevent Quorum — Ouster.

In addition to the provision of this section, requiring members of the county legislative body to attend the sessions, the very nature of their duties, voluntarily assumed upon entering office, made it obligatory upon them to refrain from combining in a faction with the declared purpose of obstructing the business of the county; and for such obstruction, they were subject to ouster. State ex rel. Thompson v. Read, 152 Tenn. 442, 278 S.W. 71 (1925).

5-5-107. Compensation of members. — (a) The several county legislative bodies are authorized to fix the compensation of their membership in attending sessions of the county legislative body and duly authorized committees thereof.

(b)(1) The counties are hereby classified in accordance with § 8-24-101, and the compensation fixed by the county legislative body for attending sessions of

the body shall in no case be less than the applicable amount reflected herein below:

Counties of the third class	$35/day
Counties of the fourth class	$30/day
Counties of the fifth class	$25/day
Counties of the sixth class	$20/day
Counties of the seventh class	$20/day
Counties of the eighth class	$20/day

(2) In counties of the second class as defined by § 8-24-101, which have a population of not less than two hundred eighty-seven thousand seven hundred (287,700) nor more than two hundred eighty-seven thousand eight hundred (287,800) according to the 1980 federal census or any subsequent federal census, the county legislative body may, by resolution adopted by a two-thirds (⅔) vote of its membership, determine the amount of and fix the compensation for members of its successor county legislative body. If such resolution is not so adopted sixty (60) days prior to the qualifying deadline for the candidates for the election of the successor legislative body, then the compensation for members of the successor legislative body shall be five hundred dollars ($500) per month. Total compensation for members of the successor legislative body shall not exceed the amount determined and fixed by action or inaction of the preceding legislative body and shall, in no way, be directly or indirectly increased during the term of the successor legislative body.

(c) The amount provided in this section, or a greater amount provided by resolution duly adopted by the county legislative body, shall be paid to the members for each day's attendance at meetings of the body or any duly authorized committee thereof, or a greater amount provided by resolution duly adopted by the county legislative body as a stated salary per month.

(d) The compensation fixed by the county legislative body for attending duly authorized committee meetings of such body shall be one half (½) of the compensation paid for attending regular sessions of the body. [Acts 1974, ch. 736, § 1; 1978, ch. 934, § 15; T.C.A., § 5-507; Acts 1980, ch. 687, § 1; 1990, ch. 1001, § 1; 1991, ch. 422, §§ 1, 2; 1993, ch. 121, § 1.]

Section to Section References. This section is referred to in § 64-1-702.

Textbooks. Tennessee Jurisprudence, 8 Tenn. Juris., Counties, § 11.

Law Reviews. The Tennessee Court System — The County Court, 8 Mem. St. U.L. Rev. 419.

NOTES TO DECISIONS

ANALYSIS

1. Constitutionality.
2. Shelby county.

1. Constitutionality.

This section does not violate Tenn. Const., art. I, § 8 because of vagueness or indefiniteness merely because the general assembly decided not to fix a maximum compensation as well as a minimum. State ex rel. Brown v. Bates, 553 S.W.2d 746 (Tenn. 1977).

2. Shelby County.

This section authorizes the Shelby County legislative body to fix its compensation without any restriction on amount or effective date, and this authority should be read into the transition section of the charter of the newly adopted mayor-county commissioner form of government. Cobb v. Shelby County Bd. of Comm'rs, 771 S.W.2d 124 (Tenn. 1989).

5-5-108. Quorum. — A majority of the members of the county legislative body of each county shall constitute a quorum for the transaction of all business by the bodies in regular or special sessions. [Acts 1887, ch. 236, § 2; Shan., § 6001; Code 1932, § 10199; Acts 1935, ch. 10, § 1; C. Supp. 1950, § 10199; Acts 1978, ch. 934, § 15; T.C.A. (orig. ed.), § 5-508.]

NOTES TO DECISIONS

1. Record Showing Quorum.

Where record of a session at which a tax was levied showed that a specified number of members of the county legislative body were acting, who, by reference to official records of which the court could take judicial notice, could be ascertained to constitute a quorum, there was sufficient evidence that the requisite proportion acted in levying the tax. Central Trust Co. v. Ashville Land Co., 72 F. 361 (6th Cir. 1896).

5-5-109. Voting. — (a) A majority of all the members constituting the county legislative body, and not merely a majority of the quorum, shall be required to:

(1) Elect county officials required by law to be elected by the body;

(2) Fix salaries;

(3) Appropriate money; and

(4) Transact all other business coming before the county legislative body in regular or special sessions.

(b)(1) If the members of the county legislative body are equally divided upon any question coming before them upon which they may lawfully act, then and only then, a county executive serving as chairperson may cast a deciding vote.

(2) If the person serving as chairperson of the county legislative body is a regular member of the county legislative body, such person may not break a tie vote in the capacity of chairperson, but may cast a vote in the first instance as a regular member of the body. [Code 1858, § 4190 (deriv. Acts 1835-1836, ch. 6, § 2); Acts 1875, ch. 63, § 2; integrated in Shan., § 6019; Code 1932, § 10218; Acts 1935, ch. 10, § 2; C. Supp. 1950, § 10218; Acts 1973, ch. 26, §§ 1, 2; 1978, ch. 934, § 15; modified; T.C.A. (orig. ed.), § 5-509; Acts 1983, ch. 138, § 1.]

Textbooks. Tennessee Jurisprudence, 8 Tenn. Juris., Counties, § 11.

Law Reviews. Selected Tennessee Legislation of 1983 (N. L. Resener, J. A. Whitson, K. J. Miller), 50 Tenn. L. Rev. 785 (1983).

Cited: Davidson County v. Olwill, 72 Tenn. 28 (1879); Ray v. Trapp, 609 S.W.2d 508 (Tenn. 1980); State ex rel. Weaver v. Ayers, 756 S.W.2d 217 (Tenn. 1988).

NOTES TO DECISIONS

ANALYSIS

1. Record to show number present.
2. Judicial notice.
3. Declaratory judgment.
4. Vacancies.

1. Record to Show Number Present.

In all cases where a specified number or a portion of the members of the county legislative body are required to be present for any given purpose, the record should show that such number constituted the county legislative body, otherwise any order or judgment of the county legislative body will be void. Coleman v. Smith, 8 Tenn. 36 (1827).

Where it is made requisite by statute to the validity of a particular order that a certain number be present when it is passed, it is not necessary that the entry of such order should have incorporated into it a statement that the requisite number were present. It will be sufficient if the record shows that on that day the requisite number were present. McCullough v. Moore, 17 Tenn. 305 (1836).

The fact of a competent county legislative

body may appear in the caption, or be recited in the order; but if there be no caption, and no such recital in the order, the record will not support a conviction for obstructing a public road purporting to have been thus established. Mankin v. State, 32 Tenn. 206 (1852).

Where the record of the county legislative body shows that a specified number of the members were acting in the levy of a tax, and the official records of the division of the county into districts, and of the election and commission of every member show that the required number to constitute the quorum were in attendance, it is sufficiently shown that a quorum was present in levying the tax. Central Trust Co. v. Ashville Land Co., 72 F. 361 (6th Cir. 1896).

2. Judicial Notice.

The courts will take judicial notice of official records showing presence of a quorum. Central Trust Co. v. Ashville Land Co., 72 F. 361 (6th Cir. 1896).

3. Declaratory Judgment.

Suit by members of county legislative body for a construction of this section relative to number of votes required to elect county executive was a suit in the nature of a quo warranto proceeding for the purpose of determining whether successful candidate was unlawfully holding office, and since suit was not filed in name of state by district attorney general the suit was subject to dismissal. Jones v. Talley, 190 Tenn. 471, 230 S.W.2d 968 (1950).

4. Vacancies.

Only a majority of the county legislative body as it exists, not a majority of the number of authorized members, is necessary to elect a county officer. Beckler v. State, 198 Tenn. 372, 280 S.W.2d 913 (1955).

The majority referred to by this section is a majority of the actual membership of the county legislative body at the time and not a majority of the total authorized membership. Bailey v. Greer, 63 Tenn. App. 13, 468 S.W.2d 327 (1971).

DECISIONS UNDER PRIOR LAW

1. County Judge Not Entitled to Vote.

County judge was not entitled to a vote, since he was not a member of the court though authorized to preside over it. Reeder v. Trotter, 142 Tenn. 37, 215 S.W. 400 (1919).

5-5-110. Business presented by chairperson. — (a) All business for the action of the county legislative body shall be presented to the chairperson, who shall announce the same to the county legislative body and take the vote thereon.

(b) No business shall be acted on by the body unless presented as herein required, except by the consent of a majority of the members present. [Code 1858, § 4188 (deriv. Acts 1847-1848, ch. 106, § 1); Shan., § 6012; Code 1932, § 10211; Acts 1978, ch. 934, § 15; T.C.A. (orig. ed.), § 5-510.]

Cited: Johnson v. Brice, 112 Tenn. 59, 83 S.W. 791 (1903).

5-5-111. Election of county officers — Authority. — The members of the county legislative body assembled shall elect such county officers as are prescribed by law and as are authorized to be so elected. [Code 1858, § 817; Shan., § 1144; mod. Code 1932, § 1904; modified; Acts 1978, ch. 934, §§ 15, 24; 1979, ch. 16, § 1; T.C.A. (orig. ed.), § 5-512.]

Cross-References. Filling of vacancies in county offices, Tenn. Const., art. VII, § 2.

Textbooks. Tennessee Jurisprudence, 2 Tenn. Juris., Appeal and Error, § 232; 8 Tenn. Juris., Counties, § 13.

Cited: State ex rel. Wolfe v. Henegar, 180 Tenn. 425, 175 S.W.2d 553 (1943).

NOTES TO DECISIONS

1. Reconsideration of Action.

Since the county legislative body exercises political and not judicial power in the election of officers, it is without power to reconsider its action in a morning session at an afternoon session of the same day. State ex rel. Pierce v. Hardin, 163 Tenn. 471, 43 S.W.2d 924 (1931).

Where county legislative body elected present highway chairman for a new term, but although not having adjourned the election, changed its recorded vote on the next day due to error in recording vote of a member, election on such second day was invalid, but present chairman was entitled to hold over until a successor could be elected at a meeting of county legislative body occurring after proper notice. State ex rel. Kempson v. Moore, 167 Tenn. 170, 67 S.W.2d 151 (1934).

5-5-112. Election of county officers — Time. — The elections for county officers, devolving on the county legislative bodies, should be made on the first day of the term; but the members present may, in their discretion, adjourn any election to the following day. [Code 1858, § 4194 (deriv. Acts 1841-1842, ch. 101, §§ 1, 2); Shan., § 6014; Code 1932, § 10213; Acts 1978, ch. 934, § 15; T.C.A. (orig. ed.), § 5-514.]

5-5-113. Election of county officers — Notice to county legislative body. — Should any offices be required to be filled, or a vacancy occur in any office required to be filled, by the county legislative body, it shall be the duty of the county clerk, or if there be no county clerk, the county clerk's deputy, and if there be no county clerk or deputy, of the acting chairperson, to give at least ten (10) days' notice to every member of the county legislative body to assemble at the courthouse of their county in order to fill such office or vacancy, and in filling same, all of the members shall be entitled to attend and draw compensation, but shall not draw same for more than one (1) day; and a majority of all of the members shall be necessary to constitute a quorum. [Acts 1875, ch. 63, § 3; impl. am. Acts 1887, ch. 236, § 2; Shan., § 6003; Code 1932, § 10201; impl. am. Acts 1935, ch. 10, § 1; C. Supp. 1950, § 10201; Acts 1978, ch. 934, § 15; impl. am. Acts 1978, ch. 934, §§ 22, 36; T.C.A. (orig. ed.), § 5-515.]

Section to Section References. This section is referred to in § 5-5-114.

Textbooks. Tennessee Jurisprudence, 2 Tenn. Juris., Appeal and Error, § 232.

Cited: Johnson v. Brice, 112 Tenn. 59, 83 S.W. 791 (1903); State ex rel. Wolfe v. Henegar, 180 Tenn. 425, 175 S.W.2d 553 (1943).

NOTES TO DECISIONS

ANALYSIS

1. Authority of general assembly.
2. Special election.
3. Previous election void.
4. County clerk.
5. Coroner performing duties of sheriff.

1. Authority of General Assembly.

No special provision is made in the constitution with regard to filling vacancies in office of county executive so general assembly may make any provision for filling such vacancies as it may deem expedient. Caldwell v. Lyon, 168 Tenn. 607, 80 S.W.2d 80, 100 A.L.R. 1152 (1935).

The general assembly may make any provision it sees proper in the matter of filling vacancies in the office of county executive. Caldwell v. Lyon, 168 Tenn. 607, 80 S.W.2d 80, 100 A.L.R. 1152 (1935).

2. Special Election.

A county superintendent of public instruction may be elected at a special term. State ex rel. Tidwell v. Morrison, 152 Tenn. 59, 274 S.W. 551 (1925).

Failure to hold an election at the expiration of a term does not preclude election at special

term. State ex rel. Tidwell v. Morrison, 152 Tenn. 59, 274 S.W. 551 (1925).

3. Previous Election Void.

Statute does not contemplate that the person declared "elected" in a void election should continue in office for any period of time after the circuit court declares his election void and that decision becomes final or is upheld on appeal, and such person declared elected at the void election could not hold over. Southall v. Billings, 213 Tenn. 280, 375 S.W.2d 844 (1963).

Where an election of judge of the juvenile court was declared void, the county legislative body had authority to elect an interim judge. Stambaugh v. Price, 532 S.W.2d 929 (Tenn. 1976).

4. County Clerk.

Power to fill a vacancy in the office of county clerk belongs to members of county legislative body and not to the county executive. State ex rel. Johnson v. Campbell, 76 Tenn. 74 (1881).

5. Coroner Performing Duties of Sheriff.

The general assembly contemplated that a coroner would perform the duties of sheriff for only a few weeks, in case of the latter's death. Allen v. Hickman, 165 Tenn. 136, 53 S.W.2d 383 (1932).

5-5-114. Election of county officers — Notice to public. — In addition to the notice required by § 5-5-113, the presiding officer of the county legislative body shall cause public notice to be given in a newspaper of general circulation in the county at least one (1) week before the meeting of the body, specifying the offices to be filled at that meeting. [Code 1858, § 821 (deriv. Acts 1796 (July), ch. 3, § 2); Shan., § 1149; mod. Code 1932, § 1910; mod. C. Supp. 1950, § 1910; Acts 1978, ch. 934, § 15; T.C.A. (orig. ed.), § 5-516.]

NOTES TO DECISIONS

ANALYSIS

1. Purpose.
2. Necessity of advertisement.
3. Want of notice — Effect.
4. Mandamus.

1. Purpose.

The intent of the general assembly was to insure full publicity to all elections held by the county legislative body. State ex rel. Kempson v. Moore, 167 Tenn. 170, 67 S.W.2d 151 (1934).

2. Necessity of Advertisement.

The provision as to the advertisement and time of the election may be only directory. Evans v. Justices of Claiborne County, 4 Tenn. 26 (1816).

The provisions of this section as to notice were directory as to certain named officers, as the time of election of such officers was definitely fixed by law and the law creating such offices and fixing the term thereof was in itself notice to the world. State ex rel. Wolfe v. Henegar, 180 Tenn. 425, 175 S.W.2d 553 (1943).

3. Want of Notice — Effect.

Where member of the county school board was present at the time his successor was elected by the county legislative body, he could not subsequently complain of want of notice of such election. State ex rel. Wolfe v. Henegar, 180 Tenn. 425, 175 S.W.2d 553 (1943).

4. Mandamus.

Mandamus will lie to compel a county executive to call or give notice of an election by the county legislative body for superintendent of public schools. State ex rel. Tidwell v. Morrison, 152 Tenn. 59, 274 S.W. 551 (1925).

5-5-115. Election of county officers — Conduct of election. — When an officer is to be elected or appointed by the county legislative body, or a vacancy filled, it is the duty of the body to hold an open election on the first day of the term, admitting all citizens to the privilege of offering as candidates, except such as are prohibited by the constitution or laws of the state. [Code 1858, § 819 (deriv. Acts 1796 (July), ch. 3, § 1; 1841-1842, ch. 101, §§ 1, 2); Shan., § 1146; Code 1932, § 1907; Acts 1978, ch. 934, § 15; T.C.A. (orig. ed.), § 5-517.]

Section to Section References. This section is referred to in § 5-5-117.

NOTES TO DECISIONS

ANALYSIS

1. Mandatory provisions.
2. Failure to elect on first day.
3. Mistake in vote.

1. Mandatory Provisions.

It is clearly mandatory under this section that the county legislative body must proceed to the election on the first day of the term. State ex rel. Wolfe v. Henegar, 180 Tenn. 425, 175 S.W.2d 553 (1943).

2. Failure to Elect on First Day.

Where election was not properly made on first day of term and no adjournment taken as provided in § 5-5-117, election could not thereafter be made without giving proper notice. State ex rel. Kempson v. Moore, 167 Tenn. 170, 67 S.W.2d 151 (1934).

3. Mistake in Vote.

The county legislative body, in filling a vacancy in a county office, acts in a political capacity, and having once made a choice, that choice is irrevocable; however, the county legislative body is not prevented from correcting a mistake of its clerk in recording the vote of its members. State ex rel. Kempson v. Moore, 167 Tenn. 170, 67 S.W.2d 151 (1934).

5-5-116. Election of county officers — Recording of votes. — In making all elections and appointments coming before the county legislative body, the vote of the members present shall be taken by ayes and nays, the county clerk calling and recording the name of each member, together with each member's vote, aye or nay, as it is given, which shall be entered on the minutes, together with the names of the persons elected or appointed. [Acts 1887, ch. 180, § 1; Shan., § 1147; Code 1932, § 1908; Acts 1978, ch. 934, § 15; impl. am. Acts 1978, ch. 934, §§ 22, 36; T.C.A. (orig. ed.), § 5-518.]

NOTES TO DECISIONS

ANALYSIS

1. In general.
2. Failure to comply with section.
3. Correction of record.
4. Determination of correctness of record.
5. Standing.

1. In General.

The provisions of this section are entirely directory. State ex rel. Wolfe v. Henegar, 180 Tenn. 425, 175 S.W.2d 553 (1943).

2. Failure to Comply with Section.

Where the county legislative body failed to comply with the provisions of this section in unanimously electing a member of the county school board at its July term but where it was not contended that the minutes showing such election were untrue, the county legislative body exhausted its power with reference to such vacancy and the failure to comply with the provisions of this section did not render the election void and the county legislative body was without authority at its October term to elect another person to fill such vacancy. State ex rel. Wolfe v. Henegar, 180 Tenn. 425, 175 S.W.2d 553 (1943).

3. Correction of Record.

County legislative body was entitled to change record of vote on highway chairman where one of its members contended that his vote was incorrectly recorded. State ex rel. Kempson v. Moore, 167 Tenn. 170, 67 S.W.2d 151 (1934).

4. Determination of Correctness of Record.

The county legislative body, in reaching its conclusion that its clerk had failed to record truly the vote of its members, acted in a legislative capacity, and such decision is conclusive and final. State ex rel. Kempson v. Moore, 167 Tenn. 170, 67 S.W.2d 151 (1934).

5. Standing.

Private citizens could not maintain suit in that capacity for class action to invalidate election of county school superintendent on basis that mandatory requirements of this section precluding secret ballot were violated. Bennett v. Stutts, 521 S.W.2d 575 (Tenn. 1975).

5-5-117. Election of county officers — Postponement. — Notwithstanding the provisions of § 5-5-115, the county legislative body, a majority of the members consenting, may adjourn the election to a subsequent day of the term.

[Code 1858, § 820 (deriv. Acts 1841-1842, ch. 101, § 1); Shan., § 1148; Code 1932, § 1909; Acts 1978, ch. 934, § 15; T.C.A. (orig. ed.), § 5-519.]

Cited: State ex rel. Wolfe v. Henegar, 180 Tenn. 425, 175 S.W.2d 553 (1943).

NOTES TO DECISIONS

1. Election on Subsequent Day Without Adjournment.

Where, on the first day of a term, the county legislative body proceeded to the election of a highway commissioner, and on the second day of the term, after correction of the record of the vote taken on the first day of the term, it appearing that no one had been elected on the previous day, the county legislative body proceeded to elect a commissioner of highways; the election held on the second day of the term, without adjournment of the election from the first day of the term to the second day, was illegal, and the commissioner holding such office would continue to hold it until his successor was elected and qualified. State ex rel. Kempson v. Moore, 167 Tenn. 170, 67 S.W.2d 151 (1934).

5-5-118. Powers and duties — Voting railroad stock. — The county legislative bodies have the power, and it is their duty, through an agent or proxy, to vote the stock of the county in any railroad, in all elections of officers and directors in such railroad. [Acts 1875, ch. 70, § 4; Shan., § 6020; mod. Code 1932, § 10219; Acts 1978, ch. 934, § 15; T.C.A. (orig. ed.), § 5-520.]

5-5-119. Powers and duties — Supervision of local improvements. — The establishment and general supervision of roads and ferries, watercourses and local improvements, are entrusted to the county legislative body, as provided in title 54, chapters 7 and 9-14. [Code 1858, § 4206 (deriv. Acts 1804, ch. 1; 1835-1836, ch. 29, § 1); Shan., § 6038; Code 1932, § 10235; Acts 1978, ch. 934, § 15; T.C.A. (orig. ed.), § 5-521.]

Textbooks. Tennessee Jurisprudence, 5 Tenn. Juris., Bridges, § 4; 8 Tenn. Juris., Counties, § 11; 23 Tenn. Juris., Streets and Highways, § 3.

Cited: Johnson v. Brice, 112 Tenn. 59, 83 S.W. 791 (1903); Prescott v. Duncan, 126 Tenn. 106, 148 S.W. 229 (1912); Cannon County v. McConnell, 152 Tenn. 555, 280 S.W. 24 (1926); Hyden v. Baker, 286 F. Supp. 475 (M.D. Tenn. 1968).

NOTES TO DECISIONS

1. Roads and Ferries.

County legislative bodies are given exclusive control of the establishment and supervision of roads and ferries. Ledbetter v. Turnpike Co., 110 Tenn. 92, 73 S.W. 117 (1902), overruled on other grounds, Knierim v. Leatherwood, 542 S.W.2d 806 (Tenn. 1976).

The building, repairing and maintaining of roads is a county purpose, and pike commissioners provided for by private acts are county officers. Grindstaff v. Carter County, 152 Tenn. 605, 279 S.W. 1041 (1925).

5-5-120. Powers and duties — Commissioners for local improvements. — The county legislative bodies have power to appoint commissioners for towns, toll bridges and other public improvements, and to fill all vacancies that may at any time occur among the commissioners, as prescribed. [Code 1858, § 4207 (deriv. Acts 1817, ch. 136, § 2; 1835-1836, ch. 29, § 12); Shan., § 6039; Code 1932, § 10236; Acts 1978, ch. 934, § 15; T.C.A. (orig. ed.), § 5-522.]

Textbooks. Tennessee Jurisprudence, 8 Tenn. Juris., Counties, § 11.

Cited: Prescott v. Duncan, 126 Tenn. 106, 148 S.W. 229 (1912).

5-5-121. Powers and duties — Control of public buildings. — The county legislative bodies have power to erect or control, and dispose of public county buildings, as provided in chapter 7 of this title. [Code 1858, § 4214; Shan., § 6044; Code 1932, § 10241; Acts 1978, ch. 934, § 15; T.C.A. (orig. ed.), § 5-523.]

Cross-References. Lease of buildings and facilities authorized, title 12, ch. 2, part 3.

Textbooks. Tennessee Jurisprudence, 8 Tenn. Juris., Counties, § 11.

Cited: Johnson v. Brice, 112 Tenn. 59, 83 S.W. 791 (1903); Prescott v. Duncan, 126 Tenn. 106, 148 S.W. 229 (1912); Hyden v. Baker, 286 F. Supp. 475 (M.D. Tenn. 1968).

NOTES TO DECISIONS

1. Lease of Courthouse Yard.

County's contract to lease part of courthouse yard for purpose of building and operating a filling station was ultra vires. Henry v. Grainger County, 154 Tenn. 576, 290 S.W. 2 (1926).

5-5-122. Powers and duties — Tax levy for public buildings. — The county legislative bodies have full power to lay any tax, from time to time, and, at any time that they may think proper, to build, extend or repair, any courthouse, jail or public office for county purposes. [Code 1858, § 4211 (deriv. Acts 1829, ch. 99, § 1); Shan., § 6041; mod. Code 1932, § 10238; Acts 1978, ch. 934, § 15; T.C.A. (orig. ed.), § 5-524.]

Textbooks. Tennessee Jurisprudence, 22 Tenn. Juris., Special Assessments, § 3.

Cited: Johnson v. Brice, 112 Tenn. 59, 83 S.W. 791 (1903); Prescott v. Duncan, 126 Tenn. 106, 148 S.W. 229 (1912); State ex rel. Weaver v. Ayers, 756 S.W.2d 217 (Tenn. 1988).

NOTES TO DECISIONS

ANALYSIS

1. Levy of special tax.
2. Review of decisions.

1. Levy of Special Tax.

An order of the county legislative body levying a special tax is void unless it states the purpose thereof, and a warrant to collect such tax will be quashed. Southern R.R. v. Hamblen County, 115 Tenn. 526, 92 S.W. 238 (1905).

No special tax for suppressing an epidemic or repaying a loan from sinking fund commissioners can be levied because these are general county purposes intended to be covered by the general tax levy, and a special tax for these purposes has not been authorized by the general assembly. Southern R.R. v. Hamblen County, 115 Tenn. 526, 92 S.W. 238 (1905).

2. Review of Decisions.

Determination of county legislative body with reference to assessment of taxes, the building of a courthouse, and like things, political, legislative and municipal in character, is not reviewable. Donnelly v. Fritts, 159 Tenn. 605, 21 S.W.2d 619 (1929).

5-5-123. Powers and duties — Time for county tax levy. — The county legislative body is required, at the first term in every year, to impose, and provide for the collection of, the tax for county purposes, and fix the rate thereof; but if it omits such duty at the first session, it shall be performed at the next regular session. [Code 1858, § 4193 (deriv. Acts 1837-1838, ch. 135, § 2); Shan., § 6013; Code 1932, § 10212; Acts 1978, ch. 934, § 15; impl. am. Acts 1978, ch. 934, § 12; T.C.A. (orig. ed.), § 5-525.]

Cross-References. General revenue authority of counties, title 67, ch. 1, part 6.

Cited: State ex rel. Weaver v. Ayers, 756 S.W.2d 217 (Tenn. 1988).

NOTES TO DECISIONS

ANALYSIS

1. Time for making assessment.
2. Correction of errors.
3. Amendment of tax levy.
4. Adoption of report as assessment.
5. Assessment for preceding year.

1. Time for Making Assessment.

Assessment may be made at any quarterly session. McLean v. State, 55 Tenn. 22 (1873); Bright v. Halloman, 75 Tenn. 309 (1881); Southern Ry. v. Hamblen County, 117 Tenn. 327, 97 S.W. 455 (1906). See Patterson v. Washington County, 136 Tenn. 60, 188 S.W. 613 (1916).

2. Correction of Errors.

County legislative body may correct error made by it in fixing tax rate too high. Nashville, C. & St. L. Ry. v. Carroll County, 12 Tenn. App. 380 (1930).

3. Amendment of Tax Levy.

A tax levy made at the April term could be amended at the following January term by striking out the levy as to certain purposes and levying for certain other purposes instead where the latter purposes were authorized by law. Southern Ry. v. Hamblen County, 117 Tenn. 327, 97 S.W. 455 (1906).

4. Adoption of Report as Assessment.

Where the tax books were made out according to rates of a levy made by a void assessment, which was reported by committee, and the report received and adopted, and the tax books directed to be turned over to the collector, this amounted to an assessment according to the rates fixed in the tax books and report. McLean v. State, 55 Tenn. 22 (1873).

5. Assessment for Preceding Year.

Assessment may be made for a preceding year. Southern Ry. v. Hamblen County, 117 Tenn. 327, 97 S.W. 455 (1906).

5-5-124. Powers and duties — Correction of tax errors. — The county legislative bodies may release from double taxes, when they have been incurred, and correct errors in the tax list. [Code 1858, § 4213 (deriv. Acts 1851-1852, ch. 171, § 1); Shan., § 6043; Code 1932, § 10240; Acts 1978, ch. 934, § 15; T.C.A. (orig. ed.), § 5-526.]

Cited: Prescott v. Duncan, 126 Tenn. 106, 148 S.W. 229 (1912); State ex rel. Weaver v. Ayers, 756 S.W.2d 217 (Tenn. 1988).

NOTES TO DECISIONS

1. Special Statutory Limitation on Corrections.

Where a tax act provides that nothing therein shall restrict the power of the county legislative body to determine applications in regard to alleged erroneous assessments, provided such application be made at the first meeting of the county legislative body occurring more than 30 days after the return of the assessors, "and never thereafter," the quoted words are merely directory, and will not take away the general jurisdiction of the county legislative body over the subject of erroneous assessments. Nashville Sav. Bank v. Nashville, 2 Cooper's Tenn. Ch. 362 (1877).

5-5-125. Powers and duties — Exemptions from roadwork, peddling requirements. — The county legislative bodies may exempt any indigent, decrepit, or other persons unable by manual labor or physical exertion to obtain a living, from working on the public roads as provided in § 71-5-2302, or allow persons to hawk and peddle, without license, as provided in § 67-4-102. [Code 1858, § 4212 (deriv. Acts 1845-1846, ch. 97); Shan., § 6042; Code 1932, § 10239; Acts 1978, ch. 934, § 15; 1979, ch. 23, § 4; T.C.A. (orig. ed.), § 5-527.]

NOTES TO DECISIONS

ANALYSIS

1. Nature of exemption power.
2. Extent of exemption.

1. Nature of Exemption Power.

Exemption is referable to the administrative power of the county legislative body. Brown v. Hows, 163 Tenn. 138, 40 S.W.2d 1017 (1931).

2. Extent of Exemption.

Exemption in one county is not effective in another. Brown v. Hows, 163 Tenn. 138, 40 S.W.2d 1017 (1931).

5-5-126. Powers and duties — Oaths of witnesses. — Power is given to members of the county legislative body to administer an oath or affirmation, as provided by law for witnesses appearing in a court of record of this state to give testimony in such court, when a witness is called to give testimony before the county legislative body or any committee of the county legislative body that has been created by a duly adopted resolution of the county legislative body. [Acts 1979, ch. 71, § 1; T.C.A., § 5-528.]

5-5-127. Powers and duties — Alcoholic beverages in parks, etc. — (a) A county may by resolution of its county legislative body prohibit or restrict the consumption of any alcoholic beverage or beer in public parks or recreation areas which are not within the corporate boundaries of a municipality. Such areas shall be prominently posted by the county in order to give the public reasonable notice.

(b) A violation of such a resolution shall upon conviction be a misdemeanor and be punishable by a fine of not more than fifty dollars ($50.00). [Acts 1984, ch. 976, § 1.]

Compiler's Notes. The misdemeanor provisions in this section may have been affected by the Criminal Sentencing Reform Act of 1989. See §§ 39-11-114, 40-35-110 and 40-35-111.

PART 2—TRANSITIONAL PROVISIONS

5-5-201. [Repealed.]

Compiler's Notes. Former § 5-5-201 (Acts 1978, ch. 934, § 35; T.C.A., § 5-551; Acts 1980, ch. 841, § 1; 1981, ch. 74, §§ 1, 2), relating to transitional provisions concerning forms of government established by private acts, was repealed by Acts 1982, ch. 623, § 1.

5-5-202. County bonds. — (a) It is the intent of the general assembly to preserve the rights and privileges of holders of outstanding county bonds and other indebtedness. The respective counties shall continue to be liable upon all outstanding bonds and other indebtedness for which they were liable prior to May 11, 1978, and nothing in chapters 1, 5 and 6 of this title shall be construed to abolish, limit or abrogate any rights or privileges heretofore existing in any holders of such outstanding bonds or indebtedness.

(b) With respect to county bonds and other indebtedness, the county executive established by chapters 1, 5 and 6 of this title shall succeed to all rights and duties heretofore existing as to any officers whose functions are assumed in whole or part by the county executive pursuant to chapters 1, 5 and 6 of this title. Likewise with respect to county bonds and other indebtedness, the county legislative body established by chapters 1, 5 and 6 of this title shall

succeed to all rights and duties heretofore existing as to any entities whose functions are assumed in whole or part by the county legislative body pursuant to chapters 1, 5 and 6 of this title. [Acts 1978, ch. 934, § 34; T.C.A., § 5-552.]

5-5-203. Effect on private and other acts. — (a) Any provision of law, private act or general act of local application in conflict with any provision of chapters 1, 5 and 6 of this title is hereby repealed.

(b) Any provision of law, private act or general law of local application not in conflict with the provisions of chapters 1, 5 and 6 of this title shall remain in full force and effect; provided, that any conflict shall be construed in favor of implementing the provisions of chapters 1, 5 and 6 of this title and repealing the conflicting provisions of law.

(c) Nothing in chapters 1, 5 and 6 of this title shall be construed as affecting the operation or existence of boards, commissions, committees or other agencies of local government except as necessary to avoid conflict with express provisions hereof. [Acts 1978, ch. 934, §§ 40, 41; T.C.A., § 5-553.]

CHAPTER 8

RECEIPT AND MANAGEMENT OF FUNDS

SECTION.

PART 1—GENERAL PROVISIONS

5-8-102. Privilege tax — Motor vehicle tax. — (a) PRIVILEGE TAXES AUTHORIZED. Each county is empowered to levy privilege taxes upon merchants and such other vocations, occupations or businesses as are declared to be privileges, not exceeding in amount that levied by the state for state purposes.

(b) MOTOR VEHICLE TAX — AUTHORIZATION. Each county is empowered to levy for county purposes by action of its governing body a motor vehicle privilege tax as a condition precedent to the operation of a motor vehicle within the county. The tax may be levied on any motor vehicle taxable by the state.

(c) MOTOR VEHICLE TAX — IMPOSITION.

(1) No resolution authorizing such motor vehicle privilege tax shall take effect unless it is approved by a two thirds (⅔) vote of the county legislative body at two (2) consecutive, regularly scheduled meetings or unless it is approved by a majority of the number of qualified voters of the county voting in an election on the question of whether or not the tax should be levied.

(2)(A) Except as provided in subdivision (c)(2)(B), if there is a petition of registered voters amounting to ten percent (10%) of the votes cast in the county in the last gubernatorial election which is filed with the county election commission within thirty (30) days of final approval of such resolution by the county legislative body, then the county election commission shall call an election on the question of whether or not the tax should be levied in accordance with the provisions of this section.

(B) In any county having a population of not less than eight hundred twenty-five thousand (825,000) nor more than eight hundred thirty thousand (830,000) according to the 1990 federal census or any subsequent federal census, if there is a petition of ten percent (10%) of the qualified voters who voted in the county in the last gubernatorial election which is filed with the county election commission within thirty (30) days of final approval of such resolution by the county legislative body, then the county election commission shall call an election on the question of whether or not the tax should be levied in accordance with the provisions of this section.

(3) The local governing body shall direct the county election commission to call such election to be held in a regular election or in a special election for the purpose of approving or rejecting such tax levy.

(4) The ballots used in such election shall have printed on them the substance of such resolution and the voters shall vote for or against its approval.

(5) The votes cast on the question shall be canvassed and the results proclaimed by the county election commissioners and certified by them to the local governing body.

(6) The qualifications of voters voting on the question shall be the same as those required for participation in general elections.

(7) All laws applicable to general elections shall apply to the determination of the approval or rejection of this tax levy.

(d) Motor Vehicle Tax — Requirements and Limitations.

(1) Any disabled veteran who has one hundred percent (100%) permanent total disability from a service-connected cause or any former prisoner-of-war, as determined by the United States veterans administration, is exempt from the motor vehicle privilege tax imposed by this section or by private act upon submission of evidence of such disability to the officer in the county charged with the responsibility for collecting such tax.

(2) In each county which has levied or may hereafter levy a motor vehicle privilege tax under either this chapter or by private act, the duration or term for which the privilege is issued, method of collection, proration of the amount chargeable for a period of either more or less than a calendar year interval, and the grace period allowable shall be the same as that provided for in § 55-4-104 for payment of state motor vehicle registration fees for all such vehicles described therein. During the period of transition from the current collection procedure and tax interval to the alternate interval method, each county shall use the same system of fee proration for applicable vehicles as that applied by the state during its transitional period. No resolution of the local governing body or election on the question by qualified voters of the county is required for implementation of these specific provisions.

(3) In each county which has levied or may hereafter levy a motor vehicle privilege tax under either this chapter or by private act, the county legislative body shall determine by resolution whether a resident who operates a motor vehicle in the county shall have a decal or emblem affixed upon the motor vehicle as evidence of compliance and, if a decal or emblem is required by the county legislative body, the place on the motor vehicle at which it shall be affixed. Any person who fails to display the decal or emblem required by a

county legislative body under this subdivision commits a Class C misdemeanor. However, the provisions of § 7-51-702, concerning nonresident motorists, shall remain in effect. [Acts 1915, ch. 101, § 2; Shan., § 1916a1; Code 1932, § 3329; modified; Acts 1976, ch. 618, § 1; 1977, ch. 76, § 1; impl. am. Acts 1978, ch. 934, §§ 22, 36; T.C.A. (orig. ed.), § 5-802; Acts 1983, ch. 409, § 1; 1984, ch. 510, § 1; 1984, ch. 773, § 1; 1985, ch. 42, § 1; 1986, ch. 530, § 1; 1989, ch. 591, § 113; 1993, ch. 518, §§ 17, 21.]

Code Commission Notes. Constitutionality of public and private acts authorizing county tax and exemptions, OAG 85-199 (6/19/85).

Constitutionality of county wheel tax, OAG 87-142 (8/21/87).

Cross-References. Collection of motor vehicle fees, § 7-51-703.

Local Option Revenue Act, title 67, ch. 6, part 7.

Registration plates furnished by department, § 55-4-103.

