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TENNESSEE MUNICIPAL HANDBOOK

MUNICIPAL TECHNICAL ADVISORY SERVICE
INSTITUTE FOR PUBLIC SERVICE
THE UNIVERSITY OF TENNESSEE
in cooperation with the
TENNESSEE MUNICIPAL LEAGUE

TENNESSEE MUNICIPAL HANDBOOK

THE UNIVERSITY OF TENNESSEE

Edward J. Biello, President

Robert S. Hutchinson, Vice President for Public Service

INSTITUTE FOR PUBLIC SERVICE

Robert S. Hutchinson, Executive Director

Donald R. Rogers, Associate Director

MUNICIPAL TECHNICAL ADVISORY SERVICE

Victor C. Holaday, Executive Director

THE TENNESSEE MUNICIPAL LEAGUE

Edward J. Biello, Executive Director

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PREFACE TO THE FIRST EDITION

This Tennessee Municipal Handbook is intended for use as a reference guide by Tennessee municipal officials. It is primarily a summary of the state's laws affecting municipalities under a rough kind of subject matter classification, with a sprinkling of other information considered to be relevant. We have not undertaken to write a textbook on municipal government.

We have tried to include sufficient information to make the publication informative, but the complete laws (codified in the Tennessee Code Annotated) should always be examined before taking any action. The numbers interspersed in the text refer to sections of the Tennessee Code Annotated (TCA). The publication may be revised in the future; in the meantime most changes by legislative action can be identified by reference to the annual publications issued by MTAS that summarize new laws affecting municipalities.

No effort has been made to deal with the myriad variations found in the private act charters of most Tennessee cities (according to the Tennessee Blue Book, 226 cities—over two-thirds of the total—have such charters). The charter of such a city is a primary reference source that should always be consulted, but many general laws, as outlined in this handbook, are also applicable, and some may modify or even supersede the provisions of private act charters.

Several MTAS staff members have collaborated by drafting parts of this handbook. I prepared the final draft; it has been reviewed by all members of the staff and has been substantially improved by their contributions. By virtue of my position and as the principal draftsman, I accept responsibility for any errors or deficiencies. Comments and suggestions from users of the handbook are invited.

January 1977

Victor C. Hobday
Executive Director, MTAS

PREFACE TO THE SECOND EDITION

I have undertaken to revise this publication to reflect amendments and additions by legislation in 1977, 1978, 1979, and 1980.

Victor C. Hobday
Executive Director, MTAS

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CONSTITUTIONAL PROVISIONS

Municipalities are creatures of the state and subject to control by the state legislature except as limited by constitutional provisions (as interpreted by the courts). All of their powers must be delegated by the legislature, except a few "self-executing" powers defined in the state constitution. Until 1953, when two "home rule" amendments were adopted, the legislature was in complete control—by general laws, and by private acts that in some instances had abolished cities, removed existing officers and installed new officers by name, and changed the organization without any consultation with municipal officers ("ripper bills").

Local approval, prohibited acts and home rule

One of the 1953 amendments (No. 6) established a local veto over private acts, by requiring approval of two-thirds of the city governing body or a majority vote in a referendum (as specified in each act) to make any such act effective. Prohibited outright are any acts which would remove an incumbent from office, abridge a term of office, or alter a salary prior to the end of a term. (These provisions are also applicable to county governments.) These provisions become inapplicable if a city elects to be covered by the other amendment (No. 7) which provides for optional home rule *municipalities*. The following summary of the advantages and disadvantages of the two options are excerpted from another publication:*

Advantages of No. 6

1. Interference with the term or salary prior to end of term of *any municipal officer* by private act is prohibited. No such private act can be passed.
2. Needed charter amendments can be obtained by private act very simply through a cooperative local legislative delegation in the General Assembly.
3. Taxing powers may be conferred on a city by private act. Little difficulty is usually encountered on such an act sponsored by a local legislative delegation, as contrasted with general tax laws that often provoke statewide opposition in the Legislature. Cities under Amendment No. 7 must rely on general tax laws.
4. The general public may be uninformed or apathetic on charter changes that are complicated and technical. In such cases

*Victor C. Hobday, *An Analysis of the 1953 Tennessee Home Rule Amendments* (Bureau of Public Administration and MTAS, The University of Tennessee, Knoxville), Second Edition, May 1976, pp. 5-9.

more reasonable, intelligent action might be taken by a small group (legislative delegation and city legislative body) who can and will devote more time and study to such matters, as compared with the election procedure under Amendment No. 7.