Penalty for Class C misdemeanor, § 40-35-111.

Privilege taxes, title 67, ch. 4.

Renewal certificates of registration and registration plates, § 55-4-105.

Section to Section References. This section is referred to in § 67-6-303.

Textbooks. Tennessee Jurisprudence, 4 Tenn. Juris., Automobiles, § 26; 17 Tenn. Juris., Licenses, § 5.

Attorney General Opinions. Referenda elections frequency, OAG 91-71 (8/1/91).

Wheel tax; voting requirements to sign referendum petition, OAG 91-102 (12/23/91).

Maximum county wheel tax authorized by statute, OAG 96-098 (7/31/96).

Cited: Gulf Ref. Co. v. City of Chattanooga, 136 Tenn. 505, 190 S.W. 463 (1916).

NOTES TO DECISIONS

ANALYSIS

a1. In general.
1. Motor vehicles.
2. Void election.

a1. In General.

Where the trial judge allowed the county commission to continue collecting the moneys levied under their initial resolution until new election was held for voters to approve or disapprove the tax, the disposition of any such moneys collected was a matter to be determined by court on remand. Brackin v. Sumner County ex rel. Sumner County Bd. of County Comm'rs, 814 S.W.2d 57 (Tenn. 1991).

1. Motor Vehicles.

There is nothing in the Motor Vehicle and Title Registration Law (title 55, chs. 1-6) which would prevent a county from levying a privilege tax on motor vehicles. Adkins v. Robertson County, 201 Tenn. 596, 301 S.W.2d 337 (1957).

Sections 6-55-501 and 6-55-502, restricting the right of municipalities to tax motor vehicles, do not apply to counties. Adkins v. Robertson County, 201 Tenn. 596, 301 S.W.2d 337 (1957).

2. Void Election.

Trial judge was correct in voiding referendum election and directing the call of a new election on the question of whether eight votes were not counted as a result of a machine malfunction. Brackin v. Sumner County ex rel. Sumner County Bd. of County Comm'rs, 814 S.W.2d 57 (Tenn. 1991).

TITLE 8

PUBLIC OFFICERS AND EMPLOYEES

CHAPTER 47

REMOVAL OF OFFICERS

8-47-101. Officers subject to removal — Grounds. — Every person holding any office of trust or profit, under and by virtue of any of the laws of the state, either state, county, or municipal, except such officers as are by the constitution removable only and exclusively by methods other than those provided in this chapter, who shall knowingly or willfully commit misconduct in office, or who shall knowingly or willfully neglect to perform any duty enjoined upon such officer by any of the laws of the state, or who shall in any public place be in a state of intoxication produced by strong drink voluntarily taken, or who shall engage in any form of gambling, or who shall commit any act constituting a violation of any penal statute involving moral turpitude, shall forfeit such office and shall be ousted from such office in the manner hereinafter provided. [Acts 1915, ch. 11, § 1; Shan., § 1135a1; Code 1932, § 1877; T.C.A. (orig. ed.), § 8-2701.]

Cross-References. Civil service commission members, removal, § 8-30-106.

Clerks of courts, removal or suspension, §§ 18-1-301, 18-1-302, 18-3-110.

Failure of clerk or clerk and master to comply with order for new bond, removal, § 18-2-213.

Impeachments, Tenn. Const., art. V, §§ 1-5; ch. 46 of this title.

Loss of retirement benefits for felony conviction arising out of employment or official capacity, §§ 8-35-203, 8-36-201.

Officers liable to indictment and removal, Tenn. Const., art. V, § 5.

Officers subject to impeachment, Tenn. Const., art. V, § 4; § 8-46-101.

Ouster from usurped office, title 29, chapter 35.

Refusal to accept assignment to civil defense mobile reserve unit, dismissal from employment, § 58-2-111.

Removal of judges and attorneys for state, Tenn. Const., art. VI, § 6.

Removal of officers and employees of city manager cities, § 6-20-220.

Suspension, removal or discharge from office, § 39-16-406.

Section to Section References. This chapter is referred to in §§ 2-6-304, 6-33-104, 7-34-115, 8-4-115, 9-13-211, 9-21-308, 16-15-303, 38-6-101, 38-6-112, 40-28-105, 54-7-205, 63-5-103.

This section is referred to in § 8-47-103.

Textbooks. Tennessee Jurisprudence, 2 Tenn. Juris., Appeal and Error, § 251; 6 Tenn. Juris., Clerks of Court, § 7; 18 Tenn. Juris., Mandamus, § 9; 21 Tenn. Juris., Public Officers, § 25; 21 Tenn. Juris., Quo Warranto, § 3; 22 Tenn. Juris., Schools, § 9.

Law Reviews. The Procedural Details of the Proposed Tennessee Rules of Appellate Procedure, III. Security and Stay Pending Appeal (John L. Sobieski, Jr.), 46 Tenn. L. Rev. 23.

Attorney General Opinions. Ouster of county commissioner convicted of driving under the influence, OAG 95-069 (7/3/95).

Comparative Legislation. Removal of officers:

Ala. Code § 36-9-1 et seq.

Ark. Code § 21-12-101 et seq.

Ga. Const. Art. III, § 11, para. IV.

Ky. Rev. Stat. Ann. § 63.020 et seq.

Miss. Code Ann. § 25-5-1 et seq.

Mo. Rev. Stat. § 106.010 et seq.

N.C. Gen. Stat. § 128-16 et seq.

Va. Code § 24.1-79.1 et seq.

Cited: First Sub. Water Util. Dist. v. McCanless, 177 Tenn. 128, 146 S.W.2d 948 (1941); Sitton v. Fulton, 566 S.W.2d 887 (Tenn. Ct. App. 1978); State v. Blazer, 619 S.W.2d 370 (Tenn. 1981); Marshall v. Sevier County, 639 S.W.2d 440 (Tenn. Ct. App. 1982).

NOTES TO DECISIONS

ANALYSIS

1. Construction and Interpretation.

2. —Popular Title.

This chapter was commonly known as the "ouster" law. Edwards v. State ex rel. Kimbrough, 194 Tenn. 64, 250 S.W.2d 19 (1952).

3. —Purpose of Statute.

The object of this statute was to rid the public of unworthy officials, and it should be given a construction which will accomplish this object. State ex rel. Milligan v. Jones, 143 Tenn. 575, 224 S.W. 1041 (1920).

The legislative intent evident in the ouster act is to provide a speedy summary proceeding. State ex rel. Leech v. Wright, 622 S.W.2d 807 (Tenn. 1981).

4. —"Office of Trust or Profit" — Creation.

Office of trust or profit within the meaning of this law could be created by the constitution or by statute, but not by the quarterly county court (now county legislative body), though the power could be granted to it to fill a county office after the same had been validly created by the general assembly. State ex rel. Harris v. Buck, 138 Tenn. 112, 196 S.W. 142 (1917).

5. —Willful Misconduct.

This chapter provided a remedy against officers who knowingly or willfully misconducted themselves in office, or who knowingly or willfully neglected to perform any duty enjoined upon them by law, or who were guilty of certain acts involving moral turpitude. State ex rel. Harris v. Brown, 157 Tenn. 39, 6 S.W.2d 560 (1928).

City council member who voted for resolution authorizing appointment of collector for delinquent city taxes and who thereafter accepted appointment of collector, but who upon being advised that he could not hold two offices, resigned office of collector and authorized city treasurer to deduct from his salary as council member the amount previously paid him in fees was not subject to ouster from city council by proceeding filed under this section for misconduct in office based on violation of § 12-4-101, since misconduct was not intentional. State ex rel. Brumit v. Grindstaff, 169 Tenn. 383, 88 S.W.2d 142 (1935).

6. —Officers Not Covered.

Where the defendant was employed by the quarterly county court (now county legislative body) as county engineer under a contract which could be terminated by either party on 30 days' notice, under statute not expressly declaring the purpose to create a county office or public office of any character, and not making the appointment of a county engineer mandatory, nor fixing the term of his employment, nor fixing his compensation, the defendant under such contract was not a person holding an office of trust or profit within the meaning of this law, but was a mere employee under contract with the county. State ex rel. Harris v. Buck, 138 Tenn. 112, 196 S.W. 142 (1917).

An attorney appointed to collect delinquent taxes was not subject to ouster. State ex rel. Harris v. Brown, 157 Tenn. 39, 6 S.W.2d 560 (1928).

A judge of a (former) county court was a judge of a court created under the authority of Tenn. Const., art. VI, § 1, and could be removed from office only by the general assembly, thus a county judge did not come within the provisions of the ouster law. State ex rel. Brooks v. Eblen, 185 Tenn. 566, 206 S.W.2d 793 (1947).

7. —Officers Covered by Statute.

The office of school director was a district, county and state office, and while not an office of profit, was an "office of trust," within this statute. State ex rel. Milligan v. Jones, 143 Tenn. 575, 224 S.W. 1041 (1920).

County commissioners were county officers within the meaning of this chapter. Jordan v. State ex rel. Williams, 217 Tenn. 307, 397 S.W.2d 383 (1965).

8. —Proceedings Under Municipal Charter.

Ouster proceeding under municipal charter could be enjoined by the courts where the charges were clearly political in nature. McDonald v. Brooks, 215 Tenn. 535, 387 S.W.2d 803 (1965).

Petition filed with city council under municipal charter provision for ouster of mayor was an ouster suit the same as if it had been filed under the provisions of this chapter, and the sufficiency of the petition would be tested by the same rules as those of a court of law. McDonald v. Brooks, 215 Tenn. 535, 387 S.W.2d 803 (1965).

9. —Clear Case — Necessity.

Proceedings against an officer should never be brought unless there is a clear case of official dereliction, as such a drastic statute should be invoked only in plain cases, and not for purposes of inquisition. State ex rel. Wilson v. Bush, 141 Tenn. 229, 208 S.W. 607 (1918); In re Kelley, 209 Tenn. 280, 352 S.W.2d 709 (1961).

Proceedings under the ouster law should not have been brought except in a clear case of

official dereliction, the statute being intended to remove public officials for willful misconduct and for acts involving moral turpitude. McDonald v. Brooks, 215 Tenn. 535, 387 S.W.2d 803 (1965).

10. —Good Faith Conduct.

Where a sheriff had made an honest and reasonably intelligent effort to do his duty, he was not removed from office by the courts, though his efforts may not have been wholly successful, for his right to hold and continue in office depended upon the good faith of his efforts rather than upon the degree of his success. State ex rel. Thompson v. Reichman, 135 Tenn. 685, 188 S.W. 597 (1916).

Right of sheriff to hold office was dependent on good faith in his efforts to enforce the law and not the degree of success obtained. Vandergriff v. State ex rel. Davis, 185 Tenn. 386, 206 S.W.2d 395 (1947).

In determining whether a public official has "knowingly or willfully misconducted himself in office," good faith can be a factor which should be considered. State ex rel. Estep v. Peters, 815 S.W.2d 161 (Tenn. 1991).

Even though the "good faith" of a defendant can be a factor to be considered in determining whether the defendant's actions constitute "misconduct" for purposes of this section, an intent or desire to benefit personally from an activity is not an essential element of "misconduct" for purposes of this section. State ex rel. Estep v. Peters, 815 S.W.2d 161 (Tenn. 1991).

11. —Penalty Not Authorized.

In an ouster proceeding under these sections, the judgment of the court was limited to removal from office, and it could impose no fine or penalty or any obligations. State ex rel. Phillips v. Greer, 170 Tenn. 529, 98 S.W.2d 79 (1936).

12. Construction with Other Acts.

13. —Cumulative Remedy.

While the mayors and vice mayors of cities were "civil officers" in the meaning of Tenn. Const., art. V, § 5, which authorized the general assembly to enact laws for their indictment for crimes or misdemeanors in office, and provided that upon conviction they should be removed from office by the court, the constitutional remedy for their removal upon such conviction was a mere incident thereto, and that remedy was not exclusive. Therefore, this statute applied to mayors and vice mayors of cities, as providing an additional remedy to that provided by the constitution. State ex rel. Timothy v. Howse, 134 Tenn. 67, 183 S.W. 510, 1916D L.R.A. 1090, 1917C Ann. Cas. 1125 (1915); State ex rel. Thompson v. Crump, 134 Tenn. 121, 183 S.W. 505, 1916D L.R.A. 951 (1915).

This statute was remedial only, providing an additional and cumulative remedy. State ex rel. v. Ward, 163 Tenn. 265, 43 S.W.2d 217 (1931); State ex rel. Phillips v. Greer, 170 Tenn. 529, 98 S.W.2d 79 (1936); Broyles v. State, 207 Tenn. 571, 341 S.W.2d 724 (1960).

City charter authorizing recall of officers was in addition to and not in substitution for the method of removal of officers as provided in this section, and did not suspend a general law and was valid. Roberts v. Brown, 43 Tenn. App. 567, 310 S.W.2d 197 (1957).

14. —Quo Warranto Proceedings.

This chapter afforded no remedy where an officer was occupying more than one lucrative office; instead, resort should have been had to a proceeding in the nature of quo warranto under § 29-35-101. State ex rel. Harris v. Brown, 157 Tenn. 39, 6 S.W.2d 560 (1928).

A statement, in a petition for removal from office of (former) justice of the peace (now general sessions court judge), that by reason of his willful and knowing misconduct petitioners were entitled to relief under the ouster law, characterized it as a proceeding under such law and not as a proceeding in quo warranto. State ex rel. v. Ward, 163 Tenn. 265, 43 S.W.2d 217 (1931).

Where acceptance of city manager's office by member of board of commissioners was legally ineffective, board member did not thereby hold second office while holding first and incompatible office of commissioner, and remedy against him, if any, was under provisions of ouster statute rather than under quo warranto statute. State ex rel. v. Thompson, 193 Tenn. 395, 246 S.W.2d 59 (1952).

15. —Municipal Charters.

This statute was remedial in nature, and only provided a new or additional remedy; and it applied and was effective for the removal of the officers of a city, charter of which provided for their removal by recall election, but further provided that such method of removal was cumulative and additional to the then existing or future methods of removal. State ex rel. Timothy v. Howse, 134 Tenn. 67, 183 S.W. 510, 1916D L.R.A. 1090, 1917C Ann. Cas. 1125 (1915).

16. —Interest in Public Contracts.

The procedure provided for ouster of public officials by the code was an additional or cumulative remedy against officials for official misconduct and carried with it no fine, penalty or obligation, so that a judgment under § 12-4-102 declaring the offending official ineligible to hold office for 10 years could not have been entered; hence, question became moot when the term of office of the official expired and the proceedings were dismissed. State ex rel. Phillips v. Greer, 170 Tenn. 529, 98 S.W.2d 79 (1936); State ex rel. Lavender v. Bingham, 170 Tenn. 552, 98 S.W.2d 86 (1936).

17. Acts Warranting Ouster.

Ouster proceedings should not be brought unless there is a clear case of official dereliction. State ex rel. Leech v. Wright, 622 S.W.2d 807 (Tenn. 1981).

18. —Willful Misconduct or Neglect of Duty.

The chancellor was well warranted in pronouncing a judgment of ouster against a director of a school district, where there had been no meeting of the directors after such director had been elected, and he had been signing the names of all directors to school warrants and delivering them to the parties entitled, had not visited all the schools, had failed and neglected to take care of the school property as required by law, had hauled coal from the school grounds and had not returned the same until after he was suspended, notwithstanding the fact that he had no unlawful purpose in appropriating coal belonging to the school district, for this law has no reference to the intent with which the misfeasance was committed. State ex rel. Milligan v. Jones, 143 Tenn. 575, 224 S.W. 1041 (1920).

For a chairman to allow use by the clerk of a rubber stamp for his counter-signature of school warrants was a willful neglect and ground for removal. State ex rel. v. Smith, 158 Tenn. 26, 11 S.W.2d 897 (1928).

A (former) justice of the peace who corruptly contracted with county board of education could be ousted. State ex rel. v. Ward, 163 Tenn. 265, 43 S.W.2d 217 (1931).

It was not willful misconduct for an inexperienced justice of the peace to prepare a new search warrant containing the proper names of those subjected to search, and to file same as the one under which a precedent search had been made. State ex rel. Barnes v. Stillwell, 165 Tenn. 174, 54 S.W.2d 978 (1932).

Sheriff was not subject to ouster where evidence did not show that he had knowingly or willfully misconducted himself but in fact showed he was a man of integrity and good character and had attempted to do his duty in good faith. Vandergriff v. State ex rel. Davis, 185 Tenn. 386, 206 S.W.2d 395 (1947).

The uncontradicted evidence established without reasonable dispute the fact that sheriff knowingly and willfully neglected to perform the duty enjoined upon him by § 38-3-102 to suppress unlawful assemblies and prevent breaches of the peace, and thereby subjected himself to ouster under the mandate of this section. Edwards v. State ex rel. Kimbrough, 194 Tenn. 64, 250 S.W.2d 19 (1952).

Where evidence sustained finding that county commissioner knowingly and willfully utilized and received labor and supplies from county penal farm, order of ouster was authorized. Jordan v. State ex rel. Williams, 217 Tenn. 307, 397 S.W.2d 383 (1965).

The words "knowingly and willfully" also are not confined to a studied or deliberate intent to go beyond the bounds of the law but also encompass a mental attitude of indifference to consequences or failure to take advantage of means of knowledge of the rights, duties or powers of a public office holder. State ex rel. Leech v. Wright, 622 S.W.2d 807 (Tenn. 1981).

School system's budget deficit of approximately two million dollars was not due to school board members' knowing and willful neglect of duty; therefore, ouster of school board members was improper. State ex rel. Thompson v. Walker, 845 S.W.2d 752 (Tenn. Ct. App. 1992).

Ouster suits should be brought only where the evidence of official dereliction is clear and convincing. State ex rel. Thompson v. Walker, 845 S.W.2d 752 (Tenn. Ct. App. 1992).

19. —Misconduct That Would Sustain Indictment.

A city commissioner who contracted with the city in good faith and without moral turpitude, was not subject to ouster. Misconduct that would support ouster would sustain an indictment at common law. State ex rel. v. Perkinson, 159 Tenn. 442, 19 S.W.2d 254 (1929).

Misconduct that would sustain an indictment under the common law would support a proceeding under the ouster law. State ex rel. v. Ward, 163 Tenn. 265, 43 S.W.2d 217 (1931).

20. —Misconduct During Prior Term.

Acts committed in a previous term which subjected the officeholder to ouster could not be used either through the ouster statute (this section) or through the quo warranto statute (§ 29-35-101) as acts to oust him or get him out of office in a succeeding term. State ex rel. Chitwood v. Murley, 202 Tenn. 637, 308 S.W.2d 405 (1957).

21. Acts Not Warranting Ouster.

Government employees who are not protected by contractual or tenure "rights" may not be dismissed for engaging in constitutionally protected speech. Watts v. Civil Serv. Bd., 606 S.W.2d 274 (Tenn. 1980), cert. denied, 450 U.S. 983, 101 S. Ct. 1519, 67 L. Ed. 2d 818 (1981).

22. Procedure.

Chancellor properly submitted specific factual questions as to alleged misconduct of county commissioner rather than submitting mixed question of law and fact as to whether commissioner knowingly and willfully misconducted himself in office. Jordan v. State ex rel. Williams, 217 Tenn. 307, 397 S.W.2d 383 (1965).

In ouster proceedings against county commissioner, chancellor could properly strike portion of answer relating to accomplishments of commissioner in office. Jordan v. State ex rel. Williams, 217 Tenn. 307, 397 S.W.2d 383 (1965).

The Tennessee Rules of Civil Procedure apply to ouster proceedings under this chapter. State ex rel. Leech v. Wright, 622 S.W.2d 807 (Tenn. 1981).

If there is any conflict between any express provisions of this chapter and the Tennessee Rules of Civil Procedure, the ouster statute should prevail. State ex rel. Leech v. Wright, 622 S.W.2d 807 (Tenn. 1981).

23. —Provided by Act.

The ouster act was sui generis. It provided the procedure to be followed in a trial under that act. Edwards v. State ex rel. Kimbrough, 194 Tenn. 64, 250 S.W.2d 19 (1952).

24. —Moot Questions.

An ouster proceeding begun after the expiration of the term of office presented only a moot question which the court would not consider. State ex rel. Phillips v. Greer, 170 Tenn. 529, 98 S.W.2d 79 (1936).

25. Nature of Proceedings.

Ouster proceedings are civil in their nature. State ex rel. Leech v. Wright, 622 S.W.2d 807 (Tenn. 1981).

DECISIONS UNDER PRIOR LAW

1. Remedy Prior to Statute.

Before this statute, the only remedy for official malfeasance or neglect of duty was through indictment as at common law followed by judgment of removal under Tenn. Const., art. V, § 5. State ex rel. v. Ward, 163 Tenn. 265, 43 S.W.2d 217 (1931).

Collateral References. 63A Am. Jur. 2d Public Officers § 219 et seq.

67 C.J.S. Officers § 117 et seq.

Action affecting personal rights or liabilities, bringing or defending. 74 A.L.R. 500.

Appointing authorities, implied power to remove where there is no tenure or definite term. 91 A.L.R. 1097.

Failure to pay creditors on claims not related to office. 127 A.L.R. 495.

Governmental control of actions or speech of public officers or employees in respect of matters outside the actual performance of their duties. 163 A.L.R. 1358.

Governor's decision, conclusiveness. 52 A.L.R. 7; 92 A.L.R. 998.

Inefficiency or misconduct of deputy or subordinate. 143 A.L.R. 517.

Judgment entered on a plea of nolo contendere as a conviction. 71 A.L.R.2d 593; 10 A.L.R.5th 139.

Mandatory retirement of public officer or employee based on age. 81 A.L.R.3d 811.

Membership in religious, political, social or criminal society or group. 116 A.L.R. 358.

Misconduct during previous term. 42 A.L.R.3d 691.

Offense under federal law or law of another state or country. 20 A.L.R.2d 732.

Pardon as restoring public office or license or eligibility therefor. 58 A.L.R.3d 1191.

Personal liability of officer for removing another officer. 4 A.L.R. 1371.

Physical or mental disability. 28 A.L.R. 777.

Refusal to answer questions during an investigation. 77 A.L.R. 616; 44 A.L.R.2d 789.

Removal of public officers for misconduct during previous term. 42 A.L.R.3d 691.

8-47-102. Institution by prosecuting attorneys on own initiative. — The attorney general and reporter has the power, on the attorney general and reporter's own initiative, and without any complaint having been made to the attorney general and reporter or request made of the attorney general and reporter, to institute proceedings in ouster against any and all state, county, and municipal officers, under the provisions of this chapter, and the district attorneys general, county attorneys, and city attorneys, within their respective jurisdictions, may institute such actions, without complaint being made to them or request made of them, as they are authorized to institute upon request made of them or complaint made to them. [Acts 1915, ch. 11, § 14; Shan., § 1135a25; Code 1932, § 1901; T.C.A. (orig. ed.), § 8-2702.]

Textbooks. Tennessee Jurisprudence, 21 Tenn. Juris., Public Officers, § 29.

Law Reviews. The Tennessee Court Systems — Prosecution, 8 Mem. St. U.L. Rev. 477.

Cited: Marshall v. Sevier County, 639 S.W.2d 440 (Tenn. Ct. App. 1982); State ex rel. Estep v. Peters, 815 S.W.2d 161 (Tenn. 1991).

NOTES TO DECISIONS

1. Persons Authorized to Bring Proceedings.

Attorney appointed by Shelby County quarterly court (now county legislative body) as county attorney was county attorney within the meaning of this section and could bring ouster proceedings against county commissioner. Jordan v. State ex rel. Williams, 217 Tenn. 307, 397 S.W.2d 383 (1965).

Authority of county attorney to bring suits for ouster of county officials was vested by the general assembly and not by county court (now county legislative body) or county commission. Jordan v. State ex rel. Williams, 217 Tenn. 307, 397 S.W.2d 383 (1965).

Private attorney retained by county commission as special counsel was not official county attorney within meaning of ouster statute. Jordan v. State ex rel. Williams, 217 Tenn. 307, 397 S.W.2d 383 (1965).

8-47-103. Investigation and institution of proceedings. — It is the duty of the attorney general and reporter, the district attorneys general, county attorneys, and city attorneys, within their respective jurisdictions, upon notice being received by them in writing that any officer herein mentioned has been guilty of any of the acts, omissions, or offenses set out in § 8-47-101, forthwith to investigate such complaint; and, if upon investigation such person finds that there is reasonable cause for such complaint, such person shall forthwith institute proceedings in the circuit, chancery, or criminal court of the proper county, to oust such officer from office. [Acts 1915, ch. 11, § 2; Shan., § 1135a2; Code 1932, § 1878; T.C.A. (orig. ed.), § 8-2703.]

Textbooks. Tennessee Jurisprudence, 21 Tenn. Juris., Public Officers, § 25.

Law Reviews. The Tennessee Court Systems — Prosecution, 8 Mem. St. U.L. Rev. 477.

Cited: In re Kelley, 209 Tenn. 280, 352 S.W.2d 709 (1961).

NOTES TO DECISIONS

1. Jurisdiction.

County court (now county legislative body) did not have jurisdiction of proceeding to remove jail physician, since removal proceeding could only be instituted in circuit, chancery and criminal courts of county involved. Brock v. Foree, 168 Tenn. 129, 76 S.W.2d 314 (1934).

Collateral References. Mandamus to compel institution of proceedings. 51 A.L.R. 561.

Quo warranto to oust incumbent. 119 A.L.R. 725.

8-47-110. Petition in name of state — Filing by relators. — The petition or complaint shall be in the name of the state and may be filed upon the relation of the attorney general and reporter, or the district attorney general for the state, or the county attorney in the case of county officers, and of the city attorney, or the district attorney general, in the case of municipal officers; and in all cases it may be filed, without the concurrence of any of such officers, upon the relation of ten (10) or more citizens and freeholders of the state, county, or city, as the case may be, upon their giving the usual security for costs. [Acts 1915, ch. 11, § 3; Shan., § 1135a3; Code 1932, § 1879; T.C.A. (orig. ed.), § 8-2710.]

Cited: State ex rel. Estep v. Peters, 815 S.W.2d 161 (Tenn. 1991).

NOTES TO DECISIONS

ANALYSIS

1. Proceedings by freeholders.
2. Expiration of term of office.

1. Proceedings by Freeholders.

Ten freeholders could institute proceeding under this statute. State ex rel. v. Ward, 163 Tenn. 265, 43 S.W.2d 217 (1931).

2. Expiration of Term of Office.

When suit for violation of §§ 12-4-101, 12-4-102 was not brought under proper procedure for enforcement of such sections, supreme court would not consider whether suit had been instituted under this law when term of office of person involved had expired. State ex rel. Wallen v. Miller, 202 Tenn. 498, 304 S.W.2d 654 (1957).

CHAPTER 50

MISCELLANEOUS PROVISIONS

PART 5—DISCLOSURE STATEMENTS OF CONFLICT OF INTERESTS

8-50-501. Disclosure statements of conflict of interests by certain public officials. — (a) Disclosure of the interests named in § 8-50-502 shall be made to the registry of election finance by candidates for and appointees to the following offices:

(1) Each member of the general assembly;

(2) The secretary of state, comptroller of the treasury, state treasurer and each member of the state election commission;

(3) Each director of the Tennessee regulatory authority;

(4) The governor;

(5) Each officer of the governor's cabinet;

(6) Each supreme court justice, each judge of the court of criminal appeals and each judge of the court of appeals;

(7) Each delegate to a constitutional convention called to consider a new constitution or amendments to the Constitution of Tennessee;

(8) The attorney general and reporter;

(9) The district attorneys general and the public defenders for each judicial district;

(10) The administrative director of the courts;

(11) The executive director of the district attorneys general conference;

(12) The state election coordinator;

(13) Members of the board of pardons and paroles;

(14) Members and executive director of the alcoholic beverage commission;

(15) The chancellor of the board of regents and the president of each college or university governed by the board of regents;

(16) The president of the University of Tennessee, and the chancellor of each separate branch or campus of the University of Tennessee; and

(17) Members of the registry of election finance.

(b) Each candidate or appointee to a local public office as defined in § 2-10-102(11)(B) shall make a disclosure of the interests named in § 8-50-502 by filing a disclosure statement with the county election commission in the county of the candidate's residence.

(c) A candidate for any of the aforementioned offices which are elective shall file a disclosure statement no later than thirty (30) days after the last day provided by law for qualifying as a candidate. The county election commission in each county shall forward a complete list of candidates who have qualified for state public office in its county to the registry of election finance within three (3) days of the qualifying deadline. Such list shall include each candidate's name, address and the office sought. An appointee to any of the offices listed in subsection (a) shall file a disclosure statement within thirty (30) days from the date of appointment. The appointing authority shall notify the registry of election finance or the county election commission, as appropriate, of any such appointment within three (3) days of the appointment. Any candidate or appointee who is holding the same position for which such person is a candidate or appointee shall not be required to file the statement required by this subsection, as long as such candidate or appointee is in compliance with §§ 8-50-503 and 8-50-504.

(d)(1) The disclosure shall be in writing in the form prescribed by the registry of election finance and shall be a public record.

(2) A person required to file the form required by this part shall have one (1) attesting witness sign the form before it is submitted to the appropriate authority. The form need not be notarized before it is submitted to the appropriate authority. [Acts 1972, ch. 843, § 1; 1977, ch. 185, § 1; 1978, ch. 928, § 1; T.C.A., § 8-4125; Acts 1981, ch. 412, §§ 1, 2; 1989, ch. 585, §§ 26, 27; 1991, ch. 519, §§ 12-14; 1992, ch. 671, § 2; 1992, ch. 988, § 6; 1993, ch. 66, § 11; 1995, ch. 305, § 94; 1996, ch. 996, § 2.]

Compiler's Notes. For order requiring financial disclosure by cabinet members and cabinet level staff, see Executive Order No. 3 (February 6, 1987).

Amendments. The 1996 amendment substituted "executive director" for "executive secretary" in (a)(11).

Effective Dates. Acts 1996, ch. 996, § 3. July 1, 1996.

Cross-References. Campaign Financial Disclosure Act of 1980, title 2, ch. 10, part 1.

Powers of registry of election finance, § 2-10-207.

Section to Section References. This part is referred to in §§ 2-10-205, 2-10-207, 17-2-302, 35-50-120.

Law Reviews. Ethical Obligations of Judges (Joe G. Riley), 23 Mem. St. U.L. Rev. 507 (1993).

Professional Responsibilities of Lobbyists (William R. Bruce), 23 Mem. St. U.L. Rev. 547 (1993).

8-50-502. Disclosure statements — Contents. — Disclosure shall be made of:

(1) The major source or sources of private income of more than one thousand dollars ($1,000), including, but not limited to, offices, directorships, and salaried employments of the person making disclosure, the spouse, or minor children residing with such person, but no dollar amounts need be stated. This subdivision shall not be construed to require the disclosure of any client list or customer list.

(2) Any investment which the person making disclosure, that person's spouse, or minor children residing with that person has in any corporation or other business organization in excess of five thousand dollars ($5,000) or five percent (5%) of the total capital, but it shall be sufficient to identify the industry and no firm or organization need be named nor dollar amounts or percentages be stated;

(3) Any person, firm, or organization for whom compensated lobbying is done by any associate of the person making disclosure, that person's spouse, or minor children residing with the person making disclosure, or any firm in which the person making disclosure or they hold any interest, complete to include the terms of any such employment and the measure or measures to be supported or opposed;

(4) In general terms by areas of the client's interest, the entities to which professional services, such as those of an attorney, accountant, or architect, are furnished by the person making disclosure or that person's spouse;

(5) By any member of the general assembly, the amount and source, by name, or any contributions from private sources for use in defraying the expenses necessarily related to the adequate performance of that member's legislative duties. The expenditure of campaign funds by an officeholder for the furtherance of the office of the officeholder shall be considered as an expenditure under title 2, chapter 10, and such expenditures need not be reported under the provisions of this chapter;

(6) Any retainer fee which the person making the disclosure receives from any person, firm, or organization who is in the practice of promoting or opposing, influencing or attempting to influence, directly or indirectly, the passage or defeat of any legislation before the general assembly, the legislative committees, or the members to such entities;

(7) Any adjudication of bankruptcy or discharge received in any United States district court within five (5) years of the date of the disclosure;

(8) Any loan or combination of loans of more than one thousand dollars ($1,000) from the same source made in the previous calendar year to the person making disclosure or to the spouse or minor children unless:

(A) The loan is from an immediate family member;

(B) The loan is from a financial institution whose deposits are insured by an entity of the federal government, or such loan is made in accordance with existing law and is made in the ordinary course of business. A loan is made in the ordinary course of business if the lender is in the business of making loans, and the loan bears the usual and customary interest rate of the lender for the category of loan involved, is made on a basis which assures repayment, is evidenced by a written instrument, and is subject to a due date or amortization schedule;

(C) The loan is secured by a recorded security interest in collateral, bears the usual and customary interest rate of the lender for the category of loan involved, is made on a basis which assures repayment, is evidenced by a written instrument, and is subject to a due date or amortization schedule;

(D) The loan is from a partnership in which the legislator has at least ten percent (10%) partnership interest; or

(E) The loan is from a corporation in which more than fifty percent (50%) of the outstanding voting shares are owned by the person making disclosure or by a member of such person's immediate family.

As used in this subdivision (8), "immediate family member" means a spouse, parent, sibling or child; and

(9) Such additional information as the person making disclosure might desire. [Acts 1972, ch. 843, § 2; T.C.A., § 8-4126; Acts 1989, ch. 589, § 9; 1992, ch. 932, §§ 2, 3; 1992, ch. 978, §§ 2, 3; 1992, ch. 988, § 7.]

Code Commission Notes. Lobbying ethics, OAG 89-87 (5/22/89).

Cross-References. Acceptance of honorarium by public officials, § 2-10-115.

Section to Section References. This section is referred to in § 8-50-501.

Attorney General Opinions. Application of campaign contribution limits to donations to constituent service accounts, OAG 95-098 (9/22/95).

8-50-503. Amendments of disclosure statements. — Any disclosure statement shall be amended from time to time as conditions change because of the termination or acquisition of interests as to which disclosure is required. [Acts 1972, ch. 843, § 3; T.C.A., § 8-4127.]

Section to Section References. This section is referred to in § 8-50-501.

8-50-504. Filing of amended disclosure statement. — As long as any person required by the provisions of this part to file a disclosure statement retains office or employment, such person shall file an amended statement with the registry of election finance or notify the registry of election finance in writing that such person has had no change of condition which requires an amended statement, not later than January 31 of each and every year, except that a delegate to a constitutional convention shall submit an amended statement with the registry of election finance or notify the registry of election finance, in writing, that such person has had no change of condition, not later than fifteen (15) days after the date provided in the call for the convening of the constitutional convention. [Acts 1972, ch. 843, § 4; 1977, ch. 185, § 2; T.C.A., § 8-4128; Acts 1989, ch. 585, § 28; 1992, ch. 671, § 1.]

Section to Section References. This section is referred to in § 8-50-501.

8-50-505. Enforcement powers. — (a) The registry of election finance and the appropriate county administrator of elections have the jurisdiction to administer and enforce the provisions of this part concerning disclosure statements of conflicts of interests. This enforcement power includes the full range of powers and penalties and procedures established in title 2, chapter 10, by Acts 1989, ch. 585.

(b) It is the intent of the general assembly that the sanctions provided in this section are the civil penalties enacted into law by Acts 1989, ch. 585. [Acts 1972, ch. 843, § 5; T.C.A., § 8-4129; Acts 1989, ch. 585, § 29; 1989, ch. 591, § 113; 1990, ch. 943, §§ 1, 2.]

Compiler's Notes. For codification of Acts 1989, ch. 585, see the Session Law Disposition Table.

Acts 1990, ch. 943, § 2(a) deleted the classification of the prohibited activity in this section designated as a Class C misdemeanor by Acts 1989, ch. 591, § 113.

References to the county "registrar-at-large" and "deputy registrar" have been changed to "administrator of elections" and "deputy", respectively, pursuant to Acts 1997, ch. 558, §§ 21 and 22.

Section to Section References. This section is referred to in § 35-50-120.

8-50-506. Career service employees — Financial disclosure. — (a) No employee in the career service under chapter 30 of this title, shall be required by the appointing authority to submit a disclosure statement or any financial disclosure statement, unless such employee or a member of the employee's immediate family has a financial interest with a value of more than five thousand dollars ($5,000) which would constitute a conflict of interest or a potential conflict of interest under state law or the department of personnel's policy or other departmental policy.

(b) Disclosure to the immediate supervisor is required at the time an assignment is received which could result in a conflict. The immediate supervisor would then determine if a conflict exists which warrants reassignment of that task to another employee.

(c) Disclosures provided for in this section shall apply to any employee or person whose duties are to regulate, inspect, audit or procure goods or services or to administer tax laws. Disclosures are required for individuals who have authority over these persons or these functions.

(d) The appointing authority has responsibility for clearly communicating these provisions in writing to agency employees upon hiring and annually thereafter. [Acts 1997, ch. 496, § 1.]

Effective Dates. Acts 1997, ch. 496, § 2. June 13, 1997.

TITLE 40

CRIMINAL PROCEDURE

CHAPTER 29

RESTORATION OF CITIZENSHIP

40-29-101. Jurisdiction — Time of application. — (a) Persons rendered infamous or deprived of the rights of citizenship by the judgment of any state or federal court may have their full rights of citizenship restored by the circuit court.

(b) Those pardoned, if the pardon does restore full rights of citizenship, may petition for restoration immediately after such pardon; provided, that a court

shall not have jurisdiction to alter, delete or render void special conditions of a pardon pertaining to the right of suffrage.

(c) Those convicted of an infamous crime may petition for restoration upon the expiration of the maximum sentence imposed for any such infamous crime. [Code 1858, § 1994 (deriv. Acts 1851-1852, ch. 30, § 1); Shan., § 3635; Code 1932, § 7183; Acts 1981, ch. 345, § 7; T.C.A. (orig. ed.), § 40-3701; Acts 1983, ch. 207, § 2.]

Cross-References. Acts purging registration, § 2-2-106.

Duties of election coordinator, § 2-11-202.

Judgment of infamy, § 40-20-112.

Qualified voters, § 2-2-102.

Registration information, § 2-2-116.

Suffrage for persons convicted of infamous crimes, § 2-19-143.

Section to Section References. This chapter is referred to in § 39-17-1316.

Sections 40-29-101 — 40-29-104 are referred to in § 40-29-105.

Textbooks. Tennessee Criminal Practice and Procedure (Raybin), § 32.223.

Tennessee Jurisprudence, 6 Tenn. Juris., Citizenship, § 2; 25 Tenn. Juris., Witnesses, § 16.

Law Reviews. Tennessee Civil Disabilities: A Systemic Approach (Neil P. Cohen), 41 Tenn. L. Rev. 253.

Cited: State v. Blazer, 619 S.W.2d 370 (Tenn. 1981); United States v. White, 808 F. Supp. 586 (M.D. Tenn. 1992).

NOTES TO DECISIONS

ANALYSIS

1. Effect of restoration.
2. Right to hold office.

1. Effect of Restoration.

Judgment for restoration of citizenship acts only in futuro and rights of citizenship are only restored from and after date of judgment of restoration. State ex rel. Harvey v. City of Knoxville, 166 Tenn. 530, 64 S.W.2d 7 (1933).

2. Right to Hold Office.

Duly elected commissioner could require other commissioners to meet and transact town business with him even though he had been convicted of forgery 20 years before election since he had been restored under this section to his rights of citizenship. Bryant v. Moore, 198 Tenn. 335, 279 S.W.2d 517 (1955).

40-29-102. Petition and proof. — The proceeding for this purpose shall be by petition to the circuit court of the county in which the petitioner resides, or to the circuit court of the county in which the petitioner was convicted of an act depriving the petitioner of citizenship sustained by satisfactory proof that ever since the judgment of disqualification, the petitioner has sustained the character of a person of honesty, respectability and veracity, and is generally esteemed as such by the petitioner's neighbors. [Code 1858, § 1995 (deriv. Acts 1851-1852, ch. 30, § 1); Shan., § 3656; Code 1932, § 7184; Acts 1969, ch. 316, § 1; T.C.A. (orig. ed.), § 40-3702.]

Cited: United States v. White, 808 F. Supp. 586 (M.D. Tenn. 1992).

NOTES TO DECISIONS

ANALYSIS

1. Necessity for proceeding.
2. Effect of restoration.
3. Conduct of applicant.
4. Appeal.

1. Necessity for Proceeding.

Where, by conviction and sentence for crime, persons were rendered incompetent to testify as witnesses, they were not relieved of such disability by the pardon of the governor, and can only be relieved by the proceeding autho-

rized under this chapter. Evans v. State, 66 Tenn. 12 (1872).

2. Effect of Restoration.

Tenure of office of policeman which was terminated as result of conviction for second degree murder was not restored by virtue of restoration of citizenship in proceeding under this section, since it was effective only from date of decree. State ex rel. Harvey v. City of Knoxville, 166 Tenn. 530, 64 S.W.2d 7 (1933).

3. Conduct of Applicant.

A party demeaning himself properly for four years after his pardon and discharge from the penitentiary for larceny, and showing by unimpeachable witnesses that he sustains a good moral character, was entitled to be restored to his rights as a citizen, although he was adjudged to be infamous under § 40-20-112. In re Curtis, 6 Tenn. Civ. App. (6 Higgins) 12 (1915).

4. Appeal.

Resident of this state is entitled to an appeal, upon the pauper oath, from the circuit court to the court of appeals from the action of the circuit court in refusing to restore him to citizenship; and the case will be tried de novo in the appellate court, on the proof heard in the lower court. In re Curtis, 6 Tenn. Civ. App. (6 Higgins) 12 (1915).

Motion for new trial is not necessary as a prerequisite to an appeal and a hearing in the appellate court, where the application for restoration to citizenship was denied. In re Curtis, 6 Tenn. Civ. App. (6 Higgins) 12 (1915).

40-29-103. Notice to district attorney general and to United States attorney. — Before the petition of a person rendered infamous or deprived of the rights of citizenship by the judgment of a state court is heard, the district attorney general in whose county the petitioner currently resides and the district attorney general of the county in which the petitioner was convicted shall have twenty (20) days' notice of such petition in order that, if deemed advisable, each may resist. The United States attorney and the district attorney general in whose district the petitioner currently resides shall be given such notice, with the same opportunity to resist, when such petitioner was rendered infamous or deprived of the rights of citizenship by the judgment of a federal court. [Code 1858, § 1966 (deriv. Acts 1851-1852, ch. 30, § 1); Shan., § 3657; mod. Code 1932, § 7185; modified; T.C.A. (orig. ed.), § 40-3703; Acts 1983, ch. 207, § 3.]

Law Reviews. The Tennessee Court System — Prosecution, 8 Mem. St. U.L. Rev. 477.

Cited: United States v. White, 808 F. Supp. 586 (M.D. Tenn. 1992).

40-29-104. Costs. — The petitioner shall pay the costs of this application. [Code 1858, § 1997 (deriv. Acts 1851-1852, ch. 30, § 2); Shan., § 3658; Code 1932, § 7186; T.C.A. (orig. ed.), § 40-3704.]

Cited: State ex rel. Webb v. Parks, 122 Tenn. 230, 122 S.W. 977 (1909).

NOTES TO DECISIONS

1. Costs on Appeal.

Upon appeal upon pauper oath from the circuit court to the court of appeals from action of the circuit court in refusing to restore citizenship, judgment may be rendered against appellant for costs if the judgment of the lower court is reversed. In re Curtis, 6 Tenn. Civ. App. (6 Higgins) 12 (1915).

40-29-105. Felons convicted of infamous crimes after July 1, 1986. — (a) The provisions and procedures provided for in §§ 40-29-101 — 40-29-104 shall apply to all persons convicted of an infamous crime prior to July 1, 1986, but before July 1, 1996.

(b) For all persons convicted of infamous crimes after July 1, 1986, but before July 1, 1996, the following procedures shall apply:

(1) A person rendered infamous or deprived of the rights of citizenship by the judgment of any state or federal court may have full rights of citizenship restored upon:

(A) Receiving a pardon, except where such pardon contains special conditions pertaining to the right to suffrage;

(B) Service or expiration of the maximum sentence imposed for any such infamous crime; or

(C) Being granted final release from incarceration or supervision by the board of parole, the department of correction or county correction authority;

(2) A person rendered infamous after July 1, 1986, by virtue of being convicted of one (1) of the following crimes shall never be eligible to register and vote in this state: First degree murder, aggravated rape, treason or voter fraud;

(3) Any person eligible for restoration of citizenship pursuant to subdivision (b)(1) may request, and then shall be issued, a certificate of restoration upon a form prescribed by the coordinator of elections, by:

(A) The pardoning authority; or

(B) An agent or officer of the supervising or incarcerating authority;

(4) Any authority issuing a certificate of restoration shall forward a copy of such certificate to the coordinator of elections;

(5) Any person issued a certificate of restoration shall submit, to the administrator of elections of the county in which the person is eligible to vote, such certificate and upon verification of the same with the coordinator of elections be issued a voter registration card entitling the person to vote; and

(6) A certificate of restoration issued pursuant to subdivision (b)(3) shall be sufficient proof to the administrator of elections that such person fulfills the above requirements; however, before allowing a person convicted of an infamous crime to become a registered voter, it is the duty of the administrator of elections in each county to verify with the coordinator of elections that such person is eligible to register under the provisions of this section.

(c) The following procedure shall apply to a person rendered infamous by virtue of being convicted of a felony on or after July 1, 1996:

(1) Except as provided in subdivision (c)(2)(B), a person rendered infamous or whose rights of citizenship have been deprived by the judgment of a state or federal court may seek restoration of full rights of citizenship by petitioning the circuit court of the county where the petitioner resides or where the conviction for the infamous crime occurred;

(2)(A) A person receiving a pardon that restores full rights of citizenship may petition for restoration immediately upon receiving the pardon. However, the court shall not have the authority or jurisdiction to alter, delete or render void special conditions pertaining to the right of suffrage that may be contained in such pardon;

(B) A person convicted of an infamous crime may petition for restoration upon the expiration of the maximum sentence imposed by the court for the infamous crime; provided, that a person convicted of murder, rape, treason or voter fraud shall never be eligible to register and vote in this state;

(3) The petition shall set forth the basis for the petitioner's eligibility for restoration and shall state the reasons the petitioner believes that petitioner's

full citizenship rights should be restored. The petition shall be accompanied by such certified records, statements and other documents or information as is necessary to demonstrate to the court that the petitioner is both eligible for and merits having full rights of citizenship restored. The court may require such additional proof as it deems necessary to reach a just decision on the petition. There is a presumption that a petition filed pursuant to this subsection shall be granted and that the full citizenship rights of the petitioner shall be restored. This presumption may only be overcome upon proof by a preponderance of the evidence that either the petitioner is not eligible for restoration or there is otherwise good cause to deny the petition;

(4)(A) Prior to acting on any petition filed pursuant to this subsection, the court shall notify the district attorney general in whose county the petitioner resides and the district attorney general of the county in which the conviction occurred that a petition for restoration of citizenship has been filed by the petitioner. Such notice shall be sent at least thirty (30) days prior to any hearing on or disposition of the petition. Each district attorney general so notified may object to the restoration of the petitioner's citizenship rights either in person or in writing;

(B) If the petitioner was rendered infamous or deprived of citizenship rights by judgment of a federal court, the circuit court shall give the notice required in subdivision (c)(2)(A) to the United States attorney and the district attorney general in whose district the petitioner is currently residing. Each such official shall have the same right to object to the petition as is provided in subdivision (c)(2)(A);

(5) If, upon the face of the petition or after conducting a hearing, the court finds that the petitioner's full citizenship rights should be restored, it shall so order and send a copy of such order to the state coordinator of elections;

(6) All costs for a proceeding under this subsection to restore a person's citizenship rights shall be paid by the petitioner unless the court specifically orders otherwise; and

(7) Any person whose citizenship rights have been restored by order of the court pursuant to this subsection shall submit a certified copy of such order to the administrator of elections of the county in which such person is eligible to vote. The administrator of elections shall verify with the coordinator of elections that such an order was issued and, upon receiving such verification, shall issue the person a voter registration card entitling the person to vote. [Acts 1986, ch. 906, § 1; 1989, ch. 227, § 51; 1996, ch. 898, §§ 1, 2.]

NOTES TO DECISIONS

1. Restoration of Citizenship.

A felon is eligible for restoration of citizenship under this section; however, it is not automatic. United States v. White, 808 F. Supp. 586 (M.D. Tenn. 1992).

TITLE 57

INTOXICATING LIQUORS

CHAPTER 3

LOCAL OPTION—TRAFFIC IN INTOXICATING LIQUORS

PART 1—GENERAL PROVISIONS

57-3-101. Definitions. — (a) Whenever used in this chapter, unless the context requires otherwise:

(1)(A) "Alcoholic beverage" or "beverage" means and includes alcohol, spirits, liquor, wine and every liquid containing alcohol, spirits, wine and capable of being consumed by a human being, other than patent medicine, or beer where the latter contains an alcoholic content of five percent (5%) by weight or less. Notwithstanding any provision to the contrary in this title, "alcoholic beverage" or "beverage" also includes any liquid product containing distilled alcohol capable of being consumed by a human being, manufactured or made with distilled alcohol irrespective of alcoholic content. Notwithstanding the provisions of this definition, products or beverages containing less than one half of one percent (0.5%) alcohol by volume, other than wine as defined in this section, shall not be considered to be alcoholic beverages and shall not be subject to regulation or taxation pursuant to chapters 1-6 and 9 of this title.

(B) Notwithstanding the provisions of this definition, ethanol produced in a facility whose production process is primarily a wet milling process in bulk and sold and transported in bulk lots of five thousand (5,000) gallons or more and not packaged for retail sale by the holder of a valid alcohol fuels permit or a valid distilled spirits permit:

(i) For export to another country;

(ii) To a domestic manufacturer, distiller, vintner, or rectifier who is a duly licensed alcohol beverage or liquor manufacturer in this or some other state; or

(iii) To a manufacturer who uses the ethanol to create a product which is incapable of human consumption or contains less than one half of one percent (0.5%) alcohol by volume;

shall not be considered to be an alcoholic beverage and shall not be subject to regulation or taxation pursuant to chapters 1-6 and 9 of this title.

(2) "Commission" means the alcoholic beverage commission, except as otherwise provided;

(3) "Distiller" means any person who owns, occupies, carries on, works, conducts or operates any distillery either by himself or by his agent;

(4) "Distillery" means and includes any place or premises wherein any liquors are manufactured for sale;

(5) "Federal license" does not mean tax receipt or permit;

(6) "Gallon" or "gallons" means a wine gallon or wine gallons, of one hundred and twenty-eight (128) ounces;

(7) "License" means the license issued pursuant to this chapter;

(8) "Licensee" means any person to whom such license has been issued pursuant to this chapter;

(9) "Manufacture" means and includes distilling, rectifying and operating a winery;

(10) "Manufacturer" means and includes a distiller, vintner and rectifier;

(11) "Municipality" means an incorporated town or city having a population of one thousand (1,000) persons or over by the federal census of 1950 or any subsequent federal census; provided, however, that when any incorporated town or city by ordinance authorizes a census to be taken of such incorporated town or city and shall furnish to the commission a certified copy of the census containing the name, address, age and sex of each person enumerated therein, and if the census shall show that the incorporated town or city has a population of one thousand (1,000) persons or over, the commission, upon verification of the census, may declare such incorporated town or city to be a "municipality" for all intents and purposes of this chapter;

(12) "Pint" means one eighth (⅛) of a wine gallon;

(13) "Quart" means one fourth (¼) of a wine gallon;

(14) "Rectifier" means and includes any person who rectifies, purifies or refines distilled spirits or wines by any process other than as provided for on distillery premises, and every person who, without rectifying, purifying or refining distilled spirits, shall, by mixing such spirits, wine or other liquor with any material, manufacture any imitation of, or compounds liquors for sale under the name of, whiskey, brandy, gin, rum, wine, spirits, cordials, bitters or any other name;

(15) "Retailer" means any person who sells at retail any beverage for the sale of which a license is required under the provisions of this chapter;

(16) "Retail sale" or "sale at retail" means a sale to a consumer or to any person for any purpose other than for resale;

(17) "Vintner" means any person who owns, occupies, carries on, works, conducts or operates any winery, either by himself or by his agent;

(18) "Wholesaler" means any person who sells at wholesale any beverage for the sale of which a license is required under the provisions of this chapter;

(19) "Wholesale sale" or "sale at wholesale" means a sale to any person for purposes of resale, except that sales by a person licensed under § 57-3-204 to a charitable, nonprofit, or political organization possessing a valid special occasion license for resale by such organizations pursuant to their special occasion license shall not be construed as such a sale;

(20) "Wine" means the product of the normal alcoholic fermentation of the juice of fresh, sound, ripe grapes, with the usual cellar treatment and necessary additions to correct defects due to climatic, saccharine and seasonal

conditions, including champagne, sparkling and fortified wine of an alcoholic content not to exceed twenty-one percent (21%) by volume. No other product shall be called "wine" unless designated by appropriate prefixes descriptive of the fruit or other product from which the same was predominantly produced, or an artificial or imitation wine; and

(21) "Winery" means and includes any place or premises wherein wines are manufactured from any fruit or brandies distilled as the by-product of wine or other fruit or cordials compounded, and also includes a winery for the manufacture of wine.

(b) Words importing the masculine gender include the feminine and the neuter, and the singular includes the plural. [Acts 1939, ch. 49, §§ 3, 4, 13; 1949, ch. 284, § 9; C. Supp. 1950, §§ 6648.4, 6648.19 (Williams, §§ 6648.6, 6648.7, 6648.16); Acts 1955, ch. 347, § 2A; impl. am. Acts 1959, ch. 9, § 14; Acts 1963, ch. 257, § 11; modified; T.C.A. (orig. ed.), § 57-106; Acts 1981, ch. 404, § 4; 1982, ch. 877, § 5; 1983, ch. 229, § 4; 1986, ch. 516, § 1; 1989, ch. 325, § 1; 1991, ch. 58, § 1; 1997, ch. 155, § 2.]

Compiler's Notes. This chapter, to the extent that the provisions hereof are in direct conflict with the provisions of §§ 12-2-201 — 12-2-204, as to the authority vested by such sections in the commissioner of general services for the advertising and sale of contraband intoxicating beverages and motor vehicles, is repealed by Acts 1959, ch. 303, § 5.

Amendments. The 1997 amendment added (a)(1)(B).

Effective Dates. Acts 1997, ch. 155, § 3. April 29, 1997.

Section to Section References. This chapter is referred to in §§ 4-31-105, 9-6-301, 57-1-201.

Parts 1-4 are referred to in § 12-2-201.

This section is referred to in §§ 57-1-210, 57-3-106, 57-3-205, 57-3-207, 57-3-216, 57-3-402, 57-3-403, 57-3-411, 57-3-412, 57-3-501, 57-5-101, 57-6-102, 68-14-601.

Textbooks. Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, §§ 2, 5, 7, 13, 25.

Law Reviews. Selected Tennessee Legislation of 1986, 54 Tenn. L. Rev. 457 (1987).

Attorney General Opinions. Applicability to foodstuff products, OAG 90-31 (3/7/90).

Hard cider, OAG 94-75 (7/8/94).

Comparative Legislation. Local option laws:

Ala. Code § 28-2-1 et seq.

Ark. Code § 3-8-101 et seq.

Ga. O.C.G.A. § 3-4-40 et seq.

Ky. Rev. Stat. Ann. § 242.010 et seq.

Miss. Code Ann. § 67-1-11 et seq.

Mo. Rev. Stat. § 311.110 et seq.

N.C. Gen. Stat. § 18B-600 et seq.

Va. Code § 4-45 et seq.

Cited: United States v. Fine, 293 F. Supp. 189 (E.D. Tenn. 1968); Hill v. State, 176 Tenn. 475, 144 S.W.2d 734 (1940); State ex rel. Saperstein v. Bass, 177 Tenn. 609, 152 S.W.2d 236 (1941); Boyd v. Burmaster, 193 Tenn. 338, 246 S.W.2d 36 (1952); Curtis v. State, 219 Tenn. 258, 409 S.W.2d 352 (1966); Overton Square, Inc. v. Foster, 615 S.W.2d 681 (Tenn. Ct. App. 1981).

NOTES TO DECISIONS

ANALYSIS

1. Legislative Authority to Regulate Liquor.

The right of the state to regulate liquor traffic does not flow from the prohibition amendment, but flows from its police power which was all powerful to deal with the subject of police power regulation unless it distinctly contravened such amendment. State ex rel. Major v. Cummings, 178 Tenn. 378, 158 S.W.2d 713, 139 A.L.R. 837 (1942).

2. Nature of Statute.

This statute cannot have effect save as a local

option law. Akers v. State, 175 Tenn. 674, 137 S.W.2d 281 (1940).

This chapter is not a local law, in the sense of being passed for the benefit of a particular county only, but is a general statewide law, applicable to the entire state, but effective for its general purposes in such counties only as may adopt it. Vickers v. State, 176 Tenn. 415, 142 S.W.2d 188 (1940).

Municipalities may exercise a degree of reasonable regulation after the license is issued, but prior thereto their sole power is to grant or withhold certificates based upon the applicant's character. City of Chattanooga v. Tennessee Alcoholic Beverage Comm'n, 525 S.W.2d 470 (Tenn. 1975).

3. Application.

This chapter has application only (1) in excepted territory, when carved out by local will; and (2) under exceptional circumstances and on specific conditions definitely detailed in this chapter. Chadrick v. State, 175 Tenn. 680, 137 S.W.2d 284 (1940).

4. Effect on Other Statutes.

This chapter does not work a repeal by implication of the provisions of the Code prohibiting the reception, possession and transportation of intoxicating liquors. Akers v. State, 175 Tenn. 674, 137 S.W.2d 281 (1940).

5. Relation to Interstate Commerce.

Under the decisions of the federal courts alcoholic beverages retain their interstate commerce character until they actually enter the forbidden state, and if the statutes should be construed so as to prohibit such transportation, they would be void because violative of the commerce clause of U.S. Const., art. 1, § 8, cl. 3. McCanless v. Graham, 177 Tenn. 57, 146 S.W.2d 137 (1941).

Where the only act engaged in by defendant which can in any wise be related to these statutes is that of transporting intoxicating liquors from outside the state through dry counties of Tennessee to Mississippi in violation of its statutes, such liquor is not contraband within the meaning of this chapter, since those acts are limited to the "manufacture, sale, receipt, possession, storage, transportation and distribution of, and traffic in, alcoholic beverages, in counties and municipalities of this state," as the purpose of the legislature was to make it unlawful to commit such acts in Tennessee, and not to regulate the liquor traffic in other states. McCanless v. Graham, 177 Tenn. 57, 146 S.W.2d 137 (1941).

6. Definitions.

7. —Retailer.

Under the definition of a retailer in this section any person who sells whisky at retail must be regarded as falling within that description regardless of whether he makes one sale or many sales. Hill v. State, 176 Tenn. 475, 144 S.W.2d 734 (1940).

8. —Consideration in Revocation of Licenses.

In considering whether terms of licenses had been violated by retailers commissioner could properly consider definitions of "retail sale," "sale at retail," "retailer," "wholesale sale" and "sale at wholesale" as contained in this section and had the discretionary authority to revoke such licenses if he found the holders to be doing a wholesale business. Little v. MacFarland, 206 Tenn. 665, 337 S.W.2d 233 (1960).

9. —Alcoholic Beverage.

On appeal, beverage admitted into evidence and examined by jury would be presumed to be capable of being consumed by a human being. State v. Bush, 626 S.W.2d 470 (Tenn. Crim. App. 1981).

10. —Municipality.

Only the urban services district, and not the entirety of Davidson County, is a municipality within the definition of this section. Templeton v. Metropolitan Gov't, 650 S.W.2d 743 (Tenn. Ct. App. 1983).

Collateral References. 45 Am. Jur. 2d Intoxicating Liquors § 79 et seq.

48 C.J.S. Intoxicating Liquors § 49 et seq.

Change of "wet" or "dry" status fixed by local option election by change of name, character, or boundaries of voting, without later election. 25 A.L.R.2d 863.

Constitutional and statutory provisions establishing local option as reviving, modifying, or repealing by implication prior laws penalizing transportation. 134 A.L.R. 434.

Entrapment to commit offense against law regulating sales of liquor. 55 A.L.R.2d 1322.

Federal constitutional and legislative provisions as to intoxicating liquor as affecting state local option statutes. 26 A.L.R. 672; 70 A.L.R. 132.

Judicial notice of intoxicating quality, and the like, of liquor or particular liquid, from its name. 49 A.L.R.2d 764.

Validity of statutory classifications based on population — intoxicating liquor statutes. 100 A.L.R.3d 850.

What constitutes "sale" of liquor in violation of statute or ordinance. 89 A.L.R.3d 551.

Intoxicating Liquors ⇦ 24-43.

57-3-102. Traffic in intoxicating liquor permitted by local option. — It is lawful to manufacture, store, transport, sell, distribute, possess and receive alcoholic beverages, subject to the license, payment of taxes, limitations, regulations and conditions provided for in this chapter, in the counties or municipalities of this state which by local option elections so permit, as hereinafter provided. [Acts 1939, ch. 49, § 1; C. Supp. 1950, § 6648.5 (Williams, § 6648.4); T.C.A. (orig. ed.), § 57-107.]

Textbooks. Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, § 4.

NOTES TO DECISIONS

ANALYSIS

1. Burden to show legal possession under statute.
2. Declaratory judgment.

1. Burden to Show Legal Possession Under Statute.

The burden is on a defendant indicted under the "bone dry law" to show that the possession was legal under the local option law. Renfro v. State, 176 Tenn. 638, 144 S.W.2d 793 (1940).

2. Declaratory Judgment.

Suit to establish town as municipality with power to license liquor stores is proper case for declaratory judgment. Crabtree v. Stephens, 198 Tenn. 149, 278 S.W.2d 672 (1955).

Collateral References. Change of "wet" or "dry" status fixed by local option election by change of name, character, or boundaries of voting, without later election. 25 A.L.R.2d 863.

Constitutional and statutory provisions establishing local option as reviving, modifying, or repealing by implication prior laws penalizing transportation. 134 A.L.R. 434.

Federal constitutional and legislative provisions as to intoxicating liquor as affecting state local option statutes. 26 A.L.R. 672; 70 A.L.R. 132.

Validity of state statute or regulation fixing minimum prices at which alcoholic beverages may be sold at retail. 96 A.L.R.3d 639.

57-3-103. Construction of chapter. — (a)(1) Nothing in this chapter is intended to relate to the manufacture, transportation, storage, sale, distribution, possession, or receipt of, or tax upon, any beverage of an alcoholic content of five percent (5%) by weight, or less, except wine or any liquid product manufactured or made with distilled alcohol, and no statute relating thereto shall be considered or construed as modified by this chapter, nor shall this chapter affect chapter 2 of this title.

(2) Alcoholic beverages lawfully manufactured pursuant to the provisions of chapter 2 of this title may be lawfully sold in Tennessee by a manufacturer to a wholesaler duly licensed, in those counties or municipalities which favor local option after election duly held and carried as hereinafter provided for. Any manufacturer now operating pursuant to chapter 2 of this title may continue to do so without being affected in any way by this chapter, except as otherwise expressly provided herein.

(b) It is the intent of the general assembly to be certain that any product containing or manufactured with distilled alcohol should be distributed only in those jurisdictions authorizing the sale of alcoholic beverages, and such distribution be subject to the rules and regulations of the commission. [Acts 1939, ch. 49, § 2; C. Supp. 1950, § 6648.6 (Williams, § 6648.5); T.C.A. (orig. ed.), § 57-108; Acts 1983, ch. 229, § 5; 1986, ch. 516, §§ 2, 3.]

Textbooks. Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, § 2.

Attorney General Opinions. Applicability to foodstuff products, OAG 90-31 (3/7/90).

Hard cider, OAG 94-75 (7/8/94).

57-3-104. Enforcement and administration by commission — Licensing procedures. — (a) The commission shall have the authority, by and with the consent of the governor, to employ such attorneys, inspectors, agents, officers and clerical assistance as may be necessary for the effective administration and enforcement of this chapter. The compensation of such personnel shall be approved by the governor.

(b) It shall enforce and administer the provisions of this chapter and the rules and regulations made by it.

(c) It shall have and exercise the following functions, duties and powers, to wit, to:

(1) Issue all licenses in respect to, or for the manufacture, importation, bottling, keeping, giving away, furnishing, possession, transportation, sale, and delivery of alcoholic beverages, and to revoke any license whatsoever, the issuance of which is authorized by this chapter:

(A) Any revocation of any license shall be made by the commission only on account of the violation of, or refusal to comply with, any of the provisions of this chapter or any rule or regulation of the commission, after not less than ten (10) days' notice to the holder of the license proposed to be revoked, informing such licensee of the time and place of the hearing to be held in respect thereto, and all further procedure with reference to the revocation of any license shall be fixed and prescribed in the rules and regulations adopted and promulgated by the commission, which may be repealed or amended from time to time;

(B) No person has a property right in any license issued hereunder, nor shall the license itself, or the enjoyment thereof, be considered a property right;

(C) Whenever any county executive, if a license has been issued outside the corporate limits of the municipality and outside a civil district meeting the requirements set out in § 57-3-205; a majority of a three-member commission which has been set up as provided in § 57-3-108, if a license has been issued within a civil district meeting the requirements set out in § 57-3-205; or the mayor or majority of the commission, city council or legislative council of a municipality within which a license has been issued shall certify that any licensee has habitually violated the provisions of this chapter, or any regulation that shall be adopted by the county legislative bodies, three-member commissions, or legislative councils, relative to the conduct and operation of the business provided for in this chapter, the commission shall hold a hearing to determine whether such license shall be revoked, which hearing shall be held with the same notice and in the same manner as all other hearings provided for under this chapter;

(2) Refuse to issue a license or permit if, upon investigation, it finds that the applicant for a license or permit has concealed or misrepresented in writing or otherwise any material fact or circumstance concerning the operation of the business or employment, or if the interest of the applicant in the operation of

the business or employment is not truly stated in the application, or in case of any fraud or false swearing by the applicant touching any matter relating to the operation of the business or employment. If a license or permit has been issued, the commission shall issue a citation to the licensee or permittee to show cause why his license or permit should not be suspended or revoked. All data, written statements, affidavits, evidence or other documents submitted in support of an application are a part of the application;

(3) Summon any applicant for a license or permit and also to summon and examine witnesses, and to administer oaths to such applicants and witnesses in making any investigation in regard thereto;

(4) Make, promulgate, alter, amend, or repeal rules and regulations for the enforcement of this chapter or the collections of all license fees and taxes, and all penalties and forfeitures relating thereto, except that the alcoholic beverage tax authorized to be collected by §§ 57-3-302 and 57-3-303 shall be collected by the commissioner of revenue;

(5) Prescribe all forms of application and licenses and tax stamps, and of all reports and all other papers and documents required to be used under or in the enforcement of this chapter, except that the alcoholic beverage tax authorized to be collected by §§ 57-3-302 and 57-3-303 shall be collected by the commissioner of revenue;

(6) Prevent parts of the premises connected with or in any sense used in connection with the premises, whereon the possession, transportation, delivery, receipt, sale or purchase of alcoholic beverages may be lawful, from being used as a subterfuge, or means of evading the provisions of this chapter or the rules and regulations of the commission;

(7) Conform, or to adopt, or to coordinate, to the extent that the commission may deem proper, the practices, methods, standards, rules, and regulations governing traffic in alcoholic beverages, and in alcohol, with the rules, practices, standards, and regulations established by the government of the United States, or any officer, bureau or agency thereof;

(8) Require, on licensed premises, the destruction or removal of any and all bottles, whether empty or otherwise, cases, containers, apparatus, or devices, used or likely to be used, designed or intended or employed in evading, violating or preventing the enforcement of this chapter or the rules and regulations of the commission;

(9) Regulate the advertising, signs and displays, posters or designs intended to advertise any alcoholic beverage or the place where the same is sold; and

(10) Prescribe all forms of applications and licenses, and of all reports and all other papers and documents required to be used under or in the enforcement of this chapter. [Acts 1939, ch. 49, § 4; 1945, ch. 167, § 1; 1947, ch. 73, § 2; 1949, ch. 284, § 2; C. Supp. 1950, § 6648.7; Acts 1951, ch. 52, § 1; impl. am. Acts 1963, ch. 257, §§ 11, 33; impl. am. Acts 1978, ch. 934, §§ 7, 16, 36; T.C.A. (orig. ed.), § 57-109; Acts 1981, ch. 474, § 2.]

Textbooks. Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, §§ 3-7, 12, 25.

Law Reviews. Delegation of Powers to Administrative Agencies in Tennessee (Philip P. Durand), 27 Tenn. L. Rev. 569.

Cited: Seagram Distillers Co. v. Jones, 548 S.W.2d 667 (Tenn. Ct. App. 1976); United States v. Blanton, 700 F.2d 298 (6th Cir. 1983); Rivergate Wine & Liquors, Inc. v. City of Goodlettsville, 647 S.W.2d 631 (Tenn. 1983).

NOTES TO DECISIONS

ANALYSIS

1. Exercise of Powers by Alcoholic Beverage Commission — Function of Court.

The exercise by the commission of powers under this section will not be lightly interfered with by the courts. McCanless v. Klein, 182 Tenn. 631, 188 S.W.2d 745 (1945); Terry v. Evans, 189 Tenn. 345, 225 S.W.2d 255 (1949).

Liquor store in municipality without police power to enact or enforce penal ordinances is still subject to state laws including license revocation by commission for violation of rules. Crabtree v. Stephens, 198 Tenn. 149, 278 S.W.2d 672 (1955).

2. Rules and Regulations.

It is difficult to conceive of a regulation of the sale and distribution of intoxicating liquor which could be construed to be beyond the police powers of the state. McCanless v. Klein, 182 Tenn. 631, 188 S.W.2d 745 (1945); Terry v. Evans, 189 Tenn. 345, 225 S.W.2d 255 (1949).

The commission is not authorized to promulgate and enforce regulations which are unreasonable, oppressive or discriminatory. Wise v. McCanless, 183 Tenn. 107, 191 S.W.2d 169 (1945).

It is the official duty of the commission to make and promulgate regulations with reference to the retail sale of intoxicating liquors. State ex rel. Brown v. McCanless, 184 Tenn. 83, 195 S.W.2d 619 (1946).

The power of the commission under this section to make reasonable rules regulating the issuance of licenses for the retail sale of intoxicating liquors will not be interfered with unless it clearly appears that it has acted arbitrarily or illegally. State ex rel. Brown v. McCanless, 184 Tenn. 83, 195 S.W.2d 619 (1946).

3. —Licensing Relatives of Licensee Whose License Is Revoked.

Rule that "no license will be issued to any employee or other person having any interest in the place of business where a license has been revoked, nor will a license be issued to a relative of any employee or other person having any interest in the business for the privilege of doing business near the location of the establishment whose license was revoked," is not too unreasonable to be sustained and is not unenforceable because of the prohibition of the relative doing business "near" the location of the closed establishment. McCanless v. State ex rel. Hamm, 181 Tenn. 308, 181 S.W.2d 154, 153 A.L.R. 832 (1944).

4. —Prohibition of License near Schools or Other Institutions.

Regulation forbidding issuance of license where premises occupied by licensee would be in too close proximity to "church, school, or public institution" is reasonable. State ex rel. Brown v. McCanless, 184 Tenn. 83, 195 S.W.2d 619 (1946).

Where regulation of commission prohibited issuance of license if premises involved were in too close proximity to a school, the refusal of commission to issue license to liquor store operated within 700 feet of college campus was not arbitrary or unreasonable and was not affected by city ordinance forbidding maintenance of a liquor store within 600 feet of a college campus. State ex rel. Brown v. McCanless, 184 Tenn. 83, 195 S.W.2d 619 (1946).

5. —Rule for Approval of Additions to Stock.

A rule that "no wholesale liquor distributor shall add an additional brand to his stock without first securing the written approval of the commission" is valid and does not tend to create a monopoly. McCanless v. Klein, 182 Tenn. 631, 188 S.W.2d 745 (1945).

6. —Rule to Prevent Illegal Diversion.

A rule regulating the transportation of whisky within the state's borders to the end that it may not be diverted and sold in violation of the state statute is a reasonable exercise of administrative authority by the commission. McQueen v. McCanless, 182 Tenn. 453, 187 S.W.2d 630 (1945).

7. —Transportation Regulations.

Rule of commission requiring bond and description of cargo before any person can transport alcoholic beverages within, into, through, or from the state of Tennessee issued pursuant to subdivision (c)(2) was a reasonable rule required for proper administration and enforcement of this chapter. McQueen v. McCanless, 182 Tenn. 453, 187 S.W.2d 630 (1945).

8. —Conflict Between Municipal and State Regulations.

If there is a conflict between the municipal

and state regulations, that impose by the latter will prevail, since by this section the final authority to license the sale of intoxicating liquor is in the commission. State ex rel. Brown v. McCanless, 184 Tenn. 83, 195 S.W.2d 619 (1946).

9. Issuance of Licenses.

The licensing authorities are vested with a large discretion in issuing licenses and their decisions will not be interfered with unless it clearly appears that they have acted arbitrarily or unreasonably. State ex rel. Nixon v. McCanless, 176 Tenn. 352, 141 S.W.2d 885 (1940).

The refusal of the commission to grant licenses to the wives of men whose licenses had been revoked where it appeared that wives knew nothing about the liquor business and that the business would be dominated by the husbands was not an abuse of discretion. State ex rel. Nixon v. McCanless, 176 Tenn. 352, 141 S.W.2d 885 (1940).

Commission is authorized to make reasonable rules regulating retail sales of intoxicating liquor and is vested with a large discretion in determining whether a license applied for shall be issued. State ex rel. Brown v. McCanless, 184 Tenn. 83, 195 S.W.2d 619 (1946).

An incorporated town of over 1,000, is a municipality under this section with power to license operation of liquor store in its boundaries, even though it does not have police power to enact or enforce penal ordinances. Crabtree v. Stephens, 198 Tenn. 149, 278 S.W.2d 672 (1955).

The alcoholic beverage commission could grant a liquor license although the city had refused to issue a certificate of good moral character. City of Chattanooga v. Tennessee Alcoholic Beverage Comm'n, 525 S.W.2d 470 (Tenn. 1975).

10. Rights of Permit Holders.

Assuming that he is without fault, the holder of a permit issued by the express authority of a legislative act is the holder of a lawfully conferred privilege in the exercise of which he is entitled to protection for the period of his permit. Wise v. McCanless, 183 Tenn. 107, 191 S.W.2d 169 (1945).

The right of a duly licensed dealer to protest an unreasonable, oppressive or discriminatory regulation does not rest on a fundamental property right, but on a privilege expressly conferred by the state, acting through the legislature, and the permission thus given for a fixed term may not be so unreasonably regulated, in the exercise by the commission of the powers delegated to it, as to destroy this permit altogether. Wise v. McCanless, 183 Tenn. 107, 191 S.W.2d 169 (1945).

Although under this section a dealer has no "property right" in his license, such civil right as he does have under the permit issued to him by the express authority of the statute may be protected against invasion by the operation of a regulation unreasonable and oppressive in its application to him. Wise v. McCanless, 183 Tenn. 107, 191 S.W.2d 169 (1945).

Where after issuance of license to complainant commission promulgated a regulation prohibiting operation of a liquor store within 100 feet of any place where the public was admitted and liquor consumed, complainant whose liquor store was within 100 feet of such a place and who had no control over such place was entitled to enjoin enforcement of such regulation during the period for which his license was issued. Wise v. McCanless, 183 Tenn. 107, 191 S.W.2d 169 (1945).

11. Revocation of Licenses.

Failure of wholesaler to reveal interest in retail liquor business was ground for revocation of license. Bluff City Beverage Co. v. MacFarland, 208 Tenn. 340, 345 S.W.2d 896 (1961).