Disadvantages of No. 6

1. Private acts may be passed which affect the tenure or salaries of *employees* (as distinguished from *officers*); however, any such act would not be effective until given local approval as provided in the act, by one of the two methods prescribed in this amendment.

2. No charter amendment can be obtained if the local legislative delegation refuses to sponsor it. Cooperative relationships between a city administration and a legislative delegation will be necessary if legislation needed by the city is to be passed.

3. A legislative delegation could pass private acts which may create serious problems for a city. Poor legislation could result from an attitude that "the final decision is to be made by the city—let them worry about it." Multiple elections also could be required by the terms of private acts, which might create undue public controversy having unnecessarily divisive effects on a community.

4. The General Assembly could determine the salaries of municipal officers and employees by general acts, and any private acts inconsistent therewith probably would be invalidated.

5. The possibility exists, though remote, that private bills sponsored by a cooperative legislative delegation would not be passed by the General Assembly or would be vetoed by the Governor.

6. Effecting charter changes through private acts subject to approval by the legislative body would be viewed by some people as less democratic than the election method under Amendment No. 7.

7. The prohibition against removal from office or abridging the term of an officer, if literally applied, could complicate desirable reorganizations (such as changing the form of government).

Advantages of No. 7 (home rule)

1. No private acts of any kind may be passed. Therefore, a private act affecting the tenure or salary of an *employee*, as well as that of an *officer*, is prohibited.

2. The city may amend its own charter, by popular vote, and is not dependent on the local legislative delegation in the General Assembly. The city legislative body can initiate changes by ordinance.

3. The General Assembly could fix the salaries of municipal officers and employees by general acts, but such general acts would apply in home rule cities only to the extent that they are not inconsistent with charter provisions.

4. Charter changes can be accomplished without requiring approval by the General Assembly and the Governor.

5. It can be said that the charter changes are truly democratic, because they must be approved in elections open to all voters in a home rule municipality.

6. Reorganization of a municipal government could be accomplished by locally-approved charter changes, free of possible restrictions in Amendment No. 6 on removing incumbents or abridging terms of officers.

Disadvantages of No. 7

1. The city loses the relatively simple procedure of securing desired charter changes through private acts.

2. Amendment of the charter is fairly cumbersome, especially if a charter commission is elected instead of proposal by ordinance.

3. A city's taxing powers may not be enlarged by private acts. For example, had Memphis then been a home rule municipality the 1955 private act empowering that city to levy a 3 per cent tax on liquor and a cigarette tax of 1¢ per package could not have been enacted.

4. Public interest is notably apathetic in referendum elections on details of governmental operations. Frequent referendums and low voting percentages can permit special interest groups to dominate such elections.

Consolidation of city and county functions

Another amendment (No. 8) adopted in 1953 deals with consolidation of city and county functions. Under its terms, merging any function (such as schools) or a complete consolidation of city and county governments (as in Nashville and Davidson County) must be approved in a referendum by a majority in the principal city and by a majority in the remainder of the county. Implementing legislation for complete city-county consolidation is found in TCA 7-1-101—7-3-312.

Municipal officers also members of General Assembly

The question is sometimes asked whether a municipal officer may also serve as a member of the General Assembly, as the Tennessee constitution (art.2, sec. 26) prohibits "any person in this State" from holding "more than one lucrative office at the same time." This question has been

answered affirmatively by the Tennessee Supreme Court, on a basis that "in this State" means "in the State government." *Boswell v. Powell*, 163 Tenn. 445, 43 S.W.2d 495(1931). That case involved a member of a county school board who had been elected to the General Assembly. In a subsequent case involving a county school superintendent, the court re-affirmed a statement in the *Boswell* opinion: "It has not been supposed in this jurisdiction that a municipal office was reached by the provision so as to render the tenure of such an office incompatible with the tenure of a State office." *Phillips v. West*, 187 Tenn. 57, 213 S.W.2d 3(1948).

CHAPTER 2

ELECTIONS

In 1972 the General Assembly enacted a comprehensive law (ch. 740) to regulate *all* elections (codified in TCA title 2). The apparent intent was that this law would supersede provisions in private act charters relating to the conduct of municipal elections. The introductory provisions include the following:

The purpose of this title is to regulate the conduct of all elections by the people so that. . . . Internal improvement is promoted by providing a comprehensive and uniform procedure for elections. [2-1-102(3)]

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

Municipal officials should, therefore, look to this law, and to county election commissions, for guidance on the conduct of all municipal elections. An example is found in TCA 2-5-101(3): "Candidates in municipal elections will file their nominating petitions no later than twelve o'clock (12) noon, prevailing time, on the fortieth day previous to the election. . . . 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."