57-3-105. Conflicts of interests prohibited. — No member of the commission and no person employed by the commission shall have any interest, direct or indirect, either proprietary or by means of any loan, mortgage or lien, or in any other manner, in or on any premises where alcoholic beverages are sold; nor shall they or any of them have any interest, direct or indirect, in any business wholly or partially devoted to the sale, transportation or storage of alcoholic beverages. [Acts 1939, ch. 49, § 5; C. Supp. 1950, § 6648.16 (Williams, § 6648.8); impl. am. Acts 1963, ch. 257, § 15; T.C.A. (orig. ed.), § 57-110.]

57-3-106. Local option election — Municipalities where applicable — Supplemental voter registration — Restrictions on frequency of elections. — (a)(1) Except as provided in subsection (g), the voters of any county may, by local option election, permit the manufacture, receipt, sale, storage,

transportation, distribution and possession of alcoholic beverages, within the territorial limits of such county, by a majority vote, at an election held as hereinafter provided, and, in the event of such permission, the manufacture, receipt, sale, storage, transportation, distribution and possession of alcoholic beverages in such county are lawful; provided, that sales at retail as herein defined shall be made only in the municipalities in such county as herein defined, or within a civil district of such county, which district shall have a population of thirty thousand (30,000) persons or over according to the federal census for the year 1950 or any subsequent census, but which civil district shall not have lying either wholly or partly within its boundaries a municipality as herein defined.

(2) In like manner, the voters of any county, at any time while this chapter is in effect, may, by local option election, forbid the manufacture, receipt, sale, storage, transportation, distribution and/or possession of alcoholic or intoxicating beverages, within the territorial limits of such county, by a majority vote, at an election to be held as hereinafter provided, and, in the event of such prohibition, the manufacture, receipt, sale, storage, transportation, distribution and/or possession of alcoholic or intoxicating beverages in such county is unlawful; provided, that this does not apply to a bona fide manufacturer, actually engaged in manufacture under the provisions of this chapter.

(b)(1)(A) Except in counties having populations of:

not less than	nor more than
12,100	12,200
23,500	24,000
65,000	70,000

according to the 1970 federal census or any subsequent federal census, the voters of any municipality in this state which has been incorporated under a general or special law or laws of this state for five (5) years or longer and which has a population of nine hundred twenty-five (925) or more persons according to the federal census of 1970 or any subsequent federal census, except in municipalities with a population of not less than one thousand two hundred thirty (1,230) nor more than one thousand two hundred fifty (1,250) according to the 1970 federal census or any subsequent federal census, in any county having a population of not less than thirteen thousand five hundred (13,500) nor more than thirteen thousand six hundred (13,600) according to the 1970 federal census or any subsequent federal census, may, by local option election, permit the manufacture, receipt, sale, storage, transportation, distribution and/or possession of alcoholic beverages within the territorial limits of such municipality by a majority vote, at an election held as hereinafter provided, and in the event of such permission, the manufacture, receipt, sale, storage, transportation, distribution and/or possession of alcoholic beverages in such municipality shall be, and become lawful, notwithstanding the fact that the county or any portion thereof in which such municipality is located has, or has not, voted to the contrary under any other provision of this chapter, and the same shall continue to be lawful until the same is forbidden by the voters of such municipality, by majority vote thereof, at a local option election held as hereinafter provided.

(B), (C) [Deleted by 1992 amendment.]

(2) In like manner, the voters of any such municipality, at any time while this chapter is in effect, may, by local option election, forbid the manufacture, receipt, sale, storage, transportation, distribution, and/or possession of alcoholic or intoxicating beverages, within the territorial limits of the municipality, by a majority vote, at an election to be held as hereinafter provided, and in the event of such prohibition, the manufacture, receipt, sale, storage, transportation, distribution, and/or possession of alcoholic or intoxicating beverages in the municipality is unlawful, notwithstanding the fact that the county or any portion thereof in which the municipality is located has or has not voted to the contrary under any other provision of this chapter; provided, that this does not apply to a bona fide manufacturer, actually engaged in manufacture under the provisions of any law of the state of Tennessee.

(c) Elections provided for in subsections (a) and (b) shall be called and held as elections on questions by the county election commission at the next regular election of the county or municipality, as the case may be, upon receipt of a petition signed by residents of the county or municipality, as the case may be, to a number amounting to ten percent (10%) or more of the votes cast in the county or municipality, as the case may be, for governor of the state of Tennessee at the then last preceding gubernatorial election, requesting the holding of such election. Except that, no election under this chapter may be placed on the same ballot or conducted on the same day of a primary election. Such petition shall be addressed to the county election commission of such county, or county in which such municipality is located, and shall read, except for such address, substantially as follows:

"We, registered voters of _____ (here insert name of county or municipality, as the case may be), do hereby request the holding of a local option election to authorize retail package stores to sell alcoholic beverages as provided by law."

Such petition may be in two (2) or more counterparts.

(d) Registered voters of the county or municipality, as the case may be, may vote in the election. Ballots shall be in the form prescribed by the general election laws of the state, except as herein otherwise provided.

(1) The questions submitted to the voters appearing thereon in county elections shall be in the following form:

"To permit retail package stores to sell alcoholic beverages in _____."

(Here insert name of county)

"Not to permit retail package stores to sell alcoholic beverages in _____."

(Here insert name of county)

(2) The questions submitted to the voters appearing thereon in municipal elections shall be in the following form:

"To permit retail package stores to sell alcoholic beverages in _____."

(Here insert name of municipality)

"Not to permit retail package stores to sell alcoholic beverages in _____."

(Here insert name of municipality)

(e) In county elections, the county election commission shall hold a prior supplemental registration, unless such election be at the time of a general election, such registration to be held at the time and in the manner prescribed by law for the holding of supplemental registration previous to the election for members of the general assembly.

(f)(1) The county election commission shall certify the results of the election to the county executive in county elections and to the mayor of the municipality in municipal elections.

(2) Not more than one (1) election in any such county or municipality shall be held under the provisions of this chapter within any period of twenty-four (24) months, except that no election in an entire county or any portion thereof in which such municipality is located, held under the provisions of this chapter, is an election held in such municipality within the meaning of this provision.

(3) Should any county or municipality thereof conduct a local option election under the provisions of this chapter in conjunction with any general election, and the number of qualified votes cast negative to the local option proposition exceeds sixty percent (60%) of the total number of votes cast in the election, no further local option election in such county or municipality shall be held for a period of four (4) years from the date of such previous election. However, no election in an entire county or any portion thereof in which such municipality is located, held under the provisions of this chapter, is an election held in such municipality within the meaning of this provision.

(g)(1) In those counties wherein are located municipalities which have a population equal to or greater than the smallest county in Tennessee by the federal census of 1960 or by any succeeding federal census, or any municipality having a population of one thousand seven hundred (1,700) or more persons according to the 1960 federal census in which at least fifty percent (50%) of assessed valuation of the real estate in the municipality consists of hotels, motels, and tourist courts and accommodations, as shown by the tax assessment rolls or books of the municipality, the elections provided for in subsection (a) apply only to those portions of such county lying outside the corporate limits of such municipalities, it being the purpose and intent of this chapter that as to such counties no countywide election may be held in, nor shall its result affect, any such municipality, but whether or not the manufacture, receipt, sale, storage, distribution, transportation and/or possession of alcoholic beverages shall be permitted or prohibited within the corporate limits of such municipalities shall be determined solely by separate local option elections held in each municipality as provided by subsection (b) hereof; provided, that in such counties wherein the manufacture, storage, sale, distribution, transportation, and/or possession of alcoholic beverages was legal on May 10, 1967, nothing herein shall affect the legality thereof in such counties and the municipalities thereof until the same shall be prohibited by separate local option elections held as provided in this section.

(2) Elections may be called and held in such portions of such counties lying outside such municipalities in the same manner as is provided by subsection (a) for an entire county and with like effect, except that the results thereof shall be applicable only to those portions of such counties lying without the

corporate limits of such municipalities. Petitioners for such elections and the voters participating therein shall reside within those portions of the county lying outside the corporate limits of such municipalities and shall be otherwise qualified as provided in this section. Where a majority of the voters participating in such election shall permit the manufacture, receipt, sale, storage, distribution, transportation and/or possession of alcoholic beverages within such portions of such counties, the same shall be and become lawful therein, but sales at retail shall be made only in such portions of such counties as are within the corporate limits of municipalities as the same are defined in § 57-3-101(9), except the provisions of this subsection shall likewise apply to any civil district which falls within the provisions of subsection (a) and § 57-3-205.

(3) Not more than one (1) such election shall be held in such portions of any county lying without the corporate limits of such municipalities within any period of twenty-four (24) months.

(4) Should any portion of any county lying without the corporate limits of such municipalities conduct a local option election under the provisions of this chapter in conjunction with any general election, and the number of qualified votes cast negative to the local option proposition exceeds sixty percent (60%) of the total number of votes cast in the election, no further local option election in such portions of any county lying without the corporate limits of such municipalities shall be held for a period of four (4) years from the date of such previous election. However, no election in any such portion of a county, held under the provisions of this chapter, is an election held in such municipalities within the meaning of this subdivision. [Acts 1939, ch. 49, § 16; C. Supp. 1950, § 6648.8 (Williams, § 6648.19); Acts 1951, ch. 52, § 6; impl. am. Acts 1951, ch. 75, § 1; impl. am. Acts 1953, ch. 88, § 1; Acts 1963, ch. 390, § 1; 1967, ch. 215, § 1; 1971, ch. 70, § 8; 1972, ch. 502, § 1; 1972, ch. 612, § 8; 1972, ch. 640, § 1; 1972, ch. 740, § 4; impl. am. Acts 1972, ch. 740, § 7; Acts 1975, ch. 112, §§ 1, 2; 1975, ch. 358, § 1; 1977, ch. 174, §§ 1, 2; 1978, ch. 627, § 1; impl. am. Acts 1978, ch. 934, §§ 21, 36; T.C.A. (orig. ed.), § 57-111; Acts 1981, ch. 381, §§ 1-3; 1982, ch. 551, §§ 1-5; 1992, ch. 711, § 2.]

Section to Section References. This section is referred to in §§ 1-3-115, 7-3-303, 57-3-112, 57-3-207, 57-4-101, 57-4-103.

Textbooks. Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, §§ 6, 25.

Cited: Taylor v. Armentrout, 632 S.W.2d 107 (Tenn. 1981); Templeton v. Metropolitan Gov't, 650 S.W.2d 743 (Tenn. Ct. App. 1983); Bemis Pentecostal Church v. State, 731 S.W.2d 897 (Tenn. 1987).

NOTES TO DECISIONS

ANALYSIS

1. Decrease in population subsequent to election.
2. Returns of election commission — Nature.
3. Function of county executive.
4. Fraudulent election — Injunction.
5. Suit by county executive to reform election.
6. Mandamus against election commission.
7. Municipal ordinances.

1. Decrease in Population Subsequent to Election.

Where the population of a town when liquor license was issued was more than 1,000 at the time it was granted, subsequent decrease of population of the town below 1,000 did not

operate to invalidate the license. O'Neil v. State ex rel. Baker, 185 Tenn. 534, 206 S.W.2d 780 (1947).

2. Returns of Election Commission — Nature.

The returns by the election commission are quasi records, and stand with all force of presumptive regularity and prima facie integrity, not only till suspicion is cast upon them, but until their self-authenticated verity is overcome by affirmative proof that the returns do not speak the truth. Seeber v. Watlington, 192 Tenn. 521, 241 S.W.2d 553 (1951).

3. Function of County Executive.

The county executive, as the recipient of the returns under this section, acts merely in a ministerial capacity as the act which he performs is done without the exercise of discretion or judgment and it is only to lodge the official returns of the election commission. Seeber v. Watlington, 192 Tenn. 521, 241 S.W.2d 553 (1951).

4. Fraudulent Election — Injunction.

Where complainant contended that his property right in his liquor business was jeopardized by a fraudulent local option election, complainant was entitled to maintain bill in chancery, but injunction restraining election commission from canvassing votes and announcing result of election was improper as being premature. O'Neil v. Jones, 185 Tenn. 539, 206 S.W.2d 782, 1 A.L.R.2d 581 (1947).

5. Suit by County Executive to Reform Election.

County executive is not entitled to file an action against election commission to reform election returns since he is merely charged with reception of returns and has no authority statutory or otherwise to bring such an action. Seeber v. Watlington, 192 Tenn. 521, 241 S.W.2d 553 (1951).

Suit by county executive against county election commission to reform local option election returns certified to him by election commission on the ground of fraud was not an election contest. Seeber v. Watlington, 192 Tenn. 521, 241 S.W.2d 553 (1951).

6. Mandamus Against Election Commission.

Election commission which rejected returns in two precincts for insufficient legal reasons could be mandated to reassemble all returns including the ones rejected. Peeler v. State ex rel. Beasley, 190 Tenn. 615, 231 S.W.2d 321 (1950).

7. Municipal Ordinances.

A municipal ordinance prohibiting the sale of and trafficking in alcoholic beverages within the corporate limits is in conflict with this section which requires that the sale of alcoholic beverage be permitted or prohibited on a countywide basis. Lakewood v. Tennessee Alcoholic Beverage Comm'n, 219 Tenn. 510, 410 S.W.2d 897 (1967).

An ordinance is unreasonable if it is so restrictive with respect to permissible locations of liquor stores that it conflicts with the legislative purpose, that such stores be fairly distributed throughout the city. City of Chattanooga v. Tennessee Alcoholic Beverage Comm'n, 525 S.W.2d 470 (Tenn. 1975).

CHAPTER 4

CONSUMPTION OF ALCOHOLIC BEVERAGES ON PREMISES

SECTION.

PART 1—GENERAL PROVISIONS

PART 1—GENERAL PROVISIONS

57-4-101. Premises on which certain sales and consumption authorized. — (a) It is lawful to sell wine and other alcoholic beverages as defined in this chapter to be consumed on the premises of any hotel, commercial passenger boat company, restaurant, or commercial airlines and passenger trains meeting the requirements hereinafter set out, within the boundaries of the political subdivisions, wherein such is authorized under § 57-4-103. Beer, as defined in § 57-6-102, is also authorized to be sold on such premises. It is lawful for a charitable, nonprofit or political organization possessing a special

occasion license pursuant to § 57-4-102 to serve or sell such alcoholic beverages to be consumed on a designated premises within the boundaries of a political subdivision wherein the sale of alcoholic beverages at retail has been approved pursuant to § 57-3-106.

(b) It is lawful to sell wine and other alcoholic beverages as defined in § 57-4-102, and beer as defined in § 57-6-102, to be consumed on the premises of any premiere type tourist resort or club as hereinafter defined, to guests of such resort and to members and guests of members of such clubs, subject to the further provisions of this chapter other than § 57-4-103.

(c) It is lawful to sell wine and other alcoholic beverages as defined in § 57-4-102, and beer as defined in § 57-6-102, to be consumed on the premises of any convention center, as hereinafter defined, to those in attendance at the convention center, subject to the further provisions of this chapter other than §§ 57-3-210(b)(1) and 57-4-103.

(d) It is lawful to sell wine and other alcoholic beverages as defined in § 57-4-102, and beer as defined in § 57-6-102, to be consumed on the premises of any historic performing arts center, as hereinafter defined, to those in attendance at the performing arts center, subject to the further provisions of this chapter other than § 57-4-103.

(e) It is lawful to sell wine and other alcoholic beverages as defined in § 57-4-102, to be consumed on the premises of a permanently constructed facility within an urban park center as hereinafter defined, to those in attendance at the urban park center, subject to the further provisions of this chapter other than §§ 57-4-103 and 57-3-210(b)(1).

(f) It is lawful to sell wine and other alcoholic beverages as defined in § 57-4-102, and beer as defined in § 57-6-102, to be consumed on the premises of any historic interpretive center as hereinafter defined, to those in attendance at such interpretive center, subject to the further provisions of this chapter other than §§ 57-4-103 and 57-3-210(b)(1).

(g) It is lawful to sell wine and other alcoholic beverages as defined in § 57-4-102, and beer as defined in § 57-6-102, to be consumed on the premises of any community theater as hereinafter defined, to those in attendance at such community theater, subject to the further provisions of this chapter other than § 57-4-103.

(h) It is lawful to sell wine and other alcoholic beverages as defined in § 57-4-102, and beer as defined in § 57-6-102, to be consumed on the premises of any historic mansion house site, as hereinafter defined, subject to the further provisions of this chapter other than § 57-4-103, only at such times at which the buildings and/or grounds of this site are leased or are being used for entertainment or engagements by private groups or private individuals.

(i) It is lawful to sell wine and other alcoholic beverages as herein defined, and beer as defined in § 57-6-102, to be consumed on the premises of any terminal building of a commercial air carrier airport as defined in § 57-4-102, subject both to the further provisions of this chapter other than § 57-4-103, and to the approval of a majority of the governing board of such commercial air carrier airport.

(j) It is lawful to sell wine and other alcoholic beverages as herein defined, and beer as defined in § 57-6-102, to be consumed on the premises of any zoological institution as hereinafter defined, to those in attendance at the

zoological institution, subject to the further provisions of this chapter other than § 57-4-103. No such wine, alcoholic beverages or beer shall be served during the regular operating hours where the institution is open to the general public unless a special event is scheduled for fund-raising purposes which is by invitation or for which an admission is charged for such event.

(k) It is lawful to sell wine and other alcoholic beverages as herein defined, and beer as defined in § 57-6-102, to be consumed on the premises of any museum as hereinafter defined, to those in attendance at the museum, subject to the further provisions of this chapter other than § 57-4-103. No alcoholic beverage or beer shall be served during the regular operating hours when the museum is open to the general public except at a restaurant located on the premises of such museum or at a special event scheduled for fund-raising purposes when such event is either by invitation or admission is charged.

(*l*) It is lawful to sell wine and other alcoholic beverages as defined in § 57-4-102, and beer as defined in § 57-6-102, to be consumed on the premises of any commercial airline travel club as defined in § 57-4-102, located within a terminal building of a commercial air carrier airport as defined in § 57-4-102, subject both to the further provisions of this chapter, other than § 57-4-103, and to the approval of a majority of the governing board of such commercial air carrier airport.

(1) In any county containing an airport belonging to a municipality which is located in an adjoining county, the county legislative body shall have sixty (60) days to request by resolution the county election commission to place on the ballot for the presidential preference primary to be held on the second Tuesday in March, 1988, the question of whether alcoholic beverages shall be sold for consumption on the premises by a commercial airline travel club in a commercial air carrier airport. The question to be submitted to the voters shall be in the following form:

May alcoholic beverages be sold for consumption on the premises by a commercial airline travel club in a commercial air carrier airport?

FOR _____

AGAINST _____

(2) If in such election a majority of votes are cast in favor of such sales, then the alcoholic beverage commission shall accept license applications as provided by law. If in such election a majority of the votes are cast against such sales, the alcoholic beverage commission shall accept no license applications and no such sales shall be permitted. The county election commission shall certify the results of the election to the county executive and to the alcoholic beverage commission. If the county legislative body does not adopt a resolution requesting the county election commission to place such question on such ballot within sixty (60) days of May 17, 1987, the alcoholic beverage commission shall accept license applications, as provided by law.

(m) Any hotel or motel licensed under this chapter may dispense sealed alcoholic beverages and beer to adult guests through locked, in-room units. Distilled spirits so dispensed shall be in bottles not exceeding fifty milliliters (50 ml.). No person under the age of twenty-one (21) shall be issued or supplied with a key by any hotel or motel for such units. Such units may only be located

in any such hotel or motel located in municipalities having a population in excess of one hundred thousand (100,000) if the voters of such municipality have approved the consumption of alcoholic beverages on the premises by referendum, and in any county in which such municipalities are located if the voters of such county have approved the consumption of alcoholic beverages on the premises by referendum.

(n) It further is lawful to sell wine, as defined in § 57-4-102(23), to be consumed on the premises of any restaurant located within the boundaries of any political subdivision which has authorized the sale of alcoholic beverages for consumption on the premises as provided in § 57-4-103, subject to the further provisions of this chapter. Notwithstanding the minimum seating requirement for a restaurant in § 57-4-102, a restaurant operating under this subsection shall have a seating capacity of at least forty (40) people at tables.

(o) It is lawful to sell wine and other alcoholic beverages and beer to be consumed on the premises of any public aquarium as herein defined to those in attendance at the public aquarium subject to the provisions of this chapter.

(p) It is lawful to sell alcoholic beverages, wine and beer to be consumed on the premises of any aquarium exhibition facility, as defined in § 57-4-102, to those in attendance at such facility subject to the provisions of this chapter. Such alcoholic beverages, wine and beer shall only be sold on such premises at special functions, wherein attendance is limited to invited guests or groups, the function is not open to the general public, and the area in which the function is held is not open to the general public during such function. [Acts 1939, ch. 49, § 3; C. Supp. 1950, §§ 6648.4 (Williams, § 6648.6); T.C.A. (orig. ed.), § 57-106; Acts 1967, ch. 211, § 1; 1972, ch. 682, § 1; 1972, ch. 756, §§ 1, 2; 1975, ch. 111, §§ 1, 2; 1979, ch. 401, § 1; T.C.A., § 57-152; Acts 1980, ch. 898, § 1; 1981, ch. 404, § 1; 1981, ch. 475, § 1; 1983, ch. 52, § 1; 1983, ch. 229, § 6; 1983, ch. 300, § 2; 1983, ch. 469, § 1; 1984, ch. 975, § 1; 1985, ch. 190, § 1; 1986, ch. 899, §§ 1, 2; 1987, ch. 444, §§ 1, 2; 1989, ch. 145, § 1; 1990, ch. 919, § 1; 1991, ch. 219, § 1; 1992, ch. 674, § 1; 1992, ch. 982, § 1; 1995, ch. 306, § 1; 1996, ch. 749, § 1.]

Compiler's Notes. Acts 1989, ch. 145, § 3 provided that the alcoholic beverage commission is authorized to promulgate any rules which may be necessary to implement the provisions of this section.

Amendments. The 1996 amendment added (p).

Effective Dates. Acts 1996, ch. 749, § 2. April 12, 1996.

Cross-References. Brown Bag Law, § 57-4-203(i)(2).

Certain 1987 amendments to section inapplicable to certain counties, § 57-4-104.

Hotels and motels, § 57-5-111.

Nonresident seller's permittees prohibited from interest in business licensed under this section, § 57-3-604.

Section to Section References. This chapter is referred to in §§ 4-31-105, 9-6-301, 57-5-101, 57-5-111, 57-5-301, 57-5-409, 67-4-410.

Parts 1-3 are referred to in § 57-4-201.

This part is referred to in § 57-4-203.

This section is referred to in §§ 57-3-604, 57-3-703, 57-3-704, 57-4-102, 57-4-201, 57-4-203, 57-4-301, 57-4-302.

Textbooks. Tennessee Jurisprudence, 16 Tenn. Juris., Intoxicating Liquors, § 7.

Comparative Legislation. Local option laws:

Ala. Code § 28-2-1 et seq.

Ark. Code § 3-8-101 et seq.

Ga. O.C.G.A. § 3-4-40 et seq.

Ky. Rev. Stat. Ann. § 242.010 et seq.

Miss. Code Ann. § 67-1-11 et seq.

Mo. Rev. Stat. § 311.110 et seq.

N.C. Gen. Stat. § 18B-600 et seq.

Va. Code § 4-45 et seq.

Cited: United States v. Fine, 293 F. Supp. 189 (E.D. Tenn. 1968); Curtis v. State, 219 Tenn. 258, 409 S.W.2d 352 (1966); Aetna Cas. & Sur. Co. v. Woods, 565 S.W.2d 861 (Tenn. 1978).

NOTES TO DECISIONS

1. **Clubs.**

A club which has a license for on-premises consumption of alcoholic beverages and beer from the alcoholic beverage commission under § 57-4-102 and subsection (b) of this section does not have an absolute right to a beer permit from a city beer board. State ex rel. Amvets Post 27 v. Beer Bd., 717 S.W.2d 878 (Tenn. 1986).

Collateral References. 45 Am. Jur. 2d Intoxicating Liquors § 79 et seq.

48 C.J.S. Intoxicating Liquors § 49 et seq.

Change of "wet" or "dry" status fixed by local option election by change of name, character, or boundaries of voting, without later election. 25 A.L.R.2d 863.

Constitutional and statutory provisions establishing local option as reviving, modifying, or repealing by implication prior laws penalizing transportation. 134 A.L.R. 434.

Entrapment to commit offense against law regulating sales of liquor. 55 A.L.R.2d 1322.

Federal constitutional and legislative provisions as to intoxicating liquor as affecting state local option statutes. 26 A.L.R. 672; 70 A.L.R. 132.

Intoxicating Liquors ⇐ 24-43.

57-4-102. Definitions. — As used in this chapter, unless the context otherwise requires:

(1) "Alcoholic beverage" or "beverage" means and includes alcohol, spirits, liquor, wine, and every liquid containing alcohol, spirits, wine and capable of being consumed by a human being, other than patented medicine or beer where the latter contains an alcoholic content of five percent (5%) by weight, or less. Notwithstanding any provision to the contrary in this title, "alcoholic beverage" or "beverage" also includes any liquid product containing distilled alcohol capable of being consumed by a human being manufactured or made with distilled alcohol irrespective of alcoholic content;

(2) "Bona fide charitable or nonprofit organization" means any corporation which has been recognized as exempt from federal taxes under § 501(c) of the Internal Revenue Code (26 U.S.C. § 501(c)) or any organization having been in existence for at least two (2) consecutive years which expends at least sixty percent (60%) of its gross revenue exclusively for religious, educational or charitable purposes;

(3) "Bona fide political organization" means any political campaign committee as defined in § 2-10-102 or any political party as defined in § 2-13-101;

(4)(A) "Club" means a nonprofit association organized and existing under the laws of the state of Tennessee, which has been in existence and operating as a nonprofit association for at least two (2) years prior to the application for a license hereunder, having at least one hundred (100) members regularly paying dues, organized and operated exclusively for pleasure, recreation and other nonprofit purposes, no part of the net earnings of which inures to the benefit of any shareholder or member; and owning, hiring or leasing a building or space therein for the reasonable use of its members with suitable kitchen and dining room space and equipment and maintaining and using a sufficient number of employees for cooking, preparing and serving meals for its members and guests; provided that no member or officer, agent or employee of the club is paid, or directly or indirectly receives, in the form of salary or other compensation, any profits from the sale of spirituous liquors, wines, champagnes or malt beverages beyond the amount of such salary as may be fixed by its members at an annual meeting or by its governing body

out of the general revenue of the club. For the purpose of this section, tips which are added to the bills under club regulations shall not be considered as profits hereunder. The alcoholic beverage commission shall have specific authority through rules and regulations to define with specificity the terms used herein and to impose additional requirements upon applicants seeking a club license not inconsistent with the definition above;

(B) "Club" also means an organization composed of members of the Tennessee national guard, air national guard, or other active or reserve military units which operate facilities located on land owned or leased by the state of Tennessee and which are operated exclusively for the pleasure and recreation of such organization's members, dependents and guests and which are generally referred to as "NCO Clubs" or "Officers Clubs." Such NCO or officers clubs shall be subject to all of the requirements of subdivision (4)(A), except for those requirements relating to having a kitchen, kitchen equipment, and employees;

(C) "Club" also means a nonprofit association organized and existing under the laws of the state of Tennessee which is located in a county having a population of not less than twenty-eight thousand six hundred sixty (28,660) nor more than twenty-eight thousand six hundred ninety (28,690) according to the 1980 federal census or any subsequent federal census. Such club shall be located in a development containing no less than four hundred forty (440) acres and shall be organized and operated exclusively for the pleasure, recreation and other nonprofit purposes of its members and their guests. No part of the net earnings of the association shall inure to the benefit of any shareholder or member. The club shall provide to its members a regulation golf course, tennis courts, and a swimming pool. The club shall own, hire or lease a building or buildings for the reasonable use of its members with suitable kitchen and dining room space and equipment. Such club shall maintain and use a sufficient number of employees for cooking, preparing and serving meals for its members and guests. No member or officer, agent or employee of the club shall be paid, or directly or indirectly receive in the form of salary or other compensation any profits from the sale of alcoholic beverage or malt beverage beyond the amount of such salary as may be fixed by its members at an annual meeting, or by its governing body out of the general revenues of the club. For the purpose of this section, tips which are added to the bills under club regulations shall not be considered as profits hereunder. The alcoholic beverage commission shall have specific authority through rules and regulations to define with specificity the terms used herein and to impose additional requirements upon applicants seeking a club license not inconsistent with this definition;

(D)(i) "Club" also means a for-profit recreational club organized and existing under the laws of the state of Tennessee and which has been in existence and operating for at least two (2) years prior to the application for a license. Such club shall have at least one hundred (100) members regularly paying dues, and shall be organized and operated exclusively for recreation, and providing to its members a regulation golf course and owning, hiring or leasing a building or buildings for the reasonable use of its members, with suitable kitchen and dining room space and equipment, and lodging facilities

consisting of not less than ten (10) rooms. Such club shall maintain and use a sufficient number of employees for cooking, preparing and serving meals for its members and guests and providing lodging facilities to its members and guests. Other than the payment of dividends to the shareholders of the club from its net income derived from all of its operations, no member or officer, agent or employee of the club shall be paid, or shall directly or indirectly receive in the form of salary or other compensation, any profits from the sale of alcoholic beverages or malt beverages beyond the amount of such salary as may be fixed by the shareholders of the corporation at an annual meeting by its governing body out of the general revenues of the club. For the purpose of this section, tips which are added to the bills under club regulations shall not be considered as profits hereunder. The alcoholic beverage commission shall have specific authority through rules and regulations to define with specificity the terms used herein and to impose additional requirements upon applicants seeking a club license not inconsistent with this definition. The alcoholic beverage commission shall not issue a license to any for-profit recreational club which restricts membership based on race or religion or sex. In any proceeding concerning a license denial or revocation under this subdivision, no quota or numerical percentage shall be used to establish proof of the prohibited discrimination among the club's membership;

(ii) Notwithstanding the provisions of § 57-4-101(b) to the contrary, this subdivision (4)(D) shall not apply in any municipality which has not approved the sale of alcoholic beverages for consumption on the premises pursuant to § 57-4-103;

(iii) The provisions of this subdivision (4)(D) shall only apply in counties having a population of not less than two hundred eighty-seven thousand seven hundred (287,700) nor more than two hundred eighty-seven thousand eight hundred (287,800) according to the 1980 federal census or any subsequent federal census;

(E)(i) "Club" also means a for-profit recreational club, organized and existing under the laws of the State of Tennessee, which has at least two hundred fifty (250) dues-paying members who pay dues of at least one hundred dollars ($100) a year. Such club shall have golf courses containing at least twenty-seven (27) holes, collectively, for the use of its members and guests, and have suitable kitchen and dining facilities. Such club shall serve at least one (1) meal daily, five (5) days a week. Such club may not compensate or pay any officer, director, agent or employee any profits from the sale of alcoholic or malt beverages based upon the volume of such beverages sold. Such club shall not discriminate against any patron or potential member on the basis of gender, race, religion or national origin;

(ii) The provisions of this subdivision (4)(E) only apply in counties having a population of not less than eighty thousand (80,000) nor more than eighty-three thousand (83,000) according to the 1990 federal census or any subsequent federal census;

(F)(i) "Club" also means a for-profit recreational club, organized and existing under the laws of the state of Tennessee, which has at least three hundred twenty-five (325) dues-paying members who pay dues of at least

three hundred dollars ($300) a year. Such club shall have a clubhouse with not less than five thousand square feet (5,000 sq. ft.), golf courses containing at least eighteen (18) holes, collectively, for the use of its members and guests, and have suitable kitchen and dining facilities. Such club shall serve at least one (1) meal daily, five (5) days a week. Such club may not compensate or pay any officer, director, agent or employee any profits from the sale of alcoholic or malt beverages based upon the volume of such beverages sold. Such club shall not discriminate against any patron or potential member on the basis of gender, race, religion or national origin;

(ii) The provisions of this subdivision (4)(F) only apply in counties having a population of not less than eighty thousand (80,000) nor more than eighty-three thousand (83,000) according to the 1990 federal census or any subsequent federal census;

(5) "Commercial airline" includes any airline operating in interstate commerce under a certificate of public convenience and necessity issued by the appropriate federal or state agency, or under an exemption from the requirement of obtaining a certificate of public convenience and necessity but otherwise regulated by an appropriate federal or state agency, with adequate facilities and equipment for serving passengers, on regular schedules, or charter trips, while moving through any county of the state, but not while any such commercial airline is stopped in a county or municipality that has not legalized such sales;

(6) "Commercial airline travel club" means an organization established and operated by or for a commercial airline as defined in this section for the convenience and comfort of airline passengers;

(7) "Commercial passenger boat company" means a company that operates one (1) or more passenger vessels for hire upon navigable waterways and is licensed by the United States Coast Guard to carry not less than fifty (50) passengers on a single vessel. Such company shall operate out of any county that has a population in excess of two hundred eighty-five thousand (285,000) or not less than eighty-three thousand three hundred (83,300) nor more than eighty-three thousand four hundred (83,400) according to the 1980 federal census or any subsequent federal census. No commercial passenger boat company licensed pursuant to this chapter shall sell any type of alcoholic beverage or beer while such boat is docked within the boundaries of any local government which has not approved the sale of alcoholic beverages pursuant to § 57-4-103;

(8) "Commission" means the alcoholic beverage commission, created pursuant to chapter 1 of this title;

(9)(A) "Community theater" means a facility or theater possessing each of the following characteristics:

(i) The community theater is at least eight (8) years old;

(ii) The theater is operated by a not-for-profit corporation which is exempt from taxation under § 501(c) of the Internal Revenue Code of 1954 (26 U.S.C. § 501(c)) as amended, where no member or officer, agent or employee of any community theater shall be paid, or directly or indirectly receive, in the form of salary or other compensation any profits from the sale of alcoholic beverages beyond the amount of such salary as may be fixed by its governing

body for the reasonable performance of their assigned duties. All profits from the sale of alcoholic beverages by a not-for-profit corporation shall be used for the operation and maintenance of the community theater, and in furtherance of the purposes of the organization. All profits from the sale of alcoholic beverages by a not-for-profit corporation shall be used for the operation, renovation, refurbishing, and maintenance of the theater. No alcoholic beverages or beverages of any kind shall be possessed or consumed inside the auditorium of such theater during performances in such auditorium;

(iii) The theater provides or leases facilities for theatrical programs of cultural, civic and educational interest; and

(iv) The theater is located in any county having a population of not less than seven hundred thousand (700,000) according to the 1980 federal census or any subsequent federal census;

(B) "Community theater" also includes a facility or theater possessing each of the following characteristics:

(i) The facility has a performance hall seating not less than two hundred fifty (250) persons, a resource library, rehearsal rooms, and permanent exhibition space of not less than nine thousand (9,000) square feet;

(ii) The facility is operated by a not-for-profit corporation which is exempt from taxation under § 501(c) of the Internal Revenue Code of 1954, as amended, where no member or officer, agent or employee of any community theater shall be paid, or directly or indirectly receive, in the form of salary or other compensation any profits from the sale of alcoholic beverages beyond the amount of such salary as may be fixed by its governing body for the reasonable performance of their assigned duties. All profits from the sale of alcoholic beverages by a not-for-profit corporation shall be used for the operation and maintenance of the facility, and in furtherance of the purposes of the organization;

(iii) The facility provides or leases facilities for concerts and programs of cultural, civic and educational interest; and

(iv) The facility is located in any county having a population of not less than two hundred eighty-five thousand (285,000) nor more than two hundred eighty-six thousand (286,000) according to the 1990 federal census or any subsequent federal census;

(C) Alcoholic beverages may be sold at a community theater only during one (1) performance or benefit program a day and only one (1) hour before, during and one (1) hour after the performance or benefit program;

(10)(A) "Convention center" means a facility possessing each of the following characteristics:

(i) Owned by the state, municipal and/or county government and leased or operated by that government or by a nonprofit charitable corporation established to operate such facility;

(ii) Designed and used for the purposes of holding meetings, conventions, trade shows, classes, dances, banquets and various artistic, musical or other cultural events;

(*a*) A convention center does not include a building located within one thousand (1,000) yards of both a student museum and a zoological park; provided, that any restaurant, located within a former world's fair site or a

zoological park and which meets the requirements of subdivision (19), shall be eligible for licensure under this chapter as long as the requirements of this chapter are otherwise met;

(*b*) A convention center also does not include a building which is more than twenty (20) years old and is located in any county having a population of not less than two hundred eighty-seven thousand seven hundred (287,700) nor more than two hundred eighty-seven thousand eight hundred (287,800) according to the 1980 federal census or any subsequent federal census;

(iii) Which state-owned facility, operated by a nonprofit charitable corporation established to operate such facility, has a designated, restricted area outside the seating area of any theater within which area the consumption of such alcoholic beverages shall be permitted. The sale of such alcoholic beverages in such facility is limited to no more than one (1) hour and fifteen (15) minutes prior to a meeting, show, performance, reception, or other similar event, and to no later than thirty (30) minutes after such event; and

(iv) Located in a municipality having a population in excess of one hundred fifty thousand (150,000) and in a county having a population in excess of two hundred thousand (200,000), or both, according to the 1980 federal census or any subsequent federal census;

(B) "Convention center" also means a facility meeting the criteria of subdivision (10)(A)(i) and (ii) and located in a premiere resort city as defined by § 67-6-103(a)(3)(B)(i); and

(C) No member or officer, agent or employee of any convention center as defined by this section shall be paid, or directly or indirectly receive, in the form of salary or other compensation any profits from the sale of spirituous liquors, wines, champagnes, malt beverages or any other alcoholic beverage beyond the amount of such salary as may be fixed by its governing body out of the general revenue of the center. All profits from the sale of such alcoholic beverages shall be used for the operation and maintenance of the convention center;

(11) "Historic interpretive center" means a facility possessing each of the following characteristics:

(A) The center is located in a restored theater that is at least fifty (50) years old and listed on the national register of historic places;

(B) The center is leased and operated by a for-profit corporation, or not-for-profit corporation which is exempt from taxation under § 501(c) of the Internal Revenue Code of 1954 (26 U.S.C. § 501(c)) as amended, where no member or officer, agent or employee of any historic interpretive center shall be paid, or directly or indirectly receive, in the form of salary or other compensation any profits from the sale of alcoholic beverages beyond the amount of such salary as may be fixed by its governing body for the reasonable performance of his assigned duties. All profits from the sale of alcoholic beverages by a not-for-profit corporation shall be used for the operation and maintenance of the historic interpretive center, and in furtherance of the purposes of the organization. All profits from the sale of alcoholic beverages by a profit corporation shall be used for the operation, renovation, refurbishing, and maintenance of the center. Alcoholic beverages may be consumed inside the auditorium of such center;

(C) The center provides facilities for programs of cultural, civic, and educational interest, including, but not limited to, musical concerts, films, receptions, exhibitions, seminars or meetings; and

(D) The center is located in any county having a population of not less than seven hundred thousand (700,000) according to the 1980 federal census or any subsequent federal census;

(12) "Historic mansion house site" means the buildings and grounds of a historic mansion house, located in any county having a metropolitan form of government, included in the Tennessee register of historic places, and operated by the Association for the Preservation of Tennessee Antiquities, and including Association for the Preservation of Tennessee Antiquities sites owned by the state of Tennessee. "Historic mansion house site" also means the buildings and grounds of an historic mansion house located in any county having a metropolitan form of government which has been conveyed by the state of Tennessee in trust to a board of trustees created and appointed in accordance with §§ 4-13-103 and 4-13-104, and for admission to which reasonable fees are charged as provided in § 4-13-105. This subdivision shall apply only to counties having a population of four hundred fifty thousand (450,000) or greater according to the 1980 federal census or any subsequent census;

(13) "Historic performing arts center" means a facility possessing each of the following characteristics:

(A) The center is located in a restored theater that is at least fifty (50) years old and listed on the national register of historic places;

(B) The center is operated by a for-profit corporation, or not-for-profit corporation which is exempt from taxation under Section 501(c) of the Internal Revenue Code of 1954, as amended (26 U.S.C. § 501(c)), where no member or officer, agent or employee of any historic performing arts center shall be paid, or directly or indirectly receive, in the form of salary or other compensation any profits from the sale of alcoholic beverages beyond the amount of such salary as may be fixed by its governing body for the reasonable performance of their assigned duties. All profits from the sale of alcoholic beverages by a not-for-profit corporation shall be used for the operation and maintenance of the historic performing arts center, and in furtherance of the purposes of the organization. All profits from the sale of alcoholic beverages by a for-profit corporation shall be used for the operation, renovation, refurbishing, and maintenance of the center. Alcoholic beverages shall only be sold before or after performances or during intermissions in such performances. No alcoholic beverages shall be consumed inside the auditorium of such center;

(C) The center provides facilities for programs of cultural, civic, and educational interest, including, but not limited to, stage plays, musical concerts, films, dance performances, receptions, exhibitions, seminars or meetings;

(D) The center is located in any county having a population of:

not less than	nor more than
143,900	144,000

not less than	nor more than
300,000	400,000
700,000	

according to the 1980 federal census or any subsequent federal census;

(14)(A) "Hotel" (Motel) means every building or other structure kept, used, maintained, advertised and held out to the public to be a place where food is actually served and consumed and sleeping accommodations are offered for adequate pay to travelers and guests, whether transient, permanent, or residential, in which fifty (50) or more rooms are used for the sleeping accommodations of such guests and having one (1) or more public dining rooms, with adequate and sanitary kitchen and a seating capacity of at least seventy-five (75) at tables, where meals are regularly served to such guests, such sleeping accommodations and dining rooms being conducted in the same building or in separate buildings or structures used in connection therewith that are on the same premises and are a part of the hotel operation. Motels meeting the qualifications set out herein for hotels shall be classified in the same category as hotels. Hotels shall have the privilege of granting franchises for the operation of a restaurant on their premises and the holder of such franchise shall be included in the definition of "hotel" hereunder; and property contiguous to a hotel, except property located in any county having a population of not less than seventy-seven thousand seven hundred fifty (77,750) nor more than seventy-seven thousand seven hundred ninety (77,790) according to the 1980 federal census or any subsequent federal census, which is owned by the same entity as the hotel and operated by the same entity as the hotel, which property either serves travelers and guests other than as a separate commercial establishment or is operated as a major entertainment complex serving in excess of one million (1,000,000) persons per year;

(B) "Hotel" also means and includes all entities previously described wherein sleeping accommodations are offered for adequate pay to travelers and guests, whether transient, permanent or residential, in which thirty (30) or more suites are used for sleeping accommodations of such guests and having eating facilities in each room for four (4) or more persons with an adequate and sanitary central kitchen from which meals are regularly prepared and served to guests in such suites. For the purpose of this section, "suite" is defined as a guest facility within a hotel where living, sleeping and dining are regularly provided for such guests within the individual units provided for guests. No such hotel or suite as defined in this subdivision shall be authorized to charge for, inhibit or otherwise interfere in any way with the rights of its guests or tenants to carry into rooms or suites rented by them their own bottles, packages or other containers of alcoholic beverages and/or to use or serve them to themselves, their own visitors or guests within the individual units rented or leased by them;

(C) "Hotel" also includes facilities owned and operated by an individual or event-management organization which plans and coordinates all phases of any function for retreats by groups of persons having similar backgrounds or purposes, and which offers meeting and banquet facilities, dining services, recreation and leisure activities in facilities which include a dining inn with

seating capacity of three hundred (300), and a complex which includes meeting and banquet facilities with a seating capacity of two hundred (200), overnight accommodations for at least forty (40), and a fifty (50) acre tract of land with picnic accommodations for at least four thousand (4,000), and a facility with seating capacity of four hundred (400). The scope of any license authorized by this subdivision includes picnic service on the grounds of the complex owned and operated by the licensee;

(D) "Hotel" also includes a residence hotel located in the central business district of any municipality having a population of more than three hundred thousand (300,000) according to the 1990 federal census or any subsequent federal census and having a common smoking room and lobby area;

(E)(i) "Hotel" also includes a bed and breakfast establishment as defined in § 68-14-502, where meals are regularly served to guests and where sleeping accommodations and dining facilities being conducted in the same buildings or structures used in connection therewith are on the same premises and are part of the hotel operation. The premises upon which such establishment is located shall be within the boundaries of a clearly defined arts district which is owned and operated by the same entity and having a common courtyard which is contiguous to all buildings and structures on the premises. The dining facilities, including beverages, may be served from an adequate and sanitary central kitchen and storage facility;

(ii) The provisions of this subdivision (14)(E) shall apply in any municipality having a population in excess of one hundred fifty thousand (150,000) according to the 1990 federal census or any subsequent federal census;

(15)(A) "Museum" means a building or institution serving as a repository of natural, scientific or literary curiosities or works of art for public display and further possesses the following characteristics:

(i) The museum is at least fifty (50) years old; and

(ii) The museum is located in a county having a population in excess of seven hundred thousand (700,000) according to the 1980 federal census or any subsequent federal census;

(B) "Museum" also means an "art museum" which is a building or institution serving as a repository of works of art for public display and further possesses the following characteristics:

(i) The art museum is owned and operated by a bona fide charitable or nonprofit organization which has been in existence for at least twenty-five (25) years;

(ii) The art museum is located in a building which contains not less than fifty thousand (50,000) square feet; and

(iii) The art museum is located in a former world's fair site.

(16) "Passenger train" includes any passenger train operating in interstate commerce under a certificate of public convenience and necessity issued by the appropriate federal or state agency, with adequate facilities and equipment for serving passengers, on regular or special schedules, or charter trips, while moving through any county of the state, but not while any such passenger train is stopped in a county or municipality that has not legalized such sales;

(17) "Premiere type tourist resort" means:

(A) A commercially operated recreational facility possessing each of the following characteristics:

(i) Ownership and operation by a profit type corporation having a capitalization of not less than ten million dollars ($10,000,000);

(ii) Situated in a geographical area wholly controlled by the operator of the facility and having not less than six thousand (6,000) acres of contiguous land, not less than five thousand (5,000) acres of which is to be developed and maintained in accordance with sound ecological and environmental practices, such requirement to be subject at all times to the oversight and approval of the department of environment and conservation, which shall not less often than once a year make a written report thereof to the commission. Satisfactory compliance with this requirement and certification thereof by the department to the commission shall be a condition precedent to the issuance or renewal of permit provided for in § 57-4-201;

(iii) Continuous maintenance of lodging accommodations consisting of not less than two hundred (200) hotel or motel rooms in a building or buildings designed for such purpose;

(iv) Continuous maintenance of facilities for the accommodation of conventions of not less than four hundred (400) persons;

(v) Maintenance within the recreational area of at least one (1) of the following types of sporting facilities:

(*a*) A golf course of at least eighteen (18) holes;

(*b*) A lake covering not less than one hundred (100) acres adapted for boating and fishing;

(*c*) A ski slope;

(vi) Maintenance, in addition to one (1) or more of the facilities enumerated in subdivision (17)(A)(v), of two (2) or more of the following types of recreational facilities:

(*a*) Area for camping;

(*b*) Tennis courts;

(*c*) Swimming pool;

(*d*) Trails for hiking and/or horseback riding;

(*e*) Equestrian center;

(vii) A twenty-four (24) hour per day security force approved as to adequacy by the commission;

(B) A hotel, motel or restaurant located within a municipality having a population of one thousand (1,000) or more persons according to the federal census of 1970 or any subsequent federal census in which at least fifty percent (50%) of the assessed valuation (as shown by the tax assessment rolls or books of the municipality) of the real estate in the municipality consists of hotels, motels, and tourist courts accommodations, providing the voters of the municipality have heretofore by referendum pursuant to § 57-4-103, approved the sale of alcoholic beverages for consumption on the premises, and such referendum shall be authorized, notwithstanding the population requirements set forth in § 57-3-106. For purposes of implementation of this subdivision (17)(B), the sale of alcoholic beverages shall be limited to hotels, restaurants, and clubs as defined in this section. To ensure proper control and development of the tourist industry of such municipality, any applicant for a license under this subdivision shall first obtain approval from a majority of the legislative body of the municipality, which may adopt

rules and regulations governing its procedure and setting forth limitations and restrictions including, but not limited to, the number and location of licensed establishments and requiring approval by the legislative body as to the good moral character of each applicant for a license;

(C)(i) A commercially operated recreational facility containing all of the following characteristics:

(*a*) Ownership and operation by a profit type corporation or partnership;

(*b*) Situated in a geographical area controlled by the operator of the facility, having not less than two thousand five hundred (2,500) acres of land;

(*c*) Continuous maintenance of lodging accommodations consisting of not less than one hundred (100) hotel or motel rooms in a building or buildings designed for such purpose;

(*d*) The maintenance of a ski slope with necessary lifts or tows for use during skiing season;

(*e*) Continuous maintenance of restaurant facilities for seating at tables of not less than two hundred (200) persons, with adequate kitchen facilities; and

(*f*) Located within a municipality with a population of not less than one thousand fifty (1,050) nor more than one thousand seventy-five (1,075) according to the 1980 or any subsequent census;

(ii) To ensure proper control and development of the tourist industry of such municipality, any applicant for a license under this subdivision shall first obtain approval from a majority of the legislative body of the municipality, which may adopt rules and regulations governing its procedure and setting forth limitations and restrictions including, but not limited to, the number and location of licensed establishments and requiring approval by the legislative body as to the good moral character of each applicant for a license;

(D) A commercially operated recreational facility containing all of the following characteristics:

(i) Ownership and development by a for-profit corporation or partnership;

(ii) Situated in a geographical area controlled by the corporation or partnership, having not less than four hundred (400) acres of land contiguous to the Cherokee National Forest;

(iii) Continuous maintenance of lodging accommodations consisting of not less than two hundred (200) hotel or motel rooms in a building or buildings designed for such purpose;

(iv) Continuous maintenance of facilities for the accommodations of conventions of not less than four hundred (400) persons;

(v) Maintenance within the recreational area of the following types of recreational facilities:

(*a*) A golf course of at least eighteen (18) holes;

(*b*) Tennis courts;

(*c*) Swimming pool; and

(vi) A twenty-four (24) hour per day security force approved as to adequacy by the commission;

(E) A commercially operated recreational facility containing all of the following characteristics:

(i) Ownership and operation by a for-profit corporation or partnership;

(ii) Located in a geographic area managed by the operator of the facility, containing a minimum area of one hundred fifty (150) contiguous acres;

(iii) Continuous maintenance of lodging accommodations of not less than fifty (50) rooms available for guests, tourists or for business meetings located in a building or buildings designed for accommodations or business meetings;

(iv) Maintenance of lakeside marina facilities, a golf course of not less than eighteen (18) holes, and riding trails and stables on the premises;

(v) Located within a municipality with a population of not less than six thousand three hundred seventy-five (6,375) nor more than six thousand four hundred (6,400) according to the 1980 or any subsequent federal census; and

(vi) Whose manager shall have been specifically approved by a majority of the legislative body of the municipality in which such licensee is located as being an individual of good moral character;

(F) A facility, whether open to the public or limited to members and guests of the development on which it is located, owned or operated, pursuant to a license by a homeowners or residential association, which facility is kept, used and maintained as a place where meals are served and where meals are actually and regularly served, with adequate and sanitary kitchen facilities and which facility meets all of the following characteristics:

(i) The facility must be located in a county having a population of not less than forty-seven thousand (47,000) nor more than forty-seven thousand five hundred (47,500) according to the 1990 federal census or any subsequent federal census;

(ii) The facility must be located on the premises of a planned, gated residential development of at least eighty (80) acres with at least nine thousand (9,000) lineal feet of water frontage on an established and designated navigable waterway; and

(iii) The facility must be located within the limits of a development which contains a marina and tennis court facilities; and

(G) A club, either for profit or not for profit, which has been in existence for two (2) consecutive years during which time it has maintained a membership of at least three thousand (3,000) members and which maintains club facilities on or adjacent to property offering recreational services available to its members, which services shall include one (1) or more of the following:

(i) Golf course with at least eighteen (18) holes;

(ii) Tennis courts;

(iii) Marina facilities with a minimum of four hundred (400) slips.

Any such club whose club facilities are located on the premises of an area meeting the definition of a "premier type tourist resort" under this section may exercise its privileges authorized under this chapter anywhere within such area;

(H) A commercially operated recreational facility, whether open to the public or limited to members and guests of an association or of the development on which it is located, owned and operated by an association or

corporation and in connection with an eighteen (18) hole golf course, which facility is kept, used and maintained as a place where meals are actually and regularly served, with adequate and sanitary kitchen facilities, and which facility meets all of the following characteristics:

(i) The facility must be located in a county having a population of not less than thirty-four thousand seven hundred thirty (34,730) nor more than thirty-four thousand seven hundred sixty (34,760) according to the 1990 federal census or any subsequent federal census;

(ii) The facility must be located in a development containing no less than four hundred twenty (420) acres and no more than four hundred fifty (450) acres;

(iii) The facility must be located within limits of a development which contains an eighteen (18) hole golf course;

(iv) The facility must have no less than five thousand (5,000) enclosed square feet (5,000 sq. ft.);

(v) The facility must be located no less than one-half (½) mile from the right-of-way of an interstate highway; and

(vi) The facility must be located within the limits of a development which contains a lake of not less than twenty-eight (28) acres which is entirely within the limits of the development;

(I) A commercially operated recreational facility possessing each of the following characteristics:

(i)(*a*) Ownership and development by a for profit corporation;

(*b*) Situated in a geographic area controlled by such entity and having not less than twenty-five (25) contiguous acres of land which is divided by a four-lane highway;

(*c*) Designed to contain picnic facilities, museum buildings, retail sales areas, retail food dispensing outlets, and restaurant areas;

(*d*) Maintenance of a limited access area containing a former residence, a swimming pool, a handball court, and stables where no pedestrian access is allowed and all guests entering must be carried by a motor vehicle; and

(*e*) Location within a county having a population of not less than seven hundred seventy thousand (770,000) according to the 1990 federal census or any subsequent federal census.

(ii) "Premier type tourist resort," as defined in this subdivision (17)(I), shall be authorized to sell or serve alcoholic beverages on the premises of such resort only at special functions, wherein attendance is limited to invited guests or groups and not to the general public; and

(J) An entity operating a commercial golf related recreational facility, whether open to the public or limited to members and guests of an association or owners and guests of a development upon or adjacent to which the facility is located, which entity or facility meets all of the following criteria:

(i) The facility is located in a county having a population of not less than thirty-four thousand seven hundred thirty (34,730) nor more than thirty-four thousand eight hundred (34,800) according to the 1990 federal census or any subsequent federal census;

(ii) The facility is operated in conjunction with an eighteen (18) hole golf course;

(iii) The facility is kept, used and maintained as a place where meals are actually and regularly served with such adequate and sanitary kitchen facilities as might be needed to meet the reasonable requirements of its patrons, members, or guests;

(iv) The entity does not discriminate or limit the use of the facilities solely on the basis of race, creed, sex, or national origin, and has provided to the commission a written certification of its policy;

(v) Such facility has enclosed clubhouse space of at least five thousand square feet (5,000 sq. ft.);

(vi) Such facility is located no less than seven (7) miles and no more than eight (8) miles from an interchange of an interstate highway; and

(vii) Such facility is located on a geographic area, owned or operated by the entity, which area contains not less than one hundred fifty-five (155) acres nor more than one hundred seventy (170) acres;

(18) "Premises," when:

(A) Referring to an establishment licensed under this chapter;

(B) Such establishment is located within an historical district which has been designated as a national historic landmark;

(C) Such a national historic landmark centers around a public street or right-of-way; and

(D) Such a public street or right-of-way is closed to motor vehicular traffic on a regular basis;

includes the area encompassed by the boundaries of the historic district; provided, that the granting of a license for a business location within such historical district shall not preclude the granting of another license to another establishment located within the boundaries of the historic district. The provisions of this subdivision shall apply only to counties with a population of more than four hundred thousand (400,000) according to the 1980 census, but those counties having a metropolitan form of government shall be exempt from the provisions of this subdivision. In such county, only for the purposes of the hours of sale provided in § 57-4-203(d)(4), "premises" also includes any establishment located within four (4) blocks west of the western boundary of the historic district and on the same public street or right of way as the historic district; provided, that the requirement of closing the street or right-of-way to motor vehicular traffic on a regular basis shall not apply to the extension of the premises established by this sentence;

(19)(A) "Restaurant" means any public place kept, used, maintained, advertised and held out to the public as a place where meals are served and where meals are actually and regularly served, without sleeping accommodations, such place being provided with adequate and sanitary kitchen and dining room equipment and seating capacity of at least seventy-five (75) people at tables, having employed therein a sufficient number and kind of employees to prepare, cook and serve suitable food for its guests. At least one (1) meal per day shall be served at least five (5) days a week, with the exception of holidays, vacations and periods of redecorating, and the serving of such meals shall be the principal business conducted. A restaurant shall also be eligible for licensure under this subdivision if the restaurant serves at least one (1) meal a day at least four (4) days a week with the exception of

holidays, vacations and periods of redecorating, and if the serving of such meals is the principal business conducted, and if such restaurant is only open for four (4) days a week;

(B) "Restaurant" also means any bowling center that was licensed as of January 1, 1983, to sell alcoholic beverages for consumption on the premises;

(C) Within a national historical landmark district or urban park center, as defined by this section, restaurant licensees shall not be required to meet any requirements of this section which make food service, maintenance of a kitchen, or a dining room a prerequisite to the issuance of a restaurant permit to serve liquor by the drink. The provisions of this subdivision shall apply only to counties with a population of more than four hundred thousand (400,000) according to the 1980 census, but those counties having a metropolitan form of government shall be exempt from the provisions of this subdivision;

(D) Notwithstanding the minimum seating capacity established in subdivision (19)(A), for the purpose of a permit to serve wine, "restaurant" means any lodge or resort with sleeping accommodations where meals are served that is located on land which is owned by the United States department of the interior, is operated by the national park service or its agents or contractors and is located in a county with a population of not less than forty-one thousand four hundred (41,400) nor more than forty-one thousand five hundred (41,500) according to the 1980 federal census or any subsequent federal census;

(E) Notwithstanding the minimum seating capacity established in subdivision (19)(A), a restaurant with a seating capacity of at least forty (40) people at tables may be licensed as a gourmet restaurant under this chapter. To be licensed as a gourmet restaurant, the establishment must obtain:

(i) Not less than two thirds (⅔) of its annual gross sales from the sale of food; and

(ii) Not less than two thirds (⅔) of its annual alcoholic beverage sales from the sale of wine;

(20)(A) "Special occasion license" means a license which the commission may issue to a bona fide charitable, nonprofit or political organization. Such license shall be issued for no longer than one (1) twenty-four-hour period, subject to the limitations of hours of sale which may be imposed by law or regulation, and such license may be issued in advance of its effective date;

(B) If a bona fide charitable or nonprofit organization owns and maintains a permanently staffed facility which:

(i) Is used for the periodic showing or exhibition of animals;

(ii) Has a seating capacity of not less than twenty-five thousand (25,000) persons; and

(iii) Has a separate permanently constructed clubhouse or meeting room located on the grounds,

then a special occasion license may be issued for use at the clubhouse or meeting room for the duration of the particular show or exhibit for which application is made, and such organization shall not be subject to the numeric limitation contained in the last sentence of this subsection. This license shall only be available upon the payment of the fee as required by law for each separate day of the show.

(C) Such license shall not be issued unless and until there shall have been paid to the commission for each such license a license fee of fifty dollars ($50.00), and there shall have been submitted an application which designates the premises upon which alcoholic beverages shall be served. No such charitable, nonprofit or political organization shall be eligible to receive more than twelve (12) special occasion licenses in any calendar year;

(21) "Terminal building of a commercial air carrier airport" means a building, including any concourses thereof, used by commercial airlines and their customers for sale of airline tickets, enplaning and deplaning of airline passengers, loading and unloading of baggage and cargo, and for providing other related services for the convenience of airline passengers and others, located in any airport which is served by one (1) or more commercial airlines as herein defined, and:

(A) Is operated by a board of commissioners whose membership is appointed by the legislative bodies of five (5) or more local governments or whose membership is appointed pursuant to § 42-4-105; or

(B) Is located in a municipality where the provisions of this chapter have become effective in that municipality;

(22)(A) "Urban park center" means a facility possessing the following characteristics:

(i) The center is owned, operated, or leased by a municipal or county government, or any agency or commission thereof;

(ii) The center is designed to contain outdoor recreational facilities, public museum buildings, exhibition buildings, retail sales areas, retail food dispensing outlets including, but not limited to, sale of package alcoholic and malt beverages, and restaurant areas to accommodate liquor-by-the-drink as well as food patronage; and

(iii) The center is located in a municipality or county having a population in excess of six hundred thousand (600,000) according to the 1970 federal census or any subsequent census;

(B) [Deleted by 1990 amendment.]

(23) "Wine" means the product of the normal alcoholic fermentation of the juice of fresh, sound, ripe grapes, with the usual cellar treatment and necessary additions to correct defects due to climatic, saccharine and seasonal conditions, including champagne, sparkling and fortified wine of an alcoholic content not to exceed twenty-one percent (21%) by volume. No other product shall be called "wine" unless designated by appropriate prefixes descriptive of the fruit or other product from which the same was predominantly produced, or an artificial or imitation wine;

(24) "Zoological institution" means a facility which contains a zoological garden or collection of living animals and provides for their care and housing for public exhibition and further possesses the following characteristics:

(A) The zoo is owned, operated, or leased by a municipal or county government;

(B) The zoo is at least fifty (50) years old; and

(C) The zoo is located in a county having a population in excess of seven hundred thousand (700,000) according to the 1980 federal census or any subsequent federal census;

(25) "Public aquarium" means a facility which contains a collection of living aquatic animals whose sole or primary habitat is water and which facility provides for care and housing for public exhibition, and also possesses the following characteristics:

(A) The exhibits containing live aquatic animals for public viewing are housed in a building having at least one hundred thousand square feet (100,000 sq. ft.) of interior space;

(B) The exhibits containing live aquatic animals for public viewing contain a minimum total of five hundred thousand gallons (500,000 gals.) of water as the living environment of the animals; and

(C) The public aquarium is located in a county having a population in excess of two hundred fifty thousand (250,000) according to the 1990 federal census or any subsequent federal census; and

(26) "Aquarium exhibition facility" means an enclosed facility possessing each of the following characteristics:

(A) The facility is owned and operated by a bona fide charitable or nonprofit organization that also owns and operates a "public aquarium" as defined in subdivision (25);

(B) The facility contains a minimum area of ten thousand square feet (10,000 sq. ft.); and

(C) The facility is used for either or both of the following purposes:

(i) The exhibition to the public of artifacts, physical objects, pictures and movies; or

(ii) To aid in the education of the public by means of interactive displays or stations, learning laboratories, and classroom areas for instruction in the physical sciences, natural history or other educational disciplines.

(iv) The facility is located in any county having a population of not less than two hundred eighty-five thousand (285,000) nor more than two hundred eighty-six thousand (286,000) according to the 1990 federal census or any subsequent federal census; [Acts 1967, ch. 211, § 1; 1972, ch. 682, § 2; 1972, ch. 756, § 3; 1975, ch. 111, § 3; 1975, ch. 347, § 1; 1979, ch. 401, § 2; T.C.A., § 57-153; Acts 1980, ch. 895, § 1; 1980, ch. 898, § 2; 1981, ch. 404, § 2; 1981, ch. 467, §§ 1-4; 1981, ch. 475, § 2; 1982, ch. 691, § 1; 1982, ch. 931, §§ 1-4; 1983, ch. 52, § 2; 1983, ch. 300, §§ 3, 6; 1983, ch. 305, § 1; 1983, ch. 306, § 1; 1983, ch. 391, § 1; 1983, ch. 454, § 4; 1983, ch. 461, §§ 1-4; 1983, ch. 469, § 2; 1983, ch. 481, § 1; 1984, ch. 522, § 1; 1984, ch. 569, § 2; 1984, ch. 599, § 1; 1984, ch. 858, §§ 1-4; 1984, ch. 871, § 1; 1984, ch. 975, § 2; 1985, ch. 41, § 1; 1985, ch. 47, § 1; 1985, ch. 117, § 1; 1985, ch. 190, § 2; 1986, ch. 516, § 1; 1986, ch. 899, § 3; 1987, ch. 73, § 1; 1987, ch. 218, § 1; 1987, ch. 444, §§ 3, 4; 1987, ch. 456, § 1; 1988, ch. 792, § 1; 1988, ch. 942, §§ 1, 2; 1989, ch. 50, § 1; 1989, ch. 361, § 1; 1989, ch. 459, § 1; 1990, ch. 718, § 1; 1990, ch. 730, §§ 1, 2; 1990, ch. 853, § 1; 1990, ch. 949, § 1; 1991, ch. 462, § 1; 1992, ch. 674, § 2; 1992, ch. 675, § 2; 1993, ch. 308, §§ 1, 2; 1994, ch. 657, § 1; 1994, ch. 822, § 1; 1994, ch. 837, § 1; 1994, ch. 933, § 1; 1995, ch. 18, § 1; 1995, ch. 306, § 2; 1996, ch. 688, § 1; 1996, ch. 730, § 1; 1996, ch. 749, § 2; 1996, ch. 1017, § 1; 1997, ch. 146, § 1; 1997, ch. 281, §§ 1-7.]

Code Commission Notes. Acts 1994, ch. 550, § 2 purports to add the following language after the second sentence in (18): "Provided, further, when the public street within the Beale Street National Historic Landmark District is closed to motor vehicular traffic."

Amendments. The 1996 amendment by ch. 688 added (14)(D).

The 1996 amendment by ch. 730 added (4)(F).

The 1996 amendment by ch. 749 added (26).

The 1996 amendment by ch. 1017 added the last sentence in (18).

The 1997 amendment by ch. 146 added (14)(E).

The 1997 amendment by ch. 281, in (9), redesignated the introductory language as (A), redesignated (A) through (D) as (A)(i) through (A)(iv), respectively, added (B), redesignated (E) as (C), and in that subdivision, inserted "at a community theater".

Effective Dates. Acts 1996, ch. 688, § 2. March 29, 1996.

Acts 1996, ch. 730, § 2. April 10, 1996.

Acts 1996, ch. 749, § 3. April 12, 1996.

Acts 1996, ch. 1017, § 2. May 15, 1996.

Acts 1997, ch. 146, § 2. April 29, 1997.

Acts 1997, ch. 281, § 8. May 27, 1997.

Cross-References. Certain 1987 amendments to section inapplicable to certain counties, § 57-4-104.

Limitation on selling or giving away alcoholic or malt beverages during certain hours, § 57-4-203.

Section to Section References. This section is referred to in §§ 57-4-101, 57-4-201, 57-4-203, 57-5-101, 57-5-105, 57-5-301.

Law Reviews. Selected Tennessee Legislation of 1983 (N. L. Resener, J. A. Whitson, K. J. Miller), 50 Tenn. L. Rev. 785 (1983).

Attorney General Opinions. Discrimination, OAG 89-73 (5/3/89).

Premiere type tourist resorts, licenses, OAG 94-81 (7/22/94).

Nashville and Davidson County arena within definition of "convention center," OAG 95-016 (3/16/95).

NOTES TO DECISIONS

1. Clubs.

A club which has a license for on-premises consumption of alcoholic beverages and beer from the alcoholic beverage commission under § 57-4-101(b) and this section does not have an absolute right to a beer permit from a city beer board. State ex rel. Amvets Post 27 v. Beer Bd., 717 S.W.2d 878 (Tenn. 1986).

57-4-103. Applicability of chapter — Referendum — Form of question. — (a)(1) The provisions of this chapter shall be effective in any jurisdiction which authorizes such sales in a referendum in the manner prescribed by § 57-3-106.

(2)(A) Except as provided in subdivision (a)(2)(B), if the county election commission receives the necessary petition requesting the referendum not less than forty five (45) days before the date on which an election is scheduled to be held, the county election commission shall include the referendum question contained in subsection (b) on the ballot.

(B) In counties having a population of not less than eight hundred twenty-five thousand (825,000) nor more than eight hundred thirty thousand (830,000) according to the 1990 federal census or any subsequent federal census, if the county election commission receives the necessary petition requesting the referendum not less than thirty (30) days before the date on which an election is scheduled to be held, the county election commission shall include the referendum question contained in subsection (b) on the ballot.

(3) If any county has authorized the sale of alcoholic beverages for sale for consumption off premises pursuant to § 57-3-106, then any municipality wholly or partially within the boundaries of the county may conduct a referendum to authorize the sale of alcoholic beverages for consumption on the premises within the corporate boundaries of the municipality.

(b) At any such election, the only question submitted to the voters shall be in the following form:

For legal sale of alcoholic beverages for consumption on the premises in _____ (here insert name of political subdivision).

Against legal sale of alcoholic beverages for consumption on the premises in _____ (here insert name of political subdivision).

[Acts 1967, ch. 211, § 4; 1971, ch. 59, § 1; 1972, ch. 510, § 1; 1975, ch. 71, §§ 1, 2; 1977, ch. 445, § 1; modified; T.C.A., § 57-164; Acts 1984, ch. 877, § 1; 1987, ch. 456, § 2; 1988, ch. 551, § 1; 1992, ch. 711, § 1; 1993, ch. 518, §§ 18, 21.]

Cross-References. Referendum held in conjunction with election as defined in § 2-1-104.

Section to Section References. This section is referred to in §§ 57-4-101, 57-4-102, 57-5-101.

Textbooks. Tennessee Jurisprudence, 6 Tenn. Juris., Constitutional Law, § 58.

Law Reviews. Constitutional Law — Bemis Pentecostal Church v. State: The Validity of Tennessee's Campaign Disclosure Act, 18 Mem. St. U.L. Rev. 324 (1989).

Cited: Bemis Pentecostal Church v. State, 731 S.W.2d 897 (Tenn. 1987).

NOTES TO DECISIONS

1. Constitutionality.

The legislature could have had a reasonable justification for including only certain counties and municipalities within this section. Taylor v. Armentrout, 632 S.W.2d 107 (Tenn. 1981).

57-4-104. Applicability of amendments to chapter. — The amendments to §§ 57-4-101, 57-4-102, 57-4-201, 57-4-203 and 57-4-301, made by Chapter 444 of the Public Acts of 1987, shall not apply in counties having a population of:

not less than	nor more than
11,700	11,800
24,590	24,600
34,800	34,900
67,300	67,400

according to the 1980 federal census or any subsequent federal census. [Acts 1987, ch. 444, § 12.]

Attorney General Opinions. Brown bagging of liquor, OAG 89-113 (9/5/89).

TITLE 67

TAXES AND LICENSES

CHAPTER 6

SALES AND USE TAXES

SECTION.

PART 7—LOCAL OPTION REVENUE ACT

PART 7—LOCAL OPTION REVENUE ACT

67-6-702. Tax authorized — Rates — Termination of services tax. — (a)(1) Any county by resolution of its county legislative body or any incorporated city or town by ordinance of its governing body is authorized to levy a tax on the same privileges subject to this chapter as the same may be amended, which are exercised within such county, city or town, to be levied and collected in the same manner and on all such privileges but not to exceed two and three-fourths percent (2¾%); provided, that the tax levied shall apply only to the first one thousand six hundred dollars ($1,600) on the sale or use of any single article of personal property.

(2) Any five dollar ($5.00) or seven dollar and fifty cent ($7.50) tax limit on the sale or use of any single article of personal property in effect at present may be removed, and, by resolution in the case of counties and by ordinance in the case of municipalities, the tax at the existing rate may, instead, be made to apply to the bases provided in subdivision (a)(1). The resolution or ordinance shall be passed at least twice at two (2) or more consecutive public meetings, not more than one (1) of which may be held on any single day. Notice of the meetings and of the fact that this matter is on the agenda of the meetings shall be published at least once in a newspaper of general circulation throughout the jurisdiction involved not less than seven (7) days before the first of the meetings. If the county (or counties) in which it is located does not increase the base of the county-wide local sales and use tax pursuant to this subdivision, any municipality may by ordinance apply any county tax rate in effect in the municipality to the bases authorized in subdivision (a)(1) for purposes of the sale or use of any single article of personal property within the municipality's corporate limits. The ordinance increasing the base of the county-wide tax within the municipality shall be adopted as required in this subdivision.

(3) Once any local sales tax limit has been removed and the tax rate applied to the base provided in subdivision (a)(1), future increases in the base beginning on the dates specified in subdivision (a)(1) shall be automatic and shall not require further action of the local governing body. For any municipality or county which implements a local sales tax for the first time after May 17, 1983, or during the phase-in period provided in subdivision (a)(1), future increases in the base beginning on the dates specified in subdivision (a)(1) shall be automatic and shall not require further action of the local governing body.

(4) For the purpose of this part, persons engaged in the business of selling water or telephone services shall be considered to be exercising a taxable privilege at the place where the tangible personal property or service is delivered to the purchaser. Telephone service is deemed to be delivered at the location of the telephone being charged for the service.

(b) Notwithstanding other provisions of this chapter, with respect to industrial and farm machinery as defined in § 67-6-102, and with respect to water sold to or used by manufacturers at the state tax rate of one percent (1%) as authorized in § 67-6-206, the local tax thereon shall be imposed at the rate of one third of one percent (⅓%) whenever the rate of the local tax does not exceed one percent (1%) and at the rate of one half of one percent (.5%) whenever the rate of the local tax exceeds one percent (1%). The maximum local tax on the

sale or use of any single article of industrial or farm machinery shall be as provided hereinabove.

(c) A use tax paid by the lessee of tangible personal property from a lessor which is a tax exempt entity pursuant to an election made under § 67-6-204(c) shall be in lieu of any tax which might otherwise be imposed under this part, and no additional sales or use tax may be imposed under this part on rental payments with respect to which a use tax based on the cost price of the tangible personal property has been paid by election.

(d) "Single article" means that which is regarded by common understanding as a separate unit exclusive of any accessories, extra parts, etc., and that which is capable of being sold as an independent unit or as a common unit of measure, a regular billing or other obligation. Such independent units sold in sets, lots, suites, etc., at a single price shall not be considered a single article. Parts or accessories for motor vehicles that are installed at the factory and delivered with the unit as original equipment and/or parts or accessories for motor vehicles that are installed by the dealer and/or distributor prior to sale, at the time of the sale, or which are included as part of the sales price of the vehicle shall be treated as a part of the unit. In addition, all necessary parts and equipment installed by a motor vehicle dealer which are essential to the functioning of the motor vehicle or are required to be installed on the motor vehicle prior to sale to the ultimate consumer pursuant to state or federal statutes relating to the lawful use of the motor vehicle shall be treated as a part of the unit. Boat motors, other parts or accessories for boats, freight, and labor, excluding trailers, shall be treated as part of the boat unit in the same manner as parts or accessories for motor vehicles are treated as part of the motor vehicle unit. Parts and accessories and any other additional or incidental items or services that are part of the sale of a manufactured home shall be treated as part of the manufactured home unit in the same manner as parts and accessories for motor vehicles are treated as part of the motor vehicle unit.

(e) Notwithstanding any other provision of this chapter, with respect to sales of tangible personal property to common carriers for use outside this state subject to the reduced rate provided in part 2 of this chapter, the local tax thereon shall be at the rate of one and one half percent (1.5%). The maximum local tax on the sale or use of any single article of personal property shall be as hereinabove provided.

(f) Notwithstanding any other provisions of this part, dealers with no location in this state may choose to pay, in lieu of the tax otherwise authorized by this part, local tax at the rate of two and twenty-five hundredths percent (2.25%) of the sales price on all sales made in this state.

(g) Notwithstanding any other provisions of this chapter, local tax with respect to interstate telecommunications services, which are subject to state tax, shall be imposed at the rate of one and one-half percent (1.5%). [Acts 1963, ch. 329, § 2; 1968, ch. 488, §§ 1, 4; 1971, ch. 117, § 7; 1971, ch. 148, § 1; 1972, ch. 653, § 2; 1973, ch. 239, § 2; 1973, ch. 340, § 1; 1974, ch. 675, § 2; 1975, ch. 316, § 2; 1976, ch. 466, § 5; 1977, ch. 43, § 1; 1977, ch. 178, § 2; 1978, ch. 592, § 2; impl. am. Acts 1978, ch. 934, §§ 7, 36; 1979, ch. 308, § 3; 1980, ch. 886, § 2; 1981, ch. 182, § 2; 1982, ch. 585, § 1; 1983, ch. 278, § 1; T.C.A., § 67-3050; Acts 1984 (E.S.), ch. 8, §§ 5, 9; 1984, ch. 631, § 1; 1984, ch. 721,

§ 1; 1984, ch. 729, § 1; 1985, ch. 356, §§ 6, 8; 1986, ch. 560, § 2; 1987, ch. 428, § 6; 1988, ch. 684, § 1; 1988, ch. 789, § 2; 1989, ch. 312, § 11; 1990, ch. 661, §§ 1, 2; 1992, ch. 529, § 15; 1992, ch. 913, § 6; 1993, ch. 492, §§ 1-3; 1995, ch. 184, § 1; 1996, ch. 743, § 1; 1997, ch. 194, § 3.]

Compiler's Notes. By the terms of Acts 1992, ch. 913, § 18, as amended by Acts 1993, ch. 492, §§ 1-3, the amendment to this section by that act expired December 31, 1993, and this section has reverted to its language prior to such amendment. Prior to December 31, 1993, this section read as set out above but contained subsections (h) and (i), which read: "(h) Notwithstanding any other provision of this chapter, for each locality the rate of local tax on sales of amusements and services other than interstate telecommunications services shall be equal to the difference between the rate levied under subdivision (a)(1) and three-quarters percent (.75%).

"(i) Notwithstanding Acts 1992, ch. 913, § 18 or any other provisions of law to the contrary, the services tax established by Acts 1992, ch. 913 and codified in chapter 4, part 18 of this title, and §§ 67-6-205, 67-6-212, 67-6-702, and 71-1-125 shall expire on December 31, 1993, provided that the state of Tennessee has received a federal medicaid waiver pursuant to § 1115(a) of the Federal Social Security Act as amended [42 U.S.C. § 1315(a)]. Should the state of Tennessee not receive, by December 30, 1993, a federal medicaid waiver pursuant to § 1115(a) of the Federal Social Security Act as amended, the services tax established by Acts 1992, ch. 913 shall expire as provided in Acts 1992, ch. 913, § 18. Upon expiration of the services tax established by Acts 1992, ch. 913, all provisions of the Tennessee Code Annotated amended by the sections of Acts 1992, ch. 913 which terminate shall, to the extent amended, revert back to the language of those provisions as they existed prior to the enactment of Acts 1992, ch. 913."

Amendments. The 1996 amendment substituted "Boat motors, other parts or accessories for boats, freight, and labor" for "Boat motors and other parts or accessories for boats" in the last sentence of (d).

The 1997 amendment added the last sentence in (d).

Effective Dates. Acts 1996, ch. 743, § 2. April 12, 1996.

Acts 1997, ch. 194, § 3. May 8, 1997.

Cross-References. Receipt and distribution of tax revenues from annexed areas, § 6-51-115.

Tax on sales of tangible personal property to common carriers for use out of state, § 67-6-219.

Taxation, interstate telecommunications service, § 67-6-221.

Section to Section References. This section is referred to in §§ 6-51-115, 67-4-1816, 67-6-204, 67-6-205, 67-6-212, 67-6-705, 67-6-710, 71-1-125.

Law Reviews. Comment, A Review of the Struggle for Tennessee Tax Reform, 60 Tenn. L. Rev. 431 (1993).

Cited: Tennessee Small Sch. Sys. v. McWherter, 851 S.W.2d 139 (Tenn. 1993).

NOTES TO DECISIONS

ANALYSIS

1. Constitutionality.
2. Nature of tax.
3. Equitable estoppel.
4. Sales outside county.
5. Telephone sales.
6. Leased property.
7. Component of system.
8. Use tax.
9. Industrial machinery.

1. Constitutionality.

Resolution by county levying sales tax subject to referendum of county voters after city in the county had adopted sales tax at same rate did not amount to an unconstitutional impairment of contract with respect to bonded indebtedness of city which pledged sales tax revenues, since such obligation was incurred with knowledge that county could levy such a tax. Lenoir City v. Loudon County, 222 Tenn. 319, 435 S.W.2d 824 (1968).

2. Nature of Tax.

A city sales tax is a tax not only on city residents but on all persons purchasing goods and services within the city. Lenoir City v. Loudon County, 222 Tenn. 319, 435 S.W.2d 824 (1968).

3. Equitable Estoppel.

County was not estopped from levying sales tax by fact that city had levied sales tax and had pledged such sales tax revenues for the bonded indebtedness of the city. Lenoir City v. Loudon County, 222 Tenn. 319, 435 S.W.2d 824 (1968).

4. Sales Outside County.

Sales made by salesman at the place of business of customer outside of county with local option sales tax, where salesman did not live or

make any sales in the county were subject to the local tax. Pidgeon-Thomas Iron Co. v. Garner, 495 S.W.2d 826 (Tenn. 1973).

5. Telephone Sales.

Sales made by telephone, where the customer was located outside the county with local option sales tax placed an order by phone and the orders were shipped through the mail, are subject to the local tax. Pidgeon-Thomas Iron Co. v. Garner, 495 S.W.2d 826 (Tenn. 1973).

6. Leased Property.

Maximum tax is to be collected only once for the entire term of a lease, and not on each monthly installment of rent. Honeywell Information Sys. v. King, 640 S.W.2d 553 (Tenn. 1982).

7. Component of System.

Separate components of a computer system should be treated as separate pieces of leased property for purposes of the local sales tax. Honeywell Information Sys. v. King, 640 S.W.2d 553 (Tenn. 1982).

The plugs, switching systems, and telephone units sold by plaintiff in telephone systems, which articles had unit prices, could be put together to meet various office needs, and could be sold separately to one who needed a system alteration, were single articles of personal property subject to the local option sales tax; the system itself did not constitute a single unit. Executone of Memphis, Inc. v. Garner, 650 S.W.2d 734 (Tenn. 1983).

8. Use Tax.

Where metal fabricating business engaged in custom making steel structures to order for a particular purpose of a customer, the manufacturer was exercising the privilege of using tangible personal property rather than the privilege of engaging in retail sales, and was subject to the maximum use tax of five dollars. Pidgeon-Thomas Iron Co. v. Garner, 495 S.W.2d 826 (Tenn. 1973).

9. Industrial Machinery.

The general assembly's exemption of industrial machinery from the state sales tax under § 67-6-206 also exempted industrial machinery from the local option sales tax. Bowater N. Am. Corp. v. Jackson, 685 S.W.2d 637 (Tenn. 1985).

67-6-703. Priority of county levy. — (a)(1) The levy of the tax by a county shall preclude, to the extent of the county tax, any city or town within such county from levying the tax, but a city or town shall at any time have the right to levy the tax at a rate equal to the difference between the county tax and the maximum rate authorized herein. For cities and towns having territory in more than one (1) county, "cities and towns" means that part of their territory in which they are not precluded by a county tax.

(2) Cities and towns having territory in more than one (1) county may levy the tax throughout the entire city or town at a rate equal to the difference between the lowest operative rate of any county in which the city is located and the maximum rate authorized herein; provided, that if such rate levied should cause the total tax rate levied within any one (1) county in which the city or town is located to exceed the maximum rate authorized herein, then only so much of the city or town levy as equals the difference between the county tax and the maximum rate authorized herein shall become effective in the territory of the city or town located in such county. Nothing in this subdivision shall in any manner affect the priority of any county levy; provided, that nothing herein shall permit any rate above the maximum rate authorized herein to become effective.

(b) If an ordinance levying the tax herein authorized is adopted by a city or town prior to adoption of the tax by the county in which the city or town is located, the effectiveness of the ordinance shall be suspended for a period of forty (40) days beyond the date on which it would otherwise be effective under the charter of the city or town. If during this forty-day period, the county legislative body adopts a resolution to levy the tax at least equal to the rate provided in such ordinance, the effectiveness of the ordinance shall be further suspended until it is determined whether the county tax is to be operative, as provided in § 67-6-706. If the county tax becomes operative by approval of the

voters as provided in § 67-6-706, the ordinance shall be null and void, but if the county tax does not become operative, the ordinance shall become effective on the same date that the county tax is determined to be nonoperative, and the election required by § 67-6-706 shall be held. After initial adoption of the tax by a county or a city or town therein, the tax rate may be increased by a city, town or county under the same procedure. If the tax levied by a county legislative body is finally determined to be nonoperative, such action shall not preclude subsequent action by the county to adopt the tax at a rate at least equal to the city or town tax rate, in which event the city or town tax shall cease to be effective; provided, that the city or town shall receive from the county tax the same amounts as would have been received from the city or town tax until the end of the current fiscal year of the city or town. [Acts 1963, ch. 329, § 3; 1968, ch. 488, § 2; T.C.A., § 67-3051; Acts 1986, ch. 785, § 1.]

Textbooks. Tennessee Jurisprudence, 23 Tenn. Juris., Taxation, § 76.

Cited: Honeywell Information Sys. v. King, 640 S.W.2d 553 (Tenn. 1982).

NOTES TO DECISIONS

1. Preservation of County Authority.

This section did not require that a county call a referendum within 40 days of passage of a city ordinance to preserve its authority to levy a future sales tax. The reference to a county referendum within 40 days of adoption of a city ordinance merely means that the calling of a referendum within the 40 day suspension period did not preclude imposition of the tax at a future date if that county referendum fails. Lenoir City v. Loudon County, 222 Tenn. 319, 435 S.W.2d 824 (1968).

67-6-704. Exemptions. — No county or incorporated city or town is authorized to levy any tax on the sale, purchase, use, consumption or distribution of electric power or energy, or of natural or artificial gas, or coal and fuel oil or steam and chilled water produced and distributed by an energy resource recovery facility operated in a county with a metropolitan form of government. [Acts 1963, ch. 329, § 2; 1968, ch. 488, §§ 1, 4; 1971, ch. 117, § 7; 1971, ch. 148, § 1; 1972, ch. 653, § 2; 1973, ch. 239, § 2; 1973, ch. 340, § 1; 1974, ch. 675, § 2; 1975, ch. 316, § 2; 1976, ch. 466, § 5; 1977, ch. 43, § 1; 1977, ch. 178, § 2; 1978, ch. 592, § 2; impl. am. Acts 1978, ch. 934, §§ 7, 36; 1979, ch. 308, § 3; 1980, ch. 886, § 2; 1981, ch. 182, § 2; 1982, ch. 585, § 1; 1983, ch. 278, § 1; T.C.A., § 67-3050; Acts 1985, ch. 452, § 7; 1989, ch. 430, § 7.]

67-6-705. Tax subject to referendum. — (a) The operation of the resolution or ordinance authorized in § 67-6-702 shall be subject to approval of the voters as required in § 67-6-706 and to the other provisions of this part.

(b) Nothing herein contained shall be deemed to permit an increase in the privilege tax rates hereby authorized, without the ratification thereof in the manner provided in § 67-6-706, regardless of the nature of any previous call and regardless of future action of the general assembly regarding the levy of the tax authorized by this chapter.

(c) Any amendment to any existing tax rate shall be subject to approval of the voters of the city or county in the same manner as is required for the initial adoption of the tax; provided, that a change in the limitation on the amount of the tax made in accordance with § 67-6-702(a)(2) shall not be subject to

approval of the voters of the city or county. [Acts 1963, ch. 329, § 2; 1968, ch. 488, §§ 1, 4; 1971, ch. 117, § 7; 1971, ch. 148, § 1; 1972, ch. 653, § 2; 1973, ch. 239, § 2; 1973, ch. 340, § 1; 1974, ch. 675, § 2; 1975, ch. 316, § 2; 1976, ch. 466, § 5; 1977, ch. 43, § 1; 1977, ch. 178, § 2; 1978, ch. 592, § 2; impl. am. Acts 1978, ch. 934, §§ 7, 36; 1979, ch. 308, § 3; 1980, ch. 886, § 2; 1981, ch. 182, § 2; 1982, ch. 585, § 1; 1983, ch. 278, § 1; T.C.A., § 67-3050.]

Textbooks. Tennessee Jurisprudence, 23 Tenn. Juris., Taxation, § 76.

67-6-706. Referendum. — (a)(1) Any ordinance or resolution of a county or of a city or town levying the tax under authority of this part shall not become operative until approved in an election herein provided in the county or the city or town, as the case may be.

(2) The county election commission shall hold an election thereon, providing options to vote "FOR" or "AGAINST" the ordinance or resolution, not less than forty-five (45) days nor more than sixty (60) days after the receipt of a certified copy of such ordinance or resolution, and a majority vote of those voting in the election shall determine whether the ordinance or resolution is to be operative.

(3) If the majority vote is for the ordinance or resolution, it shall be deemed to be operative on the date that the county election commission makes its official canvass of the election returns; provided, that no tax shall be collected under any such ordinance or resolution until the first day of a month occurring at least thirty (30) days after the operative date.

(b)(1) If a county legislative body adopts a resolution to levy the tax at the same rate that is operative in a city or town in the county, the election under this section to determine whether the county tax is to be operative shall be open only to the voters residing outside of such city or town. If the county tax is at a higher rate than the rate of the city or town tax, the election shall be also open to the voters of the city or town.

(2)(A) Except as provided in subdivision (b)(2)(B), should any county or city or town hold an election hereunder, and the ordinance or resolution is rejected, no other election thereon shall be held by such county, city or town for a period of six (6) months from the date of the holding of such prior election.

(B) In counties having a population of not more than seven hundred fifty thousand (750,000) nor less than seven hundred thousand (700,000) and not more than two hundred seventy-eight thousand (278,000) and not less than two hundred fifty thousand (250,000) according to the federal census of 1970 or any subsequent federal census, in case of rejection, the limitation period on subsequent elections shall be one (1) year from the date of the holding of such prior election.

(c) Any ordinance or resolution levying the tax under this part which was approved by the voters prior to January 1, 1985, and which made the effectiveness of the tax depend on a contingency relating to distribution of the proceeds of the tax, shall be deemed valid and effective under the provisions of this part, so long as the contingency is satisfied before or after the holding of the referendum. [Acts 1963, ch. 329, § 5; 1967, ch. 113, § 1; 1968, ch. 488, § 3;

1971, ch. 83, § 1; 1972, ch. 455, § 1; 1982, ch. 591, § 1; T.C.A., § 67-3053; Acts 1985, ch. 234, § 1.]

Section to Section References. This section is referred to in §§ 67-6-703, 67-6-705, 67-6-707.

Textbooks. Tennessee Jurisprudence, 23 Tenn. Juris., Taxation, § 76.

Law Reviews. Tennessee Annexation Law: History, Analysis, and Proposed Amendments (Frederic S. Le Clercq), 55 Tenn. L. Rev. 577 (1989).

Cited: State ex rel. Shriver ex rel. Higgins v. Dunn, 496 S.W.2d 480 (Tenn. 1973); Honeywell Information Sys. v. King, 640 S.W.2d 553 (Tenn. 1982).

NOTES TO DECISIONS

ANALYSIS

1. Constitutionality.
2. Eligibility to vote.
3. Ballot.
4. Standing.

1. Constitutionality.

Provision of subsection (b) to the effect that in a referendum on a county-wide sales tax held after city in county adopted sales tax at same rate only voters outside the city could vote was not a denial of equal protection of city voters. Lenoir City v. Loudon County, 222 Tenn. 319, 435 S.W.2d 824 (1968); City of Gatlinburg v. Sevier County Bd. of Educ., 63 Tenn. App. 724, 479 S.W.2d 811 (1972).

2. Eligibility to Vote.

If after a sales tax has been previously adopted by the city the county court called a referendum pursuant to subsection (b) for a county-wide sales tax at the same rate as the city tax only county voters residing outside the city were eligible to vote. Lenoir City v. Loudon County, 222 Tenn. 319, 435 S.W.2d 824 (1968); City of Gatlinburg v. Sevier County Bd. of Educ., 63 Tenn. App. 724, 479 S.W.2d 811 (1972).

A referendum called by a county court either before the passage of a city ordinance levying the sales tax subject to a referendum or within the 40-day suspension period following, such city action would be open to all residents of the county including residents of the city. Lenoir City v. Loudon County, 222 Tenn. 319, 435 S.W.2d 824 (1968).

3. Ballot.

Election under resolution proposing to levy local sales tax was not invalid because resolution was not copied in toto on voting machines where abbreviated notice conveyed a reasonable certainty of meaning so that voters could intelligently cast a vote for or against resolution. Pidgeon-Thomas Iron Co. v. Shelby County, 217 Tenn. 288, 397 S.W.2d 375 (1965).

4. Standing.

Municipal corporations could not challenge the county sales tax referendum held pursuant to this section, under the provisions of § 2-17-101 relating to election contests generally. City of Greenfield v. Butts, 573 S.W.2d 748 (Tenn. 1978).

67-6-713. Exemption of certain sales from tax increase — Applicability. — (a) There shall be exempt from any increase in the local option portion of the sales and use tax imposed by this part all sales contractually committed and/or for which money has been paid before the effective date of the increase.

(b) This section shall only apply:

(1) In any municipality having a population of more than one hundred thousand (100,000) according to the 1990 federal census or any subsequent census and whose rate is now higher than that of the county in which it is located; and

(2) To sales made in the ordinary course of business and not accelerated for the purpose of avoiding the tax as determined by the municipal officer in charge of collecting the tax. Such officer may make such refunds as are necessary to effectuate the purposes of this section.

(c) The powers conferred by this section are in addition and supplemental to the powers conferred by any other law, charter, or home rule provision. [Acts 1997, ch. 174, § 1.]

Compiler's Notes. Acts 1997, ch. 174, § 3 provides that this section shall apply to sales contractually committed and/or for which money has been paid on or after July 1, 1996, through June 30, 1998.

Effective Dates. Acts 1997, ch. 174, § 3. May 7, 1997.

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PART 1—PETITIONS

PART 1—PETITIONS

2-5-104. Candidates for other than statewide elections. — (a) Each independent or primary candidate, other than those filing under § 2-5-103, and those filing under subsection (b) or subsection (c), shall file the candidate's original nominating petition with the chair or the administrator of elections of the county election commission in the county in which the candidate is a resident and shall file certified duplicates of the nominating petition with the chairs or administrators of the county election commissions in all counties wholly or partially within the area served by the office which the candidate seeks.

(b)(1) Each independent or primary candidate for the office of representative to the United States congress shall file the candidate's nominating petitions as a candidate for an office elected by the voters of the entire state would file the candidate's nominating petitions under the provisions of § 2-5-103.

(2) However, any independent and primary candidate for the office of representative to the United States congress from a district located entirely in one (1) county shall file the candidate's nominating petitions under the provisions of this section.

(c) Each candidate for municipal office shall file the candidate's original nominating petition with the county election commission where the municipality is located. If the municipality is located in more than one (1) county, the candidate shall file the nominating petition with the county election commission of the county responsible for holding the election pursuant to § 6-53-101. [Acts 1972, ch. 740, § 1; 1973, ch. 31, § 1; 1977, ch. 480, § 1; 1978, ch. 754, § 2; 1979, ch. 115, § 2; T.C.A., § 2-508; Acts 1982, ch. 746, §§ 1, 2; 1998, ch. 720, §§ 1, 2.]

Amendments. The 1998 amendment in (a) inserted "or subsection (c)" and added (c).

Effective Dates. Acts 1998, ch. 720, § 3. April 8, 1998.

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2-7-116. Assistance to disabled, illiterate or blind voters — Certified record.

— (a)(1) A voter who claims, by reason of illiteracy or physical

disability other than blindness, to be unable to mark the ballot to vote as the voter wishes and who, in the judgment of the officer of elections, is so disabled or illiterate, may:

(A) Where voting machines are used, have the ballot marked on a voting machine or on a paper ballot subject to the provisions of § 2-7-117 by any person of the voter's selection, or by one of the judges of the voter's choice in the presence of either a judge of a different political party or, if such judge is not available, an election official of a different political party; or

(B) Where voting machines are not used, have the ballot marked by any person of the voter's selection or by one of the judges of the voter's choice in the presence of either a judge of a different political party or, if such judge is not available, an election official of a different political party.

(2) The officer of elections shall keep a record of each such declaration, including the name of the voter and of the person marking the ballot and, if marked by a judge, the name of the judge or other official in whose presence the ballot was marked. The record shall be certified and kept with the poll books on forms to be provided by the coordinator of elections.

(b)(1) A voter who claims, by reason of blindness, to be unable to mark the ballot to vote as the voter wishes and who, in the judgment of the officer of elections, is blind, may:

(A) Where voting machines are used, have the ballot marked on a voting machine or on a paper ballot subject to the provisions of § 2-7-117 by any person of the voter's selection or by one of the judges of the voter's choice in the presence of either a judge of a different political party or, if such judge is not available, an election official of a different political party; or

(B) Where voting machines are not used, have the ballot marked by any person of the voter's selection or by one of the judges of the voter's choice in the presence of either a judge of a different political party or, if such judge is not available, an election official of a different political party.

(2) The officer of elections shall keep a record of each such declaration, including the name of the voter and of the person marking the ballot and, if marked by a judge, the name of the judge or other official in whose presence the ballot was marked. The record shall be certified and kept with the poll books on forms to be provided by the coordinator of elections.

(c) A physically disabled voter may, at the discretion of the officer of elections, be moved to the front of any line at the polling place. [Acts 1972, ch. 740, § 1; 1975, ch. 2, § 1; T.C.A., § 2-716; Acts 1997, ch. 122, § 1; 1997, ch. 558, § 8; 1997, ch. 558, §§ 8, 9; 1998, ch. 719, §§ 1, 2.]

Amendments. The 1998 amendment rewrote (a)(1)(A) which read: "Where voting machines are used: (i) Use a paper ballot; or (ii) If the voter cannot mark a paper ballot as the voter wishes, have a ballot marked on a voting machine or on a paper ballot subject to the provisions of § 2-7-117 by the voter's spouse, father, mother, brother, sister, son, daughter or grandchild or by one (1) of the judges of the voter's choice in the presence of either a judge of a different political party or, if such judge is not available, an election official of a different political party; or"; and substituted "any person of the voter's choice" for "the voter's spouse, father, mother, brother, sister, son, daughter or grandchild" in (a)(1)(B).

Effective Dates. Acts 1998, ch. 719, § 3. April 8, 1998.

CHAPTER 9

VOTING MACHINES

SECTION.

2-9-103. Voting machine technicians. — (a) The representatives of each political party on the county election commission shall jointly appoint a voting machine technician who is a member of their political party and who is qualified by training or experience to prepare and maintain the voting machines, and the county election commission shall appoint as many assistants as may be necessary for the proper preparation of the machines for elections and for their maintenance, storage, and care.

(b) The voting machine technicians, under the direction of the commission, shall have charge of the voting machines and shall represent the commission during the preparation of the voting machines.

(c) The voting machine technicians shall serve at the pleasure of the commissioners who appointed them. The assistants shall serve at the pleasure of the commission.

(d) The commission shall fix the compensation of the voting machine technicians and assistants commensurate with the work required.

(e) Duties imposed on the voting machine technician by this chapter shall be performed jointly by the voting machine technicians.

(f)(1) Any voting machine technician appointed by the county election commission who performs such duties on a part-time basis and who has other full-time employment shall be excused without pay from such full-time employment for the days required for the performance of the technician's duties.

(2) No employer of a voting machine technician being excused from employment pursuant to this section shall require such technician to use vacation time or other leave time for the days such technician has been excused from employment to perform the technician's duties. [Acts 1972, ch. 740, § 1; T.C.A., § 2-903; Acts 1998, ch. 741, § 1.]

Compiler's Notes. Acts 1998, ch. 964, § 1 provides that, in the event of a tie vote by the representatives of the minority political party on the county election commission of any county having a population of not less than twenty-nine thousand one hundred (29,100) nor more than twenty-nine thousand four hundred (29,400), according to the 1990 federal census or any subsequent federal census, on the appointment of a voting machine technician, the chair of the minority political party of such county shall break such tie vote. The provisions of ch. 964 shall cease to be effective on December 31, 1998.

Amendments. The 1998 amendment added (f).

Effective Dates. Acts 1998, ch. 741, § 2. April 15, 1998.

CHAPTER 10

CAMPAIGN FINANCES

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2-10-102. Definitions.

Attorney General Opinions. Application of campaign finance laws to contributions to officeholder's legal defense fund, OAG 97-146 (10/23/97).

2-10-105. Filing of contribution, loan and expenditure statements — Eligible treasurers — Additional reporting requirements. — (a) Each candidate for state public office or political campaign committee in a state election shall file with the registry of election finance a statement of all contributions received and all expenditures made by or on behalf of such candidate or such committee. The statement of each candidate for state public office shall include the date of the receipt of each contribution and the statement of a political campaign committee in a state election shall include the date of each expenditure which is a contribution to a candidate. Each candidate for the office of member of the general assembly and each political campaign committee for such candidate shall file a copy of such statement with the county election commission in the county of which the candidate is a resident.

(b) Each candidate for local public office or political campaign committee for a local election shall file with each county election commission of the county where the election is held, a statement of all contributions received and all expenditures made by or on behalf of such candidate or such committee. The statement of each candidate for local public office shall include the date of the receipt of each contribution and the statement of a political campaign committee for a local election shall include the date of each expenditure which is a contribution to a candidate.

(c) The statements required by subsections (a) and (b) of each candidate, each single candidate political campaign committee or single measure political campaign committee shall be filed in the following manner:

(1) Statements for any primary election or referendum, from and including the day that the first contribution was received or the first expenditure made, whichever was earlier, through the tenth day before any such election or

referendum shall be filed not later than seven (7) days before the election. The reporting period of any statement filed subsequent to a report filed under subdivision (c)(5) shall commence the day after the period covered by such prior filing. Each independent candidate for a state or local public office, which office has a primary election, shall file all primary reports required by this subsection, even though such independent candidate is not included on the ballot in such primary election;

(2) Statements for any special or general election or referendum:

(A) From and including the day that the first contribution was received or the first expenditure made whichever was earlier; or

(B) From the last day included in any prior report whichever is later through the tenth day before any such election or referendum shall be filed not later than seven (7) days before the election;

(3) Statements for any runoff election, from the last day included in any prior report through the tenth day before any such election shall be filed, not later than seven (7) days before the election;

(4) Statements from the last day of the prior report through the forty-fifth day after the primary, general, special or runoff election or referendum shall be filed not later than forty-eight (48) days after the election. When no subsequent report is required by this section or § 2-10-106 because such statement has a zero ($0) balance of contributions and expenditures, such statement shall be the final statement; and

(5) Any candidate or political campaign committee filing a statement pursuant to subsection (e), more than one (1) year before the election in which the candidate or committee expects to be involved, shall file reports with the registry of election finance or the county election commission, whichever is required by subsections (a) and (b), by January 31 immediately succeeding the filing, and annually thereafter through the year of the election. If January 31 falls on a Saturday, a Sunday, or a legal holiday, the provisions of § 1-3-102 shall apply. The ending date of a reporting period for such a filing is December 31 of the year preceding the filing. No such annual report need be made if the reporting date is within sixty (60) days of a report otherwise required by this part.

(d) Each multicandidate political campaign committee shall file reports according to § 2-10-107 quarterly, within ten (10) days following the first day of January, April, July and October respectively. Each report shall include transactions occurring since the preceding report.

(e) Each candidate and each political campaign committee shall certify the name and address of the candidate's or committee's political treasurer to the registry of election finance and/or the county election commission, where appropriate, before the candidate or committee may receive a contribution or make an expenditure in a state or local election. A state public officeholder shall also certify the name and address of such officeholder's political treasurer to the registry of election finance before the officeholder or the officeholder's political committee may accept a contribution to defray the expenses incurred in connection with the performance of the officeholder's duties or responsibilities, and a local officeholder shall so certify the name and address of such officeholder's treasurer to the appropriate county election commission. A

candidate may appoint such candidate as the political treasurer. A candidate or political campaign committee shall notify the registry of election finance or county election commission of any changes in the office of its political treasurer. Any such statements filed pursuant to this part shall be cosigned by the candidate, if such candidate appoints a political treasurer other than the candidate.

(f) All records used by the candidate or political campaign committee to complete a statement required by this part shall be retained by the candidate or political campaign committee for at least one (1) year after the date of the election to which the records refer.

(g) Separate reporting shall be required for both primary elections and general elections. Cumulative reporting for both primary and general elections for the same office in the same year is expressly prohibited. An appointment of a political treasurer pursuant to subsection (e) may be cumulative, and one (1) such appointment shall be sufficient for both a primary and general election for the same office in the same year. A successful primary candidate shall not be required to certify a political treasurer for the general election if the candidate had previously certified such political treasurer prior to the primary election.

(h) During the period beginning at twelve o'clock midnight (12:00) of the tenth day prior to a primary, general, runoff or special election or a referendum and extending through twelve o'clock midnight (12:00) of such election or referendum day, each candidate or political campaign committee shall by telegram, facsimile machine, hand delivery or overnight mail delivery file a report with the registry of election finance or the county election commission, whichever is required by subsections (a) and (b) of:

(1)(A) The full name and address of each person from whom the candidate or committee has received and accepted a contribution, loan or transfer of funds during such period and the date of the receipt of each contribution in excess of the following amounts: a committee participating in the election of a candidate for any state public office, five thousand dollars ($5,000); a committee participating in the election of a candidate for any local public office, two thousand five hundred dollars ($2,500). If the committee is participating in the election of candidates for offices with different reporting amounts, the amount shall be the lowest for any candidate in whose election the committee is participating or in which any committee is participating to which it makes or from which it receives a transfer of funds; and

(B) Such report shall include the amount and date of each such contribution or loan reported, and a brief description and valuation of each in-kind contribution. If a loan is reported, the report shall contain the name and address of the lender, of the recipient of the proceeds of the loan, and of any person who makes any type of security agreement binding such person or such person's property, directly or indirectly, for the repayment of all or any part of the loan.

(2) Each report required by this subsection shall be filed within seventy-two (72) hours after the time the contribution or loan is received. If such time falls other than during regular working hours, the report shall be filed after the opening of the office of the registry of election finance or the county election commission, whichever is required by subsections (a) and (b) on the next working day after the time at which the report is otherwise due.

(3) The registry shall develop appropriate forms for the report required by this subsection and make such forms available to the candidates and the county election commissions.

(i) Reports filed under this section shall not be cumulative. Each report shall reflect the total for its own reporting period. [Acts 1980, ch. 861, § 6; 1981, ch. 136, § 1; 1984, ch. 683, §§ 3, 7; 1989, ch. 585, §§ 11-13; 1990, ch. 1078, §§ 1, 2; 1991, ch. 519, §§ 3, 4; 1995, ch. 531, §§ 9, 11-13; 1996, ch. 1005, § 2; 1997, ch. 410, §§ 1, 2; 1998, ch. 650, §§ 1-3.]

Amendments. The 1998 amendment, in (c)(5), substituted "by January 31" for "on February 1", added the present second sentence and rewrote the present third sentence which read: "The ending date of a reporting period for such a filing is January 29 of the year of the filing."

Effective Dates. Acts 1998, ch. 650, § 5. March 24, 1998.

2-10-110. Penalties.

Attorney General Opinions. Failure to file conflict of interest disclosure report, OAG 97-134 (9/29/97).

2-10-113. December reports — Reporting period — Filing deadline. — Notwithstanding any other provision of law, rule or regulation to the contrary, if any report is required to be filed in December under the provisions of this part, the date of the reporting period for such report shall end on December 31, and the report shall be filed not later than January 31 of the following year. If January 31 falls on a Saturday, a Sunday, or a legal holiday, the provisions of § 1-3-102 shall apply. [Acts 1992, ch. 809, § 1; 1998, ch. 650, § 4.]

Amendments. The 1998 amendment added the last sentence.

Effective Dates. Acts 1998, ch. 650, § 5. March 24, 1998.

2-10-114. Campaign funds — Allocation of unexpended contributions — Use of funds.

Attorney General Opinions. Use of contributions for legal expenses, OAG 97-146 (10/23/97).

Part 2—Registry of Election Finance

2-10-203. Registry of election finance — Creation — Appointments — Qualifications — Administration. — (a) There is hereby created as an independent entity of state government a Tennessee registry of election finance. The registry shall be composed of seven (7) members appointed as provided herein. Appointments shall be made to reflect the broadest possible representation of Tennessee citizens. Of the seven (7) members appointed, at least one (1) shall be a female and one (1) shall be black. However, a black female shall not satisfy the requirement of one (1) female and one (1) black. Each member shall have been a legal resident of this state for five (5) years immediately preceding selection. Members shall be at least thirty (30) years of

age, registered voters in Tennessee, not announced candidates for public office, not members of a political party's state executive committee, shall not have been convicted of an election offense, and shall be persons of high ethical standards who have an active interest in promoting fair elections. Gubernatorial appointees shall be subject to confirmation by joint resolution of the general assembly. Such appointees shall have full power to serve until any vote of nonconfirmation.

(b)(1) For administrative purposes, the registry shall be attached to the department of state for all administrative matters relating to receipts, disbursements, expense accounts, budget, audit, and other related items. The autonomy of the registry and its authority are not affected hereby and the secretary of state shall have no administrative or supervisory control over the registry.

(2) No person performing staff duties for the registry of election finance, including the executive director, shall, during the period of such employment:

(A) Be allowed to hold or qualify for elective office to any state or local public office as defined by § 2-10-102;

(B) Be an officer of any political party or political committee;

(C) Permit such person's name to be used, or make contributions, in support of or in opposition to any candidate or propositions;

(D) Participate in any way in any election campaign; or

(E) Lobby, or employ or assist a lobbyist; provided, that this provision on lobbying shall not prohibit the executive director from the performance of the executive director's duties.

(c) Members of the registry shall be selected for staggered five-year terms as follows:

(1) The governor shall appoint three (3) members. One (1) member shall be appointed from a list of three (3) nominees submitted by the state executive committee of the majority party. One (1) member shall be appointed from a list of three (3) nominees submitted by the state executive committee of the minority party. One (1) other member shall be appointed by the governor. Before making this appointment, the governor shall solicit nominations from at least one (1) organization which has demonstrated a nonpartisan interest in fair elections and informed voting. The governor's solicitations and the replies shall be public records. The governor shall give due consideration to such nominations. The gubernatorial appointees shall serve initial terms of one (1) year;

(2) The senate shall appoint two (2) members with one (1) member to be chosen by the members of the senate democratic caucus and one (1) member to be chosen by the members of the senate republican caucus. The senate appointees shall serve initial terms of three (3) years; and

(3) The house of representatives shall appoint two (2) members with one (1) member to be chosen by the members of the house democratic caucus and one (1) member to be chosen by the members of the house republican caucus. The house appointees shall serve initial terms of five (5) years.

(d) Vacancies shall be filled in the same manner as the vacating member's office was originally filled.

(e) The registry shall elect a chair from among its appointed membership. The chair shall serve in that capacity for one (1) year and shall be eligible for

reelection. The chair shall preside at all meetings and shall have all the powers and privileges of the other members.

(f) The registry shall fix the place and time of its regular meetings by order duly recorded in its minutes. No action shall be taken without a quorum present. Special meetings shall be called by the chair on the chair's initiative or on the written request of four (4) members. Members shall receive seven (7) days' written notice of a special meeting, and the notice shall specify the purpose, time and place of the meeting, and no other matters may be considered, without a specific waiver by all the members.

(g) The members of the registry shall receive no compensation; provided, that each member of the registry shall be eligible for reimbursement for expenses and mileage in accordance with the regulations promulgated by the commissioner of finance and administration and approved by the attorney general and reporter.

(h) No member of the registry of election finance shall, during such membership:

(1) Be allowed to hold or qualify for elective office to any state or local public office, as defined by § 2-10-102;

(2) Be an officer of any political party or political committee;

(3) Permit such member's name to be used, or make contributions, in support of or in opposition to any candidate or propositions;

(4) Participate in any way in any election campaign; or

(5) Lobby, or employ or assist a lobbyist.

(i) The prohibitions of subsection (h) shall not prohibit any incumbent member of the registry of election finance from seeking votes for reelection to the registry.

(j)(1) The provisions of subsection (h) shall be applicable for one (1) year subsequent to the removal, vacancy or termination of the term of office of a member of the registry of election finance.

(2) If a member of the registry of election finance is also serving as an appointed public official and is subsequently required to run in a nonpartisan election to retain that office, the provisions of subdivisions (h)(1), (h)(3), and (h)(4) shall not apply to that member after resignation from the registry in order to run for such office. The provisions of this subdivision shall cease to be effective on June 1, 1999.

(3) A member of the registry of election finance may not be appointed or hired by an official over whom the registry has jurisdiction for one (1) year subsequent to the removal, vacancy or termination of the term of office of such member.

(k) Any member of the registry of election finance who violates the oath of office for such position or participates in any of the activities prohibited by this part commits a Class A misdemeanor, and such violation or participation shall be a ground for removal from office. [Acts 1989, ch. 585, § 3; 1998, ch. 1062, § 1; 1998, ch. 1082, § 1.]

Amendments. The 1998 amendments, by chapters 1062 and 1082, designated the existing language as (j)(1) and added (j)(2) and (j)(3).

Effective Dates. Acts 1998, ch. 1062, § 8. May 19, 1998.

Acts 1998, ch. 1082, § 2. May 19, 1998.

PART 3—CAMPAIGN CONTRIBUTIONS LIMITS

2-10-301. Short title — Jurisdiction.

Attorney General Opinions. Candidate's acceptance of contributions for primary election that may not occur, OAG 97-137 (10/06/97).

2-10-310. Fund raising during general assembly session. — (a) From the convening of the general assembly in organizational session through the earlier of the last day of regular session or June 1 in odd years, and from the convening of the general assembly in regular session to the earlier of May 15 or the conclusion of the annual session in even years, no member of the general assembly or a member's campaign committee shall conduct a fundraiser or solicit or accept contributions for the benefit of the caucus, any caucus member or member or candidate of the general assembly or governor.

(b) From the convening of the general assembly in organizational session through the earlier of the last day of regular session or June 1 in odd years, and from the convening of the general assembly in regular session to the earlier of May 15 or the conclusion of the annual session in even years, a political campaign committee controlled by a political party on the national, state, or local level or by a caucus of such political party established by members of either House of the general assembly, which makes contributions to a candidate for the general assembly or governor for election or to defray the expenses of such person's office shall not conduct a fundraiser, solicit or accept contributions for the benefit of the caucus, any caucus member or candidate for the general assembly or governor.

(c) Excess funds for election to a local public office are not eligible for transfer under § 2-10-114 to a campaign account for election to the general assembly or governor. [Acts 1995, ch. 531, § 1; 1998, ch. 1062, § 7.]

Amendments. The 1998 amendment rewrote subsection (a) which read: "From the convening of the general assembly's regular annual session each year to the earlier of May 15 or the conclusion of the annual session, a member or a candidate for the general assembly or a member's or a candidate's campaign committee shall not conduct a fundraiser or solicit or accept contributions for the benefit of the caucus, any caucus member or candidate for the general assembly or governor", and rewrote subsection (b) which read: "From the convening of the general assembly's regular annual session each year to the earlier of May 15 or the conclusion of the annual session, a political campaign committee controlled by a political party on the national, state, or local level or by a caucus of such political party established by members of either house of the general assembly, which makes contributions to a candidate for the general assembly or governor for election or to defray the expenses of such person's office shall not conduct a fundraiser, solicit or accept, contributions for the benefit of the caucus, any caucus member or candidate for the general assembly or governor."

Effective Dates. Acts 1998, ch. 1062, § 8. May 19, 1998.

Attorney General Opinions. Fund raising for campaign for local office, OAG 97-147 (10/23/97).

Fund raising for campaign for judicial office, OAG 97-148 (10/23/97).

Application to recall petition for city council member, OAG 97-149 (10/23/97).

Nonlegislators not barred from fund raising, OAG 97-158 (12/01/97).

CHAPTER 12

COUNTY ELECTION COMMISSIONS

SECTION.

PART 2—REGISTRARS

2-12-208. Compensation of certified administrators of elections.

Code Commission Notes. According to the County Technical Assistance Service (Technical Bulletin 96-1), the following minimum salaries for certified administrators of elections are effective July 1, 1996: in counties having a 1990 population of 400,000 or more — $56,066; 275,000 to 399,999 — $63,629; 250,000 to 274,999 — $64,800; 225,000 to 249,999 — $62,100; 200,000 to 224,999 — $59,400; 175,000 to 199,999 — $56,700; 150,000 to 174,999 — $54,000; 125,000 to 149,999 — $43,196; 100,000 to 124,999 — $43, 196; 65,000 to 99,999 — $43,196, except for Anderson and Bradley Counties ($42,998, limited to 7% increase), and Wilson County ($40,909, limited to 7% increase); 50,000 to 64,999 — $40,909; 35,000 to 49,999 — $30,682; 23,000 to 34,999 — $30,682; 12,000 to 22,999 — $28,124; 5,000 to 11,999 — $24,290; and less than 5,000 — $23,012, except Van Buren County ($22,021, limited to 7% increase).

According to the County Technical Assistance Service (Technical Bulletin 97-1), the following minimum salaries for certified administrators of elections are effective July 1, 1997: in counties having a 1990 population of 400,000 or more — $61,673; 275,000 to 399,999 — $69,992; 250,000 to 274,999 — $65,961; 225,000 to 249,999 — $63,261; 200,000 to 224,999 — $60,561; 175,000 to 199,999 — $57,861; 150,000 to 174,999 — $55,161; 125,000 to 149,999 — $47,516; 100,000 to 124,999 — $47,516; 65,000 to 99,999 — $47,516, except for Anderson and Bradley Counties ($47,298, limited to 7% increase), and Wilson County ($45,000, limited to 10% increase); 50,000 to 64,999 — $45,000; 35,000 to 49,999 — $33,750; 23,000 to 34,999 — $33,750; 12,000 to 22,999 — $30,936; 5,000 to 11,999 — $26, 719; and less than 5,000 — $25,313, except Van Buren County ($24,223, limited to 10% increase).

CHAPTER 13

POLITICAL PARTIES AND PRIMARIES

SECTION.

PART 2—SELECTION OF CANDIDATES

2-13-203. Methods of nomination for other offices.

Attorney General Opinions. Nonpartisan judicial elections in Shelby County, constitutionality, OAG 97-094 (62/26/97).

Nonpartisan judicial elections in Shelby County, meaning of "county judicial offices," OAG 97-094 (62/26/97).

CHAPTER 17

CONTESTED ELECTIONS

SECTION.

2-17-112. Judgment.

Cited: Lee v. Tuttle, 965 S.W.2d 483 (Tenn. 1998).

2-17-116. Appeal.

NOTES TO DECISIONS

ANALYSIS

1. **Purpose of Section.**
Staples v. Brown, 113 Tenn. 639, 85 S.W. 254 (1904); 19 A.L.R. 766, 27 A.L.R. 493, 37 A.L.R. 838, 67 A.L.R. 249, 88 A.L.R. 665, 106 A.L.R. 1040.

CHAPTER 19

PROHIBITED PRACTICES

SECTION.

PART 1—PROHIBITED PRACTICES GENERALLY

2-19-101. Interfering with nominating meeting or election.

Cross-References. State guard use to supervise, etc., election prohibited, § 58-1-402.

TITLE 5

COUNTIES

CHAPTER 5

COUNTY LEGISLATIVE BODIES

SECTION.

PART 1—SUBSTANTIVE PROVISIONS

5-5-105. Special meetings.

NOTES TO DECISIONS

ANALYSIS

4. Adequacy of notice.

4. Adequacy of notice.

This section did not prohibit a single notice of a public hearing and special meeting of the county board of commissioners on the same subject matter. Tucker v. Humphreys County, 944 S.W.2d 613 (Tenn. Ct. App. 1996).

CHAPTER 8

RECEIPT AND MANAGEMENT OF FUNDS

SECTION.

PART 1—GENERAL PROVISIONS

5-8-102. Privilege tax — Motor vehicle tax.

PART 1—GENERAL PROVISIONS

5-8-102. Privilege tax — Motor vehicle tax.

Cross-References. Privilege and excise taxes, title 67, ch. 4.

Attorney General Opinions. County wheel tax not limited by § 67-1-602, OAG 97-109 (8/06/97).

TITLE 8

PUBLIC OFFICERS AND EMPLOYEES

CHAPTER 50

MISCELLANEOUS PROVISIONS

SECTION.

PART 5—DISCLOSURE STATEMENTS OF CONFLICT OF INTERESTS

8-50-501. Disclosure statements of conflict of interests by certain public officials.

SECTION.

8-50-505. Enforcement powers.

PART 5—DISCLOSURE STATEMENTS OF CONFLICT OF INTERESTS

8-50-501. Disclosure statements of conflict of interests by certain public officials. — (a) Disclosure of the interests named in § 8-50-502 shall be made to the registry of election finance by candidates for and appointees to the following offices:

(1) Each member of the general assembly;

(2) The secretary of state, comptroller of the treasury, state treasurer and each member of the state election commission;

(3) Each director of the Tennessee regulatory authority;

(4) The governor;

(5) Each officer of the governor's cabinet;

(6) Each supreme court justice, each judge of the court of criminal appeals and each judge of the court of appeals;

(7) Each delegate to a constitutional convention called to consider a new constitution or amendments to the Constitution of Tennessee;

(8) The attorney general and reporter;

(9) The district attorneys general and the public defenders for each judicial district;

(10) The administrative director of the courts;

(11) The executive director of the district attorneys general conference;

(12) The state election coordinator;

(13) Members of the board of probation and parole;

(14) Members and executive director of the alcoholic beverage commission;

(15) The chancellor of the board of regents and the president of each college or university governed by the board of regents;

(16) The president of the University of Tennessee, and the chancellor of each separate branch or campus of the University of Tennessee; and

(17) Members of the registry of election finance.

(b) Each candidate or appointee to a local public office as defined in § 2-10-102(11)(B) shall make a disclosure of the interests named in § 8-50-502 by filing a disclosure statement with the county election commission in the county of the candidate's residence.

(c) A candidate for any of the aforementioned offices which are elective shall file a disclosure statement no later than thirty (30) days after the last day provided by law for qualifying as a candidate. The county election commission in each county shall forward a complete list of candidates who have qualified for state public office in its county to the registry of election finance within three (3) days of the qualifying deadline. Such list shall include each candidate's name, address and the office sought. An appointee to any of the offices listed in subsection (a) shall file a disclosure statement within thirty (30) days from the date of appointment. The appointing authority shall notify the registry of election finance or the county election commission, as appropriate, of any such appointment within three (3) days of the appointment. Any candidate or appointee who is holding the same position for which such person is a candidate or appointee shall not be required to file the statement required by this subsection, as long as such candidate or appointee is in compliance with §§ 8-50-503 and 8-50-504.

(d)(1) The disclosure shall be in writing in the form prescribed by the registry of election finance and shall be a public record.

(2) A person required to file the form required by this part shall have one (1) attesting witness sign the form before it is submitted to the appropriate authority. The form need not be notarized before it is submitted to the appropriate authority. [Acts 1972, ch. 843, § 1; 1977, ch. 185, § 1; 1978, ch. 928, § 1; T.C.A., § 8-4125; Acts 1981, ch. 412, §§ 1, 2; 1989, ch. 585, §§ 26, 27;

1991, ch. 519, §§ 12-14; 1992, ch. 671, § 2; 1992, ch. 988, § 6; 1993, ch. 66, § 11; 1995, ch. 305, § 94; 1996, ch. 996, § 2; 1998, ch. 1049, § 4.]

Amendments. The 1998 amendment substituted "board of probation and parole" for "board of pardons and paroles" in (a)(13).

Effective Dates. Acts 1998, ch. 1049, § 68. May 18, 1998. However, the implementation of the act shall take effect July 1, 1999; provided, that provisions of the act may be implemented prior to July 1, 1999, upon the request of the Tennessee board of probation and parole through its chair, with the approval of the commissioner of personnel and the commissioner of finance and administration, with review and comment by the select oversight committee on correction.

8-50-505. Enforcement powers.

Attorney General Opinions. Failure to file conflict of interest disclosure report, OAG 97-134 (9/29/97).

TITLE 40

CRIMINAL PROCEDURE

CHAPTER 29

RESTORATION OF CITIZENSHIP

SECTION.

40-29-101. Jurisdiction — Time of application.

Attorney General Opinions. Felons obtaining handgun carry permit after restoration of rights, OAG 97-169 (12/22/97).

40-29-105. Felons convicted of infamous crimes after July 1, 1986. — (a) The provisions and procedures provided for in §§ 40-29-101 — 40-29-104 shall apply to all persons convicted of an infamous crime prior to July 1, 1986, but before July 1, 1996.

(b) For all persons convicted of infamous crimes after July 1, 1986, but before July 1, 1996, the following procedures shall apply:

(1) A person rendered infamous or deprived of the rights of citizenship by the judgment of any state or federal court may have full rights of citizenship restored upon:

(A) Receiving a pardon, except where such pardon contains special conditions pertaining to the right to suffrage;

(B) Service or expiration of the maximum sentence imposed for any such infamous crime; or

(C) Being granted final release from incarceration or supervision by the board of probation and parole, or county correction authority;

(2) A person rendered infamous after July 1, 1986, by virtue of being convicted of one (1) of the following crimes shall never be eligible to register

and vote in this state: First degree murder, aggravated rape, treason or voter fraud;

(3) Any person eligible for restoration of citizenship pursuant to subdivision (b)(1) may request, and then shall be issued, a certificate of restoration upon a form prescribed by the coordinator of elections, by:

(A) The pardoning authority; or

(B) An agent or officer of the supervising or incarcerating authority;

(4) Any authority issuing a certificate of restoration shall forward a copy of such certificate to the coordinator of elections;

(5) Any person issued a certificate of restoration shall submit, to the administrator of elections of the county in which the person is eligible to vote, such certificate and upon verification of the same with the coordinator of elections be issued a voter registration card entitling the person to vote; and

(6) A certificate of restoration issued pursuant to subdivision (b)(3) shall be sufficient proof to the administrator of elections that such person fulfills the above requirements; however, before allowing a person convicted of an infamous crime to become a registered voter, it is the duty of the administrator of elections in each county to verify with the coordinator of elections that such person is eligible to register under the provisions of this section.

(c) The following procedure shall apply to a person rendered infamous by virtue of being convicted of a felony on or after July 1, 1996:

(1) Except as provided in subdivision (c)(2)(B), a person rendered infamous or whose rights of citizenship have been deprived by the judgment of a state or federal court may seek restoration of full rights of citizenship by petitioning the circuit court of the county where the petitioner resides or where the conviction for the infamous crime occurred;

(2)(A) A person receiving a pardon that restores full rights of citizenship may petition for restoration immediately upon receiving the pardon. However, the court shall not have the authority or jurisdiction to alter, delete or render void special conditions pertaining to the right of suffrage that may be contained in such pardon;

(B) A person convicted of an infamous crime may petition for restoration upon the expiration of the maximum sentence imposed by the court for the infamous crime; provided, that a person convicted of murder, rape, treason or voter fraud shall never be eligible to register and vote in this state;

(3) The petition shall set forth the basis for the petitioner's eligibility for restoration and shall state the reasons the petitioner believes that petitioner's full citizenship rights should be restored. The petition shall be accompanied by such certified records, statements and other documents or information as is necessary to demonstrate to the court that the petitioner is both eligible for and merits having full rights of citizenship restored. The court may require such additional proof as it deems necessary to reach a just decision on the petition. There is a presumption that a petition filed pursuant to this subsection shall be granted and that the full citizenship rights of the petitioner shall be restored. This presumption may only be overcome upon proof by a preponderance of the evidence that either the petitioner is not eligible for restoration or there is otherwise good cause to deny the petition;

(4)(A) Prior to acting on any petition filed pursuant to this subsection, the court shall notify the district attorney general in whose county the petitioner

resides and the district attorney general of the county in which the conviction occurred that a petition for restoration of citizenship has been filed by the petitioner. Such notice shall be sent at least thirty (30) days prior to any hearing on or disposition of the petition. Each district attorney general so notified may object to the restoration of the petitioner's citizenship rights either in person or in writing;

(B) If the petitioner was rendered infamous or deprived of citizenship rights by judgment of a federal court, the circuit court shall give the notice required in subdivision (c)(2)(A) to the United States attorney and the district attorney general in whose district the petitioner is currently residing. Each such official shall have the same right to object to the petition as is provided in subdivision (c)(2)(A);

(5) If, upon the face of the petition or after conducting a hearing, the court finds that the petitioner's full citizenship rights should be restored, it shall so order and send a copy of such order to the state coordinator of elections;

(6) All costs for a proceeding under this subsection to restore a person's citizenship rights shall be paid by the petitioner unless the court specifically orders otherwise; and

(7) Any person whose citizenship rights have been restored by order of the court pursuant to this subsection shall submit a certified copy of such order to the administrator of elections of the county in which such person is eligible to vote. The administrator of elections shall verify with the coordinator of elections that such an order was issued and, upon receiving such verification, shall issue the person a voter registration card entitling the person to vote. [Acts 1986, ch. 906, § 1; 1989, ch. 227, § 51; 1996, ch. 898, §§ 1, 2; 1998, ch. 1049, § 41.]

Amendments. The 1998 amendment, in (b)(1)(C), substituted "board of probation and parole," for "board of parole, the department of correction."

Effective Dates. Acts 1998, ch. 1049, § 68. May 18, 1998. However, the implementation of the act shall take effect July 1, 1999; provided, that provisions of the act may be implemented prior to July 1, 1999, upon the request of the Tennessee board of probation and parole through its chair with the approval of the commissioner of personnel and the commissioner of finance and administration, with review and comment by the select oversight committee on correction.

TITLE 57

INTOXICATING LIQUORS

CHAPTER 4

CONSUMPTION OF ALCOHOLIC BEVERAGES ON PREMISES

PART 1—GENERAL PROVISIONS

57-4-101. Premises on which certain sales and consumption authorized. — (a) It is lawful to sell wine and other alcoholic beverages as defined in this chapter to be consumed on the premises of any hotel, commercial passenger boat company, restaurant, or commercial airlines and passenger trains meeting the requirements hereinafter set out, within the boundaries of the political subdivisions, wherein such is authorized under § 57-4-103. Beer, as defined in § 57-6-102, is also authorized to be sold on such premises. It is lawful for a charitable, nonprofit or political organization possessing a special occasion license pursuant to § 57-4-102 to serve or sell such alcoholic beverages to be consumed on a designated premises within the boundaries of a political subdivision wherein the sale of alcoholic beverages at retail has been approved pursuant to § 57-3-106.

(b) It is lawful to sell wine and other alcoholic beverages as defined in § 57-4-102, and beer as defined in § 57-6-102, to be consumed on the premises of any premiere type tourist resort or club as hereinafter defined, to guests of such resort and to members and guests of members of such clubs, subject to the further provisions of this chapter other than § 57-4-103.

(c) It is lawful to sell wine and other alcoholic beverages as defined in § 57-4-102, and beer as defined in § 57-6-102, to be consumed on the premises of any convention center, as hereinafter defined, to those in attendance at the convention center, subject to the further provisions of this chapter other than §§ 57-3-210(b)(1) and 57-4-103.

(d) It is lawful to sell wine and other alcoholic beverages as defined in § 57-4-102, and beer as defined in § 57-6-102, to be consumed on the premises of any historic performing arts center, as hereinafter defined, to those in attendance at the performing arts center, subject to the further provisions of this chapter other than § 57-4-103.

(e) It is lawful to sell wine and other alcoholic beverages as defined in § 57-4-102, to be consumed on the premises of a permanently constructed facility within an urban park center as hereinafter defined, to those in attendance at the urban park center, subject to the further provisions of this chapter other than §§ 57-4-103 and 57-3-210(b)(1).

(f) It is lawful to sell wine and other alcoholic beverages as defined in § 57-4-102, and beer as defined in § 57-6-102, to be consumed on the premises of any historic interpretive center as hereinafter defined, to those in attendance at such interpretive center, subject to the further provisions of this chapter other than §§ 57-4-103 and 57-3-210(b)(1).

(g) It is lawful to sell wine and other alcoholic beverages as defined in § 57-4-102, and beer as defined in § 57-6-102, to be consumed on the premises of any community theater as hereinafter defined, to those in attendance at such community theater, subject to the further provisions of this chapter other than § 57-4-103.

(h) It is lawful to sell wine and other alcoholic beverages as defined in § 57-4-102, and beer as defined in § 57-6-102, to be consumed on the premises of any historic mansion house site, as hereinafter defined, subject to the further provisions of this chapter other than § 57-4-103, only at such times at

which the buildings and/or grounds of this site are leased or are being used for entertainment or engagements by private groups or private individuals.

(i) It is lawful to sell wine and other alcoholic beverages as herein defined, and beer as defined in § 57-6-102, to be consumed on the premises of any terminal building of a commercial air carrier airport as defined in § 57-4-102, subject both to the further provisions of this chapter other than § 57-4-103, and to the approval of a majority of the governing board of such commercial air carrier airport.

(j) It is lawful to sell wine and other alcoholic beverages as herein defined, and beer as defined in § 57-6-102, to be consumed on the premises of any zoological institution as hereinafter defined, to those in attendance at the zoological institution, subject to the further provisions of this chapter other than § 57-4-103. No such wine, alcoholic beverages or beer shall be served during the regular operating hours where the institution is open to the general public unless a special event is scheduled for fund-raising purposes which is by invitation or for which an admission is charged for such event.

(k) It is lawful to sell wine and other alcoholic beverages as herein defined, and beer as defined in § 57-6-102, to be consumed on the premises of any museum as hereinafter defined, to those in attendance at the museum, subject to the further provisions of this chapter other than § 57-4-103. No alcoholic beverage or beer shall be served during the regular operating hours when the museum is open to the general public except at a restaurant located on the premises of such museum or at a special event scheduled for fund-raising purposes when such event is either by invitation or admission is charged.

(*l*) It is lawful to sell wine and other alcoholic beverages as defined in § 57-4-102, and beer as defined in § 57-6-102, to be consumed on the premises of any commercial airline travel club as defined in § 57-4-102, located within a terminal building of a commercial air carrier airport as defined in § 57-4-102, subject both to the further provisions of this chapter, other than § 57-4-103, and to the approval of a majority of the governing board of such commercial air carrier airport.

(1) In any county containing an airport belonging to a municipality which is located in an adjoining county, the county legislative body shall have sixty (60) days to request by resolution the county election commission to place on the ballot for the presidential preference primary to be held on the second Tuesday in March, 1988, the question of whether alcoholic beverages shall be sold for consumption on the premises by a commercial airline travel club in a commercial air carrier airport. The question to be submitted to the voters shall be in the following form:

May alcoholic beverages be sold for consumption on the premises by a commercial airline travel club in a commercial air carrier airport?

FOR _____

AGAINST _____

(2) If in such election a majority of votes are cast in favor of such sales, then the alcoholic beverage commission shall accept license applications as provided by law. If in such election a majority of the votes are cast against such sales, the alcoholic beverage commission shall accept no license applications and no such

sales shall be permitted. The county election commission shall certify the results of the election to the county executive and to the alcoholic beverage commission. If the county legislative body does not adopt a resolution requesting the county election commission to place such question on such ballot within sixty (60) days of May 17, 1987, the alcoholic beverage commission shall accept license applications, as provided by law.

(m) Any hotel or motel licensed under this chapter may dispense sealed alcoholic beverages and beer to adult guests through locked, in-room units. Distilled spirits so dispensed shall be in bottles not exceeding fifty milliliters (50 ml.). No person under the age of twenty-one (21) shall be issued or supplied with a key by any hotel or motel for such units. Such units may only be located in any such hotel or motel located in municipalities having a population in excess of one hundred thousand (100,000) if the voters of such municipality have approved the consumption of alcoholic beverages on the premises by referendum, and in any county in which such municipalities are located if the voters of such county have approved the consumption of alcoholic beverages on the premises by referendum.

(n) It further is lawful to sell wine, as defined in § 57-4-102(23), to be consumed on the premises of any restaurant located within the boundaries of any political subdivision which has authorized the sale of alcoholic beverages for consumption on the premises as provided in § 57-4-103, subject to the further provisions of this chapter. Notwithstanding the minimum seating requirement for a restaurant in § 57-4-102, a restaurant operating under this subsection shall have a seating capacity of at least forty (40) people at tables.

(o) It is lawful to sell wine and other alcoholic beverages and beer to be consumed on the premises of any public aquarium as herein defined to those in attendance at the public aquarium subject to the provisions of this chapter.

(p) It is lawful to sell alcoholic beverages, wine and beer to be consumed on the premises of any aquarium exhibition facility, as defined in § 57-4-102, to those in attendance at such facility subject to the provisions of this chapter. Such alcoholic beverages, wine and beer shall only be sold on such premises at special functions, wherein attendance is limited to invited guests or groups, the function is not open to the general public, and the area in which the function is held is not open to the general public during such function.

(q) A restaurant or hotel licensed under this chapter may seek an additional license permitting the restaurant or hotel to distribute and sell wine, beer and other alcoholic beverages at locations other than the licensed premises if the restaurant or hotel is providing catering services, if such location is within a jurisdiction where such sales are authorized. A caterer licensed under this chapter may distribute and sell wine, beer and other alcoholic beverages at locations other than the permanent catering hall if the caterer is providing catering services at a location that is within a jurisdiction where such sales are authorized.

(r) It is lawful to sell alcoholic beverages, wine and beer on the premises of a caterer licensed under this chapter as well as at such other sites as the licensed caterer has given advanced notice to the commission. Such sites shall be considered to be within the licensed premises for the purposes of this chapter.

(s) It is lawful to sell wine and other alcoholic beverages as defined in § 57-4-102, and beer as defined in § 57-6-102, to be consumed on the premises of any sports authority facility as hereinafter defined to those in attendance at such sports authority facility, subject to the further provisions of this chapter. A sports authority facility constitutes an urban park center for the purposes of the taxes provided in § 57-4-301. [Acts 1939, ch. 49, § 3; C. Supp. 1950, §§ 6648.4 (Williams, § 6648.6); T.C.A. (orig. ed.), § 57-106; Acts 1967, ch. 211, § 1; 1972, ch. 682, § 1; 1972, ch. 756, §§ 1, 2; 1975, ch. 111, §§ 1, 2; 1979, ch. 401, § 1; T.C.A., § 57-152; Acts 1980, ch. 898, § 1; 1981, ch. 404, § 1; 1981, ch. 475, § 1; 1983, ch. 52, § 1; 1983, ch. 229, § 6; 1983, ch. 300, § 2; 1983, ch. 469, § 1; 1984, ch. 975, § 1; 1985, ch. 190, § 1; 1986, ch. 899, §§ 1, 2; 1987, ch. 444, §§ 1, 2; 1989, ch. 145, § 1; 1990, ch. 919, § 1; 1991, ch. 219, § 1; 1992, ch. 674, § 1; 1992, ch. 982, § 1; 1995, ch. 306, § 1; 1996, ch. 749, § 1; 1998, ch. 795, §§ 1, 5; 1998, ch. 939, § 1.]

Amendments. The 1998 amendment by ch. 795 added (q) and (r).

The 1998 amendment by ch. 939 added (s).

Effective Dates. Acts 1998, ch. 795, § 7. April 23, 1998.

Acts 1998, ch. 939, § 7. May 11, 1998.

Section to Section References. Sections 57-4-101 — 57-4-203 are referred to in § 57-3-404.

57-4-102. Definitions. — As used in this chapter, unless the context otherwise requires:

(1) "Alcoholic beverage" or "beverage" means and includes alcohol, spirits, liquor, wine, and every liquid containing alcohol, spirits, wine and capable of being consumed by a human being, other than patented medicine or beer where the latter contains an alcoholic content of five percent (5%) by weight, or less. Notwithstanding any provision to the contrary in this title, "alcoholic beverage" or "beverage" also includes any liquid product containing distilled alcohol capable of being consumed by a human being manufactured or made with distilled alcohol irrespective of alcoholic content;

(2) "Bona fide charitable or nonprofit organization" means any corporation which has been recognized as exempt from federal taxes under § 501(c) of the Internal Revenue Code (26 U.S.C. § 501(c)) or any organization having been in existence for at least two (2) consecutive years which expends at least sixty percent (60%) of its gross revenue exclusively for religious, educational or charitable purposes;

(3) "Bona fide political organization" means any political campaign committee as defined in § 2-10-102 or any political party as defined in § 2-13-101;

(4)(A) "Club" means a nonprofit association organized and existing under the laws of the state of Tennessee, which has been in existence and operating as a nonprofit association for at least two (2) years prior to the application for a license hereunder, having at least one hundred (100) members regularly paying dues, organized and operated exclusively for pleasure, recreation and other nonprofit purposes, no part of the net earnings of which inures to the benefit of any shareholder or member; and owning, hiring or leasing a building or space therein for the reasonable use of its members with suitable kitchen and dining room space and equipment and maintaining and using a sufficient number of employees for cooking, preparing and serving meals for its members and guests; provided that no member or officer, agent or

employee of the club is paid, or directly or indirectly receives, in the form of salary or other compensation, any profits from the sale of spirituous liquors, wines, champagnes or malt beverages beyond the amount of such salary as may be fixed by its members at an annual meeting or by its governing body out of the general revenue of the club. For the purpose of this section, tips which are added to the bills under club regulations shall not be considered as profits hereunder. The alcoholic beverage commission shall have specific authority through rules and regulations to define with specificity the terms used herein and to impose additional requirements upon applicants seeking a club license not inconsistent with the definition above;

(B) "Club" also means an organization composed of members of the Tennessee national guard, air national guard, or other active or reserve military units which operate facilities located on land owned or leased by the state of Tennessee and which are operated exclusively for the pleasure and recreation of such organization's members, dependents and guests and which are generally referred to as "NCO Clubs" or "Officers Clubs." Such NCO or officers clubs shall be subject to all of the requirements of subdivision (4)(A), except for those requirements relating to having a kitchen, kitchen equipment, and employees;

(C) "Club" also means a nonprofit association organized and existing under the laws of the state of Tennessee which is located in a county having a population of not less than twenty-eight thousand six hundred sixty (28,660) nor more than twenty-eight thousand six hundred ninety (28,690) according to the 1980 federal census or any subsequent federal census. Such club shall be located in a development containing no less than four hundred forty (440) acres and shall be organized and operated exclusively for the pleasure, recreation and other nonprofit purposes of its members and their guests. No part of the net earnings of the association shall inure to the benefit of any shareholder or member. The club shall provide to its members a regulation golf course, tennis courts, and a swimming pool. The club shall own, hire or lease a building or buildings for the reasonable use of its members with suitable kitchen and dining room space and equipment. Such club shall maintain and use a sufficient number of employees for cooking, preparing and serving meals for its members and guests. No member or officer, agent or employee of the club shall be paid, or directly or indirectly receive in the form of salary or other compensation any profits from the sale of alcoholic beverage or malt beverage beyond the amount of such salary as may be fixed by its members at an annual meeting, or by its governing body out of the general revenues of the club. For the purpose of this section, tips which are added to the bills under club regulations shall not be considered as profits hereunder. The alcoholic beverage commission shall have specific authority through rules and regulations to define with specificity the terms used herein and to impose additional requirements upon applicants seeking a club license not inconsistent with this definition;

(D)(i) "Club" also means a for-profit recreational club organized and existing under the laws of the state of Tennessee and which has been in existence and operating for at least two (2) years prior to the application for a license. Such club shall have at least one hundred (100) members regularly

paying dues, and shall be organized and operated exclusively for recreation, and providing to its members a regulation golf course and owning, hiring or leasing a building or buildings for the reasonable use of its members, with suitable kitchen and dining room space and equipment, and lodging facilities consisting of not less than ten (10) rooms. Such club shall maintain and use a sufficient number of employees for cooking, preparing and serving meals for its members and guests and providing lodging facilities to its members and guests. Other than the payment of dividends to the shareholders of the club from its net income derived from all of its operations, no member or officer, agent or employee of the club shall be paid, or shall directly or indirectly receive in the form of salary or other compensation, any profits from the sale of alcoholic beverages or malt beverages beyond the amount of such salary as may be fixed by the shareholders of the corporation at an annual meeting by its governing body out of the general revenues of the club. For the purpose of this section, tips which are added to the bills under club regulations shall not be considered as profits hereunder. The alcoholic beverage commission shall have specific authority through rules and regulations to define with specificity the terms used herein and to impose additional requirements upon applicants seeking a club license not inconsistent with this definition. The alcoholic beverage commission shall not issue a license to any for-profit recreational club which restricts membership based on race or religion or sex. In any proceeding concerning a license denial or revocation under this subdivision, no quota or numerical percentage shall be used to establish proof of the prohibited discrimination among the club's membership;

(ii) Notwithstanding the provisions of § 57-4-101(b) to the contrary, this subdivision (4)(D) shall not apply in any municipality which has not approved the sale of alcoholic beverages for consumption on the premises pursuant to § 57-4-103;

(iii) The provisions of this subdivision (4)(D) shall only apply in counties having a population of not less than two hundred eighty-seven thousand seven hundred (287,700) nor more than two hundred eighty-seven thousand eight hundred (287,800) according to the 1980 federal census or any subsequent federal census;

(E)(i) "Club" also means a for-profit recreational club, organized and existing under the laws of the State of Tennessee, which has at least two hundred fifty (250) dues-paying members who pay dues of at least one hundred dollars ($100) a year. Such club shall have golf courses containing at least twenty-seven (27) holes, collectively, for the use of its members and guests, and have suitable kitchen and dining facilities. Such club shall serve at least one (1) meal daily, five (5) days a week. Such club may not compensate or pay any officer, director, agent or employee any profits from the sale of alcoholic or malt beverages based upon the volume of such beverages sold. Such club shall not discriminate against any patron or potential member on the basis of gender, race, religion or national origin;

(ii) The provisions of this subdivision (4)(E) only apply in counties having a population of not less than eighty thousand (80,000) nor more than eighty-three thousand (83,000) according to the 1990 federal census or any subsequent federal census;

(F)(i) "Club" also means a for-profit recreational club, organized and existing under the laws of the state of Tennessee, which has at least two hundred twenty-five (225) dues-paying members who pay dues of at least three hundred dollars ($300) a year. Such club shall have a clubhouse with not less than five thousand square feet (5,000 sq. ft.), golf courses containing at least eighteen (18) holes, collectively, for the use of its members and guests, and have suitable kitchen and dining facilities. Such club shall serve at least one (1) meal daily, five (5) days a week. Such club may not compensate or pay any officer, director, agent or employee any profits from the sale of alcoholic or malt beverages based upon the volume of such beverages sold. Such club shall not discriminate against any patron or potential member on the basis of gender, race, religion or national origin. It is the express intention of the general assembly that the provisions of law concerning the purchase or possession of alcoholic beverages by persons under twenty-one (21) years of age be strictly enforced in such clubs;

(ii) The provisions of this subdivision (4)(F) only apply in any county having a population of:

not less than	nor more than
21,800	22,100
22,600	23,000
34,850	35,000
80,000	83,000

according to the 1990 federal census or any subsequent federal census.

(5) "Commercial airline" includes any airline operating in interstate commerce under a certificate of public convenience and necessity issued by the appropriate federal or state agency, or under an exemption from the requirement of obtaining a certificate of public convenience and necessity but otherwise regulated by an appropriate federal or state agency, with adequate facilities and equipment for serving passengers, on regular schedules, or charter trips, while moving through any county of the state, but not while any such commercial airline is stopped in a county or municipality that has not legalized such sales;

(6) "Commercial airline travel club" means an organization established and operated by or for a commercial airline as defined in this section for the convenience and comfort of airline passengers;

(7) "Commercial passenger boat company" means a company that operates one (1) or more passenger vessels for hire upon navigable waterways and is licensed by the United States Coast Guard to carry not less than fifty (50) passengers on a single vessel. Such company shall operate out of any county that has a population in excess of two hundred eighty-five thousand (285,000) or not less than eighty-three thousand three hundred (83,300) nor more than eighty-three thousand four hundred (83,400) according to the 1980 federal census or any subsequent federal census. No commercial passenger boat company licensed pursuant to this chapter shall sell any type of alcoholic beverage or beer while such boat is docked within the boundaries of any local government which has not approved the sale of alcoholic beverages pursuant to § 57-4-103;

(8) "Commission" means the alcoholic beverage commission, created pursuant to chapter 1 of this title;

(9)(A) "Community theater" means a facility or theater possessing each of the following characteristics:

(i) The community theater is at least eight (8) years old;

(ii) The theater is operated by a not-for-profit corporation which is exempt from taxation under § 501(c) of the Internal Revenue Code of 1954 (26 U.S.C. § 501(c)) as amended, where no member or officer, agent or employee of any community theater shall be paid, or directly or indirectly receive, in the form of salary or other compensation any profits from the sale of alcoholic beverages beyond the amount of such salary as may be fixed by its governing body for the reasonable performance of their assigned duties. All profits from the sale of alcoholic beverages by a not-for-profit corporation shall be used for the operation and maintenance of the community theater, and in furtherance of the purposes of the organization. All profits from the sale of alcoholic beverages by a not-for-profit corporation shall be used for the operation, renovation, refurbishing, and maintenance of the theater. No alcoholic beverages or beverages of any kind shall be possessed or consumed inside the auditorium of such theater during performances in such auditorium;

(iii) The theater provides or leases facilities for theatrical programs of cultural, civic and educational interest; and

(iv) The theater is located in any county having a population of not less than seven hundred thousand (700,000) according to the 1980 federal census or any subsequent federal census;

(B) "Community theater" also includes a facility or theater possessing each of the following characteristics:

(i) The facility has a performance hall seating not less than two hundred fifty (250) persons, a resource library, rehearsal rooms, and permanent exhibition space of not less than nine thousand (9,000) square feet;

(ii) The facility is operated by a not-for-profit corporation which is exempt from taxation under § 501(c) of the Internal Revenue Code of 1954, as amended, where no member or officer, agent or employee of any community theater shall be paid, or directly or indirectly receive, in the form of salary or other compensation any profits from the sale of alcoholic beverages beyond the amount of such salary as may be fixed by its governing body for the reasonable performance of their assigned duties. All profits from the sale of alcoholic beverages by a not-for-profit corporation shall be used for the operation and maintenance of the facility, and in furtherance of the purposes of the organization;

(iii) The facility provides or leases facilities for concerts and programs of cultural, civic and educational interest; and

(iv) The facility is located in any county having a population of not less than two hundred eighty-five thousand (285,000) nor more than two hundred eighty-six thousand (286,000) according to the 1990 federal census or any subsequent federal census;

(C) Alcoholic beverages may be sold at a community theater only during one (1) performance or benefit program a day and only one (1) hour before, during and one (1) hour after the performance or benefit program;

(10)(A) "Convention center" means a facility possessing each of the following characteristics:

(i) Owned by the state, municipal and/or county government and leased or operated by that government or by a nonprofit charitable corporation established to operate such facility;

(ii) Designed and used for the purposes of holding meetings, conventions, trade shows, classes, dances, banquets and various artistic, musical or other cultural events;

(*a*) A convention center does not include a building located within one thousand (1,000) yards of both a student museum and a zoological park; provided, that any restaurant, located within a former world's fair site or a zoological park and which meets the requirements of subdivision (19), shall be eligible for licensure under this chapter as long as the requirements of this chapter are otherwise met;

(*b*) A convention center also does not include a building which is more than twenty (20) years old and is located in any county having a population of not less than two hundred eighty-seven thousand seven hundred (287,700) nor more than two hundred eighty-seven thousand eight hundred (287,800) according to the 1980 federal census or any subsequent federal census;

(iii)(*a*) Except as provided for in (10)(A)(iii)(b), which state-owned facility, operated by a nonprofit charitable corporation established to operate such facility, has a designated, restricted area outside the seating area of any theater within which area the consumption of such alcoholic beverages shall be permitted. The sale of such alcoholic beverages in such facility is limited to no more than one (1) hour and fifteen (15) minutes prior to a meeting, show, performance, reception, or other similar event, and to no later than thirty (30) minutes after such event; and

(*b*) In a county having a metropolitan form of government and a population in excess of five hundred thousand (500,000), according to the 1990 Federal Census or any subsequent Federal Census, which state-owned facility, operated by a nonprofit charitable corporation established to operate such facility, has designated an area within or adjacent to any theatre or meeting space, or adjacent to the facility within which area the consumption of alcoholic beverages shall be permitted. Nothing herein shall restrict the ability of a convention center, as defined herein, from adjusting the designated area within or adjacent to its theatre areas, upon adequate prior notice to the commission.

(iv) Located in a municipality having a population in excess of one hundred fifty thousand (150,000) and in a county having a population in excess of two hundred thousand (200,000), or both, according to the 1980 federal census or any subsequent federal census;

(B) "Convention center" also means a facility meeting the criteria of subdivision (10)(A)(i) and (ii) and located in a premiere resort city as defined by § 67-6-103(a)(3)(B)(i); and

(C) No member or officer, agent or employee of any convention center as defined by this section shall be paid, or directly or indirectly receive, in the form of salary or other compensation any profits from the sale of spirituous liquors, wines, champagnes, malt beverages or any other alcoholic beverage

beyond the amount of such salary as may be fixed by its governing body out of the general revenue of the center. All profits from the sale of such alcoholic beverages shall be used for the operation and maintenance of the convention center;

(11) "Historic interpretive center" means a facility possessing each of the following characteristics:

(A) The center is located in a restored theater that is at least fifty (50) years old and listed on the national register of historic places;

(B) The center is leased and operated by a for-profit corporation, or not-for-profit corporation which is exempt from taxation under § 501(c) of the Internal Revenue Code of 1954 (26 U.S.C. § 501(c)) as amended, where no member or officer, agent or employee of any historic interpretive center shall be paid, or directly or indirectly receive, in the form of salary or other compensation any profits from the sale of alcoholic beverages beyond the amount of such salary as may be fixed by its governing body for the reasonable performance of his assigned duties. All profits from the sale of alcoholic beverages by a not-for-profit corporation shall be used for the operation and maintenance of the historic interpretive center, and in furtherance of the purposes of the organization. All profits from the sale of alcoholic beverages by a profit corporation shall be used for the operation, renovation, refurbishing, and maintenance of the center. Alcoholic beverages may be consumed inside the auditorium of such center;

(C) The center provides facilities for programs of cultural, civic, and educational interest, including, but not limited to, musical concerts, films, receptions, exhibitions, seminars or meetings; and

(D) The center is located in any county having a population of not less than seven hundred thousand (700,000) according to the 1980 federal census or any subsequent federal census;

(12) "Historic mansion house site" means the buildings and grounds of a historic mansion house, located in any county having a metropolitan form of government, included in the Tennessee register of historic places, and operated by the Association for the Preservation of Tennessee Antiquities, and including Association for the Preservation of Tennessee Antiquities sites owned by the state of Tennessee. "Historic mansion house site" also means the buildings and grounds of an historic mansion house located in any county having a metropolitan form of government which has been conveyed by the state of Tennessee in trust to a board of trustees created and appointed in accordance with §§ 4-13-103 and 4-13-104, and for admission to which reasonable fees are charged as provided in § 4-13-105. This subdivision shall apply only to counties having a population of four hundred fifty thousand (450,000) or greater according to the 1980 federal census or any subsequent census;

(13) "Historic performing arts center" means a facility possessing each of the following characteristics:

(A) The center is located in a restored theater that is at least fifty (50) years old and listed on the national register of historic places;

(B) The center is operated by a for-profit corporation, or not-for-profit corporation which is exempt from taxation under Section 501(c) of the Internal Revenue Code of 1954, as amended (26 U.S.C. § 501(c)), where no

member or officer, agent or employee of any historic performing arts center shall be paid, or directly or indirectly receive, in the form of salary or other compensation any profits from the sale of alcoholic beverages beyond the amount of such salary as may be fixed by its governing body for the reasonable performance of their assigned duties. All profits from the sale of alcoholic beverages by a not-for-profit corporation shall be used for the operation and maintenance of the historic performing arts center, and in furtherance of the purposes of the organization. All profits from the sale of alcoholic beverages by a for-profit corporation shall be used for the operation, renovation, refurbishing, and maintenance of the center. Alcoholic beverages shall only be sold before or after performances or during intermissions in such performances. No alcoholic beverages shall be consumed inside the auditorium of such center;

(C) The center provides facilities for programs of cultural, civic, and educational interest, including, but not limited to, stage plays, musical concerts, films, dance performances, receptions, exhibitions, seminars or meetings;

(D) The center is located in any county having a population of:

not less than	nor more than
143,900	144,000
300,000	400,000
700,000	

according to the 1980 federal census or any subsequent federal census;

(14)(A) "Hotel" (Motel) means every building or other structure kept, used, maintained, advertised and held out to the public to be a place where food is actually served and consumed and sleeping accommodations are offered for adequate pay to travelers and guests, whether transient, permanent, or residential, in which fifty (50) or more rooms are used for the sleeping accommodations of such guests and having one (1) or more public dining rooms, with adequate and sanitary kitchen and a seating capacity of at least seventy-five (75) at tables, where meals are regularly served to such guests, such sleeping accommodations and dining rooms being conducted in the same building or in separate buildings or structures used in connection therewith that are on the same premises and are a part of the hotel operation. Motels meeting the qualifications set out herein for hotels shall be classified in the same category as hotels. Hotels shall have the privilege of granting franchises for the operation of a restaurant on their premises and the holder of such franchise shall be included in the definition of "hotel" hereunder; and property contiguous to a hotel, except property located in any county having a population of not less than seventy-seven thousand seven hundred fifty (77,750) nor more than seventy-seven thousand seven hundred ninety (77,790) according to the 1980 federal census or any subsequent federal census, which is owned by the same entity as the hotel and operated by the same entity as the hotel, which property either serves travelers and guests other than as a separate commercial establishment or is operated as a major entertainment complex serving in excess of one million (1,000,000) persons per year;

(B) "Hotel" also means and includes all entities previously described wherein sleeping accommodations are offered for adequate pay to travelers and guests, whether transient, permanent or residential, in which thirty (30) or more suites are used for sleeping accommodations of such guests and having eating facilities in each room for four (4) or more persons with an adequate and sanitary central kitchen from which meals are regularly prepared and served to guests in such suites. For the purpose of this section, "suite" is defined as a guest facility within a hotel where living, sleeping and dining are regularly provided for such guests within the individual units provided for guests. No such hotel or suite as defined in this subdivision shall be authorized to charge for, inhibit or otherwise interfere in any way with the rights of its guests or tenants to carry into rooms or suites rented by them their own bottles, packages or other containers of alcoholic beverages and/or to use or serve them to themselves, their own visitors or guests within the individual units rented or leased by them;

(C) "Hotel" also includes facilities owned and operated by an individual or event-management organization which plans and coordinates all phases of any function for retreats by groups of persons having similar backgrounds or purposes, and which offers meeting and banquet facilities, dining services, recreation and leisure activities in facilities which include a dining inn with seating capacity of three hundred (300), and a complex which includes meeting and banquet facilities with a seating capacity of two hundred (200), overnight accommodations for at least forty (40), and a fifty (50) acre tract of land with picnic accommodations for at least four thousand (4,000), and a facility with seating capacity of four hundred (400). The scope of any license authorized by this subdivision includes picnic service on the grounds of the complex owned and operated by the licensee;

(D) "Hotel" also includes a residence hotel located in the central business district of any municipality having a population of more than three hundred thousand (300,000) according to the 1990 federal census or any subsequent federal census and having a common smoking room and lobby area;

(E)(i) "Hotel" also includes a bed and breakfast establishment as defined in § 68-14-502, where meals are regularly served to guests and where sleeping accommodations and dining facilities being conducted in the same buildings or structures used in connection therewith are on the same premises and are part of the hotel operation. The premises upon which such establishment is located shall be within the boundaries of a clearly defined arts district which is owned and operated by the same entity and having a common courtyard which is contiguous to all buildings and structures on the premises. The dining facilities, including beverages, may be served from an adequate and sanitary central kitchen and storage facility;

(ii) The provisions of this subdivision (14)(E) shall apply in any municipality having a population in excess of one hundred fifty thousand (150,000) according to the 1990 federal census or any subsequent federal census;

(15)(A) "Museum" means a building or institution serving as a repository of natural, scientific or literary curiosities or works of art for public display and further possesses the following characteristics:

(i) The museum is at least fifty (50) years old; and

(ii) The museum is located in a county having a population in excess of seven hundred thousand (700,000) according to the 1980 federal census or any subsequent federal census;

(B) "Museum" also means an "art museum" which is a building or institution serving as a repository of works of art for public display and further possesses the following characteristics:

(i) The art museum is owned and operated by a bona fide charitable or nonprofit organization which has been in existence for at least twenty-five (25) years;

(ii) The art museum is located in a building which contains not less than fifty thousand (50,000) square feet; and

(iii) The art museum is located in a former world's fair site.

(16) "Passenger train" includes any passenger train operating in interstate commerce under a certificate of public convenience and necessity issued by the appropriate federal or state agency, with adequate facilities and equipment for serving passengers, on regular or special schedules, or charter trips, while moving through any county of the state, but not while any such passenger train is stopped in a county or municipality that has not legalized such sales;

(17) "Premiere type tourist resort" means:

(A) A commercially operated recreational facility possessing each of the following characteristics:

(i) Ownership and operation by a profit type corporation having a capitalization of not less than ten million dollars ($10,000,000);

(ii) Situated in a geographical area wholly controlled by the operator of the facility and having not less than six thousand (6,000) acres of contiguous land, not less than five thousand (5,000) acres of which is to be developed and maintained in accordance with sound ecological and environmental practices, such requirement to be subject at all times to the oversight and approval of the department of environment and conservation, which shall not less often than once a year make a written report thereof to the commission. Satisfactory compliance with this requirement and certification thereof by the department to the commission shall be a condition precedent to the issuance or renewal of permit provided for in § 57-4-201;

(iii) Continuous maintenance of lodging accommodations consisting of not less than two hundred (200) hotel or motel rooms in a building or buildings designed for such purpose;

(iv) Continuous maintenance of facilities for the accommodation of conventions of not less than four hundred (400) persons;

(v) Maintenance within the recreational area of at least one (1) of the following types of sporting facilities:

(*a*) A golf course of at least eighteen (18) holes;

(*b*) A lake covering not less than one hundred (100) acres adapted for boating and fishing;

(*c*) A ski slope;

(vi) Maintenance, in addition to one (1) or more of the facilities enumerated in subdivision (17)(A)(v), of two (2) or more of the following types of recreational facilities:

(*a*) Area for camping;

(*b*) Tennis courts;

(*c*) Swimming pool;

(*d*) Trails for hiking and/or horseback riding;

(*e*) Equestrian center;

(vii) A twenty-four (24) hour per day security force approved as to adequacy by the commission;

(B) A hotel, motel or restaurant located within a municipality having a population of one thousand (1,000) or more persons according to the federal census of 1970 or any subsequent federal census in which at least fifty percent (50%) of the assessed valuation (as shown by the tax assessment rolls or books of the municipality) of the real estate in the municipality consists of hotels, motels, and tourist courts accommodations, providing the voters of the municipality have heretofore by referendum pursuant to § 57-4-103, approved the sale of alcoholic beverages for consumption on the premises, and such referendum shall be authorized, notwithstanding the population requirements set forth in § 57-3-106. For purposes of implementation of this subdivision (17)(B), the sale of alcoholic beverages shall be limited to hotels, restaurants, and clubs as defined in this section. To ensure proper control and development of the tourist industry of such municipality, any applicant for a license under this subdivision shall first obtain approval from a majority of the legislative body of the municipality, which may adopt rules and regulations governing its procedure and setting forth limitations and restrictions including, but not limited to, the number and location of licensed establishments and requiring approval by the legislative body as to the good moral character of each applicant for a license;

(C)(i) A commercially operated recreational facility containing all of the following characteristics:

(*a*) Ownership and operation by a profit type corporation or partnership;

(*b*) Situated in a geographical area controlled by the operator of the facility, having not less than two thousand five hundred (2,500) acres of land;

(*c*) Continuous maintenance of lodging accommodations consisting of not less than one hundred (100) hotel or motel rooms in a building or buildings designed for such purpose;

(*d*) The maintenance of a ski slope with necessary lifts or tows for use during skiing season;

(*e*) Continuous maintenance of restaurant facilities for seating at tables of not less than two hundred (200) persons, with adequate kitchen facilities; and

(*f*) Located within a municipality with a population of not less than one thousand fifty (1,050) nor more than one thousand seventy-five (1,075) according to the 1980 or any subsequent census;

(ii) To ensure proper control and development of the tourist industry of such municipality, any applicant for a license under this subdivision shall first obtain approval from a majority of the legislative body of the municipality, which may adopt rules and regulations governing its procedure and setting forth limitations and restrictions including, but not limited to, the number and location of licensed establishments and requiring approval by the legislative body as to the good moral character of each applicant for a license;

(D) A commercially operated recreational facility containing all of the following characteristics:

(i) Ownership and development by a for-profit corporation or partnership;

(ii) Situated in a geographical area controlled by the corporation or partnership, having not less than four hundred (400) acres of land contiguous to the Cherokee National Forest;

(iii) Continuous maintenance of lodging accommodations consisting of not less than two hundred (200) hotel or motel rooms in a building or buildings designed for such purpose;

(iv) Continuous maintenance of facilities for the accommodations of conventions of not less than four hundred (400) persons;

(v) Maintenance within the recreational area of the following types of recreational facilities:

(*a*) A golf course of at least eighteen (18) holes;

(*b*) Tennis courts;

(*c*) Swimming pool; and

(vi) A twenty-four (24) hour per day security force approved as to adequacy by the commission;

(E) A commercially operated recreational facility containing all of the following characteristics:

(i) Ownership and operation by a for-profit corporation or partnership;

(ii) Located in a geographic area managed by the operator of the facility, containing a minimum area of one hundred fifty (150) contiguous acres;

(iii) Continuous maintenance of lodging accommodations of not less than fifty (50) rooms available for guests, tourists or for business meetings located in a building or buildings designed for accommodations or business meetings;

(iv) Maintenance of lakeside marina facilities, a golf course of not less than eighteen (18) holes, and riding trails and stables on the premises;

(v) Located within a municipality with a population of not less than six thousand three hundred seventy-five (6,375) nor more than six thousand four hundred (6,400) according to the 1980 or any subsequent federal census; and

(vi) Whose manager shall have been specifically approved by a majority of the legislative body of the municipality in which such licensee is located as being an individual of good moral character;

(F) A facility, whether open to the public or limited to members and guests of the development on which it is located, owned or operated, pursuant to a license by a homeowners or residential association, which facility is kept, used and maintained as a place where meals are served and where meals are actually and regularly served, with adequate and sanitary kitchen facilities and which facility meets all of the following characteristics:

(i) The facility must be located in a county having a population of not less than forty-seven thousand (47,000) nor more than forty-seven thousand five hundred (47,500) according to the 1990 federal census or any subsequent federal census;

(ii) The facility must be located on the premises of a planned, gated residential development of at least eighty (80) acres with at least nine

thousand (9,000) lineal feet of water frontage on an established and designated navigable waterway; and

(iii) The facility must be located within the limits of a development which contains a marina and tennis court facilities; and

(G) A club, either for profit or not for profit, which has been in existence for two (2) consecutive years during which time it has maintained a membership of at least three thousand (3,000) members and which maintains club facilities on or adjacent to property offering recreational services available to its members, which services shall include one (1) or more of the following:

(i) Golf course with at least eighteen (18) holes;

(ii) Tennis courts;

(iii) Marina facilities with a minimum of four hundred (400) slips.

Any such club whose club facilities are located on the premises of an area meeting the definition of a "premier type tourist resort" under this section may exercise its privileges authorized under this chapter anywhere within such area;

(H) A commercially operated recreational facility, whether open to the public or limited to members and guests of an association or of the development on which it is located, owned and operated by an association or corporation and in connection with an eighteen (18) hole golf course, which facility is kept, used and maintained as a place where meals are actually and regularly served, with adequate and sanitary kitchen facilities, and which facility meets all of the following characteristics:

(i) The facility must be located in a county having a population of not less than thirty-four thousand seven hundred thirty (34,730) nor more than thirty-four thousand seven hundred sixty (34,760) according to the 1990 federal census or any subsequent federal census;

(ii) The facility must be located in a development containing no less than four hundred twenty (420) acres and no more than four hundred fifty (450) acres;

(iii) The facility must be located within limits of a development which contains an eighteen (18) hole golf course;

(iv) The facility must have no less than five thousand (5,000) enclosed square feet (5,000 sq. ft.);

(v) The facility must be located no less than one-half (½) mile from the right-of-way of an interstate highway; and

(vi) The facility must be located within the limits of a development which contains a lake of not less than twenty-eight (28) acres which is entirely within the limits of the development;

(I) A commercially operated recreational facility possessing each of the following characteristics:

(i)(*a*) Ownership and development by a for profit corporation;

(*b*) Situated in a geographic area controlled by such entity and having not less than twenty-five (25) contiguous acres of land which is divided by a four-lane highway;

(*c*) Designed to contain picnic facilities, museum buildings, retail sales areas, retail food dispensing outlets, and restaurant areas;

(*d*) Maintenance of a limited access area containing a former residence, a swimming pool, a handball court, and stables where no pedestrian access is allowed and all guests entering must be carried by a motor vehicle; and

(*e*) Location within a county having a population of not less than seven hundred seventy thousand (770,000) according to the 1990 federal census or any subsequent federal census.

(ii) "Premier type tourist resort," as defined in this subdivision (17)(I), shall be authorized to sell or serve alcoholic beverages on the premises of such resort only at special functions, wherein attendance is limited to invited guests or groups and not to the general public;

(J) An entity operating a commercial golf related recreational facility, whether open to the public or limited to members and guests of an association or owners and guests of a development upon or adjacent to which the facility is located, which entity or facility meets all of the following criteria:

(i) The facility is located in a county having a population of not less than thirty-four thousand seven hundred thirty (34,730) nor more than thirty-four thousand eight hundred (34,800) according to the 1990 federal census or any subsequent federal census;

(ii) The facility is operated in conjunction with an eighteen (18) hole golf course;

(iii) The facility is kept, used and maintained as a place where meals are actually and regularly served with such adequate and sanitary kitchen facilities as might be needed to meet the reasonable requirements of its patrons, members, or guests;

(iv) The entity does not discriminate or limit the use of the facilities solely on the basis of race, creed, sex, or national origin, and has provided to the commission a written certification of its policy;

(v) Such facility has enclosed clubhouse space of at least five thousand square feet (5,000 sq. ft.);

(vi) Such facility is located no less than seven (7) miles and no more than eight (8) miles from an interchange of an interstate highway; and

(vii) Such facility is located on a geographic area, owned or operated by the entity, which area contains not less than one hundred fifty-five (155) acres nor more than one hundred seventy (170) acres; and

(K) A commercially operated recreational facility whether open to the public or limited to members and guests of an association or of the development on which it is located, owned and operated by an association or corporation and in connection with an eighteen (18) hole golf course, which facility is regularly kept, used and maintained as a place where meals are actually and regularly served, with adequate and sanitary kitchen facilities, and which facility meets all the following characteristics:

(i) The facility must be located in or adjacent to a real estate development containing no less than one thousand, one hundred (1,100) acres and no more than two thousand (2,000) acres.

(ii) The facility must have no less than nine thousand (9,000) enclosed square feet.

(iii) The facility must be located within the limits of a development which is contiguous to a water reservoir operated and maintained by the United States Army Corp of Engineers during 1998 or any subsequent years.

(iv) Maintenance within the recreational area of the following types of recreational facilities:

(*a*) Golf course of at least eighteen (18) holes;

(*b*) Swimming pool;

(*c*) Tennis court; and

(*d*) Walking trails.

(18) "Premises," when:

(A) Referring to an establishment licensed under this chapter;

(B) Such establishment is located within an historical district which has been designated as a national historic landmark;

(C) Such a national historic landmark centers around a public street or right-of-way; and

(D) Such a public street or right-of-way is closed to motor vehicular traffic on a regular basis;

includes the area encompassed by the boundaries of the historic district; provided, that the granting of a license for a business location within such historical district shall not preclude the granting of another license to another establishment located within the boundaries of the historic district. The provisions of this subdivision shall apply only to counties with a population of more than four hundred thousand (400,000) according to the 1980 census, but those counties having a metropolitan form of government shall be exempt from the provisions of this subdivision. In such county, only for the purposes of the hours of sale provided in § 57-4-203(d)(4), "premises" also includes any establishment located within four (4) blocks west of the western boundary of the historic district and on the same public street or right of way as the historic district; provided, that the requirement of closing the street or right-of-way to motor vehicular traffic on a regular basis shall not apply to the extension of the premises established by this sentence;

(19)(A) "Restaurant" means any public place kept, used, maintained, advertised and held out to the public as a place where meals are served and where meals are actually and regularly served, without sleeping accommodations, such place being provided with adequate and sanitary kitchen and dining room equipment and seating capacity of at least seventy-five (75) people at tables, having employed therein a sufficient number and kind of employees to prepare, cook and serve suitable food for its guests. At least one (1) meal per day shall be served at least five (5) days a week, with the exception of holidays, vacations and periods of redecorating, and the serving of such meals shall be the principal business conducted. A restaurant shall also be eligible for licensure under this subdivision if the restaurant serves at least one (1) meal a day at least four (4) days a week with the exception of holidays, vacations and periods of redecorating, and if the serving of such meals is the principal business conducted, and if such restaurant is only open for four (4) days a week;

(B) "Restaurant" also means any bowling center that was licensed as of January 1, 1983, to sell alcoholic beverages for consumption on the premises;

(C)(i) Within a national historical landmark district or urban park center, as defined by this section, restaurant licensees shall not be required to meet any requirements of this section which make food service, maintenance of a kitchen, or a dining room a prerequisite to the issuance of a restaurant permit to serve liquor by the drink. The provisions of this subdivision shall apply only to counties with a population of more than four hundred thousand (400,000) according to the 1980 census, but those counties having a metropolitan form of government shall be exempt from the provisions of this subdivision;

(ii) Within a sports authority facility as defined in this section, restaurant licensees shall not be required to meet any of the requirements of subdivision (19)(A) which make food service, maintenance of a kitchen, or a dining room a prerequisite for the issuance of a permit to serve liquor by the drink.

(D) Notwithstanding the minimum seating capacity established in subdivision (19)(A), for the purpose of a permit to serve wine, "restaurant" means any lodge or resort with sleeping accommodations where meals are served that is located on land which is owned by the United States department of the interior, is operated by the national park service or its agents or contractors and is located in a county with a population of not less than forty-one thousand four hundred (41,400) nor more than forty-one thousand five hundred (41,500) according to the 1980 federal census or any subsequent federal census;

(E) Notwithstanding the minimum seating capacity established in subdivision (19)(A), a restaurant with a seating capacity of at least forty (40) people at tables may be licensed as a gourmet restaurant under this chapter. To be licensed as a gourmet restaurant, the establishment must obtain:

(i) Not less than two thirds (⅔) of its annual gross sales from the sale of food; and

(ii) Not less than two thirds (⅔) of its annual alcoholic beverage sales from the sale of wine;

(F) "Restaurant" also means a facility located in any municipality having a population in excess of one hundred thousand (100,000), according to the 1990 federal census, or any subsequent federal census, in which coffees, teas, pastries, and other foodstuffs are offered for sale for consumption on the premises, which facility has a seating capacity of at least thirty (30) seats and which facility obtains at least fifty percent (50%) of its annual gross sales from the sale of coffees, teas and pastries. Any restaurant licensed under this subdivision (19)(F) shall be authorized to sell alcoholic beverages for consumption on the premises only when such beverages are mixed with coffees, teas and other beverages. A restaurant licensed under this subsection need not meet the requirement of subdivision (19)(A).

(20)(A) "Special occasion license" means a license which the commission may issue to a bona fide charitable, nonprofit or political organization. Such license shall be issued for no longer than one (1) twenty-four-hour period, subject to the limitations of hours of sale which may be imposed by law or regulation, and such license may be issued in advance of its effective date;

(B) If a bona fide charitable or nonprofit organization owns and maintains a permanently staffed facility which:

(i) Is used for the periodic showing or exhibition of animals;

(ii) Has a seating capacity of not less than twenty-five thousand (25,000) persons; and

(iii) Has a separate permanently constructed clubhouse or meeting room located on the grounds,

then a special occasion license may be issued for use at the clubhouse or meeting room for the duration of the particular show or exhibit for which application is made, and such organization shall not be subject to the numeric limitation contained in the last sentence of this subsection. This license shall only be available upon the payment of the fee as required by law for each separate day of the show.

(C) Such license shall not be issued unless and until there shall have been paid to the commission for each such license a license fee of fifty dollars ($50.00), and there shall have been submitted an application which designates the premises upon which alcoholic beverages shall be served. No such charitable, nonprofit or political organization shall be eligible to receive more than twelve (12) special occasion licenses in any calendar year;

(21) "Terminal building of a commercial air carrier airport" means a building, including any concourses thereof, used by commercial airlines and their customers for sale of airline tickets, enplaning and deplaning of airline passengers, loading and unloading of baggage and cargo, and for providing other related services for the convenience of airline passengers and others, located in any airport which is served by one (1) or more commercial airlines as herein defined, and:

(A) Is operated by a board of commissioners whose membership is appointed by the legislative bodies of five (5) or more local governments or whose membership is appointed pursuant to § 42-4-105; or

(B) Is located in a municipality where the provisions of this chapter have become effective in that municipality;

(22)(A) "Urban park center" means a facility possessing the following characteristics:

(i) The center is owned, operated, or leased by a municipal or county government, or any agency or commission thereof;

(ii) The center is designed to contain outdoor recreational facilities, public museum buildings, exhibition buildings, retail sales areas, retail food dispensing outlets including, but not limited to, sale of package alcoholic and malt beverages, and restaurant areas to accommodate liquor-by-the-drink as well as food patronage; and

(iii) The center is located in a municipality or county having a population in excess of six hundred thousand (600,000) according to the 1970 federal census or any subsequent census;

(B) [Deleted by 1990 amendment.]

(23) "Wine" means the product of the normal alcoholic fermentation of the juice of fresh, sound, ripe grapes, with the usual cellar treatment and necessary additions to correct defects due to climatic, saccharine and seasonal conditions, including champagne, sparkling and fortified wine of an alcoholic

content not to exceed twenty-one percent (21%) by volume. No other product shall be called "wine" unless designated by appropriate prefixes descriptive of the fruit or other product from which the same was predominantly produced, or an artificial or imitation wine;

(24) "Zoological institution" means a facility which contains a zoological garden or collection of living animals and provides for their care and housing for public exhibition and further possesses the following characteristics:

(A) The zoo is owned, operated, or leased by a municipal or county government;

(B) The zoo is at least fifty (50) years old; and

(C) The zoo is located in a county having a population in excess of seven hundred thousand (700,000) according to the 1980 federal census or any subsequent federal census;

(25) "Public aquarium" means a facility which contains a collection of living aquatic animals whose sole or primary habitat is water and which facility provides for care and housing for public exhibition, and also possesses the following characteristics:

(A) The exhibits containing live aquatic animals for public viewing are housed in a building having at least one hundred thousand square feet (100,000 sq. ft.) of interior space;

(B) The exhibits containing live aquatic animals for public viewing contain a minimum total of five hundred thousand gallons (500,000 gals.) of water as the living environment of the animals; and

(C) The public aquarium is located in a county having a population in excess of two hundred fifty thousand (250,000) according to the 1990 federal census or any subsequent federal census;

(26) "Aquarium exhibition facility" means an enclosed facility possessing each of the following characteristics:

(A) The facility is owned and operated by a bona fide charitable or nonprofit organization that also owns and operates a "public aquarium" as defined in subdivision (25);

(B) The facility contains a minimum area of ten thousand square feet (10,000 sq. ft.); and

(C) The facility is used for either or both of the following purposes:

(i) The exhibition to the public of artifacts, physical objects, pictures and movies; or

(ii) To aid in the education of the public by means of interactive displays or stations, learning laboratories, and classroom areas for instruction in the physical sciences, natural history or other educational disciplines;

(27) "Caterer" means a business engaged in offering food and beverage service for a fee at various locations, which:

(A) Operates a permanent catering hall on an exclusive basis;

(B) Has a complete and adequate commercial kitchen facility; and

(C) Is licensed as a caterer by the Tennessee department of health; and

(28) "Sports authority facility" means a facility possessing the following characteristics:

(A) The facility is owned or operated by a sports authority established under title 7, chapter 67;

(B) The facility is designed and used for presentation of professional sporting events and other activities, such as amateur sporting events, recreational activities and entertainment events and activities, and includes retail sales areas and retail food dispensing outlets, including, but not limited to, restaurant areas to accommodate liquor by the drink as well as food patronage;

(C) A major league professional baseball (American or National League), football (National Football League), basketball (National Basketball Association) or hockey (National Hockey League) franchise has entered into a long-term agreement to play its home games in the facility; and

(D) The facility is located in a municipality or county having a population in excess of five hundred thousand (500,000) according to the 1990 federal census or any subsequent federal census. [Acts 1967, ch. 211, § 1; 1972, ch. 682, § 2; 1972, ch. 756, § 3; 1975, ch. 111, § 3; 1975, ch. 347, § 1; 1979, ch. 401, § 2; T.C.A., § 57-153; Acts 1980, ch. 895, § 1; 1980, ch. 898, § 2; 1981, ch. 404, § 2; 1981, ch. 467, §§ 1-4; 1981, ch. 475, § 2; 1982, ch. 691, § 1; 1982, ch. 931, §§ 1-4; 1983, ch. 52, § 2; 1983, ch. 300, §§ 3, 6; 1983, ch. 305, § 1; 1983, ch. 306, § 1; 1983, ch. 391, § 1; 1983, ch. 454, § 4; 1983, ch. 461, §§ 1-4; 1983, ch. 469, § 2; 1983, ch. 481, § 1; 1984, ch. 522, § 1; 1984, ch. 569, § 2; 1984, ch. 599, § 1; 1984, ch. 858, §§ 1-4; 1984, ch. 871, § 1; 1984, ch. 975, § 2; 1985, ch. 41, § 1; 1985, ch. 47, § 1; 1985, ch. 117, § 1; 1985, ch. 190, § 2; 1986, ch. 516, § 1; 1986, ch. 899, § 3; 1987, ch. 73, § 1; 1987, ch. 218, § 1; 1987, ch. 444, §§ 3, 4; 1987, ch. 456, § 1; 1988, ch. 792, § 1; 1988, ch. 942, §§ 1, 2; 1989, ch. 50, § 1; 1989, ch. 361, § 1; 1989, ch. 459, § 1; 1990, ch. 718, § 1; 1990, ch. 730, §§ 1, 2; 1990, ch. 853, § 1; 1990, ch. 949, § 1; 1991, ch. 462, § 1; 1992, ch. 674, § 2; 1992, ch. 675, § 2; 1993, ch. 308, §§ 1, 2; 1994, ch. 657, § 1; 1994, ch. 822, § 1; 1994, ch. 837, § 1; 1994, ch. 933, § 1; 1995, ch. 18, § 1; 1995, ch. 306, § 2; 1996, ch. 688, § 1; 1996, ch. 730, § 1; 1996, ch. 749, § 2; 1996, ch. 1017, § 1; 1997, ch. 146, § 1; 1997, ch. 281, §§ 1-7; 1998, ch. 722, § 1; 1998, ch. 786, § 1; 1998, ch. 795, § 6; 1998, ch. 798, § 1; 1998, ch. 939, §§ 2, 3; 1998, ch. 966, §§ 1, 2.]

Amendments. The 1998 amendment by ch. 722 added (17)(K).

The 1998 amendment by ch. 786 redesignated (10)(A)(iii) as (10)(A)(iii)(a) and inserted "Except as provided in (10(A)(iii)(b)" and added (10)(A)(iii)(b).

The 1998 amendment by ch. 795 added (27).

The 1998 amendment by ch. 798 added (19)(F).

The 1998 amendment by ch. 939 added (19)(C)(ii) and (28).

The 1998 amendment by ch. 966, in the first sentence of (4)(F)(i), substituted "two hundred twenty-five (225)" for "three hundred twenty-five (325)" and added the last sentence; and rewrote (4)(F)(ii) which formerly read: "The provisions of this subdivision (4)(F) only apply in counties having a population of not less than eighty thousand (80,000) nor more than eighty-three thousand (83,000) according to the 1990 federal census or any subsequent federal census."

Effective Dates. Acts 1998, ch. 722, § 2. April 8, 1998.

Acts 1998, ch. 786, § 3. April 22, 1998.

Acts 1998, ch. 795, § 7. April 23, 1998.

Acts 1998, ch. 798, § 2. April 23, 1998.

Acts 1998, ch. 939, § 7. May 11, 1998.

Acts 1998, ch. 966, § 3. May 14, 1998.

57-4-103. Applicability of chapter — Referendum — Form of question. — (a)(1) The provisions of this chapter shall be effective in any jurisdiction which authorizes such sales in a referendum in the manner prescribed by § 57-3-106.

(2)(A) Except as provided in subdivision (a)(2)(B), if the county election commission receives the necessary petition requesting the referendum not less than forty five (45) days before the date on which an election is scheduled to be held, except for referenda scheduled to be held with the regular November general election which shall be held pursuant to § 2-3-204, the county election commission shall include the referendum question contained in subsection (b) on the ballot.

(B) In counties having a population of not less than eight hundred twenty-five thousand (825,000) nor more than eight hundred thirty thousand (830,000) according to the 1990 federal census or any subsequent federal census, if the county election commission receives the necessary petition requesting the referendum not less than thirty (30) days before the date on which an election is scheduled to be held, the county election commission shall include the referendum question contained in subsection (b) on the ballot.

(3) If any county has authorized the sale of alcoholic beverages for sale for consumption off premises pursuant to § 57-3-106, then any municipality wholly or partially within the boundaries of the county may conduct a referendum to authorize the sale of alcoholic beverages for consumption on the premises within the corporate boundaries of the municipality.

(b) At any such election, the only question submitted to the voters shall be in the following form:

For legal sale of alcoholic beverages for consumption on the premises in _____ (here insert name of political subdivision).

Against legal sale of alcoholic beverages for consumption on the premises in _____ (here insert name of political subdivision).

[Acts 1967, ch. 211, § 4; 1971, ch. 59, § 1; 1972, ch. 510, § 1; 1975, ch. 71, §§ 1, 2; 1977, ch. 445, § 1; modified; T.C.A., § 57-164; Acts 1984, ch. 877, § 1; 1987, ch. 456, § 2; 1988, ch. 551, § 1; 1992, ch. 711, § 1; 1993, ch. 518, §§ 18, 21; 1998, ch. 618, § 2.]

Amendments. The 1998 amendment inserted the language "except for referenda scheduled to be held with the regular November general election which shall be held pursuant to § 2-3-204," between the language "held" and "the."

Effective Dates. Acts 1998, ch. 618, § 5. March 17, 1998.

TITLE 67

TAXES AND LICENSES

CHAPTER 6

SALES AND USE TAXES

SECTION.

PART 7—LOCAL OPTION REVENUE ACT

67-6-706. Referendum. — (a)(1) Any ordinance or resolution of a county or of a city or town levying the tax under authority of this part shall not become operative until approved in an election herein provided in the county or the city or town, as the case may be.

(2) The county election commission shall hold an election on the question pursuant to § 2-3-204, providing options to vote "FOR" or "AGAINST" the ordinance or resolution, after the receipt of a certified copy of such ordinance or resolution, and a majority vote of those voting in the election shall determine whether the ordinance or resolution is to be operative.

(3) If the majority vote is for the ordinance or resolution, it shall be deemed to be operative on the date that the county election commission makes its official canvass of the election returns; provided, that no tax shall be collected under any such ordinance or resolution until the first day of a month occurring at least thirty (30) days after the operative date.

(b)(1) If a county legislative body adopts a resolution to levy the tax at the same rate that is operative in a city or town in the county, the election under this section to determine whether the county tax is to be operative shall be open only to the voters residing outside of such city or town. If the county tax is at a higher rate than the rate of the city or town tax, the election shall be also open to the voters of the city or town.

(2)(A) Except as provided in subdivision (b)(2)(B), should any county or city or town hold an election hereunder, and the ordinance or resolution is rejected, no other election thereon shall be held by such county, city or town for a period of six (6) months from the date of the holding of such prior election.

(B) In counties having a population of not more than seven hundred fifty thousand (750,000) nor less than seven hundred thousand (700,000) and not more than two hundred seventy-eight thousand (278,000) and not less than two hundred fifty thousand (250,000) according to the federal census of 1970 or any subsequent federal census, in case of rejection, the limitation period on subsequent elections shall be one (1) year from the date of the holding of such prior election.

(c) Any ordinance or resolution levying the tax under this part which was approved by the voters prior to January 1, 1985, and which made the effectiveness of the tax depend on a contingency relating to distribution of the proceeds of the tax, shall be deemed valid and effective under the provisions of this part, so long as the contingency is satisfied before or after the holding of the referendum. [Acts 1963, ch. 329, § 5; 1967, ch. 113, § 1; 1968, ch. 488, § 3; 1971, ch. 83, § 1; 1972, ch. 455, § 1; 1982, ch. 591, § 1; T.C.A., § 67-3053; Acts 1985, ch. 234, § 1; 1998, ch. 618, § 3.]

Index

No new index entries were required for this supplement. The material included herein did not necessitate any changes or additions to the general index in the main volume. Please refer to the main volume index for all topical inquiries.

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