The general law requires a county election commission to publish notice of *all* elections not less than 10 days before the qualifying deadline for candidates, which, in the case of municipal elections, would mean not less than 50 days before the election. In a subsequent law, codified in TCA 6-53-101, the time for publishing notice of an election for municipal offices is fixed at not less than 60 nor more than 75 days before the election; this section also authorizes posting of notices in towns of 125 population or less, in lieu of newspaper publication. Publication in full of any question to be voted on is required, not less than 20 nor more than 30 days before the election. (2-12-111)

Candidates for municipal offices should pay particular attention to the Campaign Financial Disclosure Act of 1980 (ch. 861). All candidates for the chief administrative officer (mayor), a candidate for any office who spends more than \$500, and candidates for other offices that pay \$100 a month or more are required to file reports.

GOVERNING BODIES

This chapter deals with provisions of general application to municipal governing bodies and members thereof, not covered elsewhere under subject headings. TCA 7-31-102 codifies an old law (from the Acts of 1859-60) that is interesting, to say the least: if a municipality fails to keep its governing body "functioning . . . for six consecutive months," the residents thereof are subject to work on the public roads for 12 months thereafter or until a board is elected, organized and functioning!

Form of government

The governing body can play a major role in determining the form and structure of the municipal government.[#] Its members may influence legislators to make changes in a private act charter, and its approval of private acts, by a two-thirds vote, may be required (the other method—by referendum—may be specified in a private act). In a home-rule city, charter amendments may be initiated by ordinances to be voted on by the people.

General law charters

Two general laws are available for incorporation of a new city or for adoption by an existing city: TCA 6-1-201 et seq.* (mayor-aldermen form), and TCA 6-18-101 et seq. (commission-manager form). A third law, TCA 6-30-101 et seq. (council-manager form), is available only for an *unincorporated* area with 5,000 or more population. To become a city under either of the first two laws an area must have a minimum population of 200 and real estate "worth not less than \$5,000." If an area of 500 or more residents proposed for incorporation is within five miles of a city over 100,000 or within two miles of a city between 5,000 and 100,000, the city has 15 months to block the incorporation by annexing at least 20 percent of the land area or 35 per cent of the population. (6-1-205, 6-18-103)

Since adoption of constitutional amendment No. 7 in 1953, which ended the former practice of incorporation by private acts by providing that municipalities can be "created" only by laws which are "general in terms and effect," the foregoing general laws are the only means of incorporating new cities. Another statutory restriction is that a new municipality cannot include the property of any person, firm or corpora-

[#]The three major forms are discussed and compared in *Forms of Municipal Government* (The Bureau of Public Administration, The University of Tennessee, Knoxville, October 1973). City officials may obtain copies of this publication from MTAS.

*Sec. 6-1-217 indicates that chapters 1, 2, 51-57 of title 6 and chapters 31-37, 51, 52, 54, 61-63 of title 7, TCA, are to be regarded as constituting this general law charter.

tion, "unless by consent," if the purpose is to collect "the majority of the revenues of the said municipality." A waiting period of eight years also is required, "unless by consent," to include the property of any person, firm or corporation that would be equivalent to 35 per cent or more of the city's total assessed valuation. (6-1-102, 6-1-103)

An election on whether an *existing* city should adopt TCA 6-1-201 et seq. may be called by a resolution of the governing body or by a petition signed by at least 20 per cent of the city's registered voters (6-1-301). An election on whether to adopt TCA 6-18-101 et seq. can be called only by a petition signed by registered voters of the city numbering at least 20 per cent of the city's registered voters who voted in the last general election (whether this means the last "general election" for state or county officers or the last "general municipal election" is not clear) (6-18-104).

TCA 6-1-201 et seq. provides for the "weak mayor form," under a board of mayor and aldermen consisting of the mayor and two aldermen elected from each ward. The initial application for incorporation may establish the number and boundaries of wards; thereafter the board of mayor and aldermen may change the number and boundaries (6-1-202, 6-54-101, 6-54-102). A city with one ward may provide by ordinance for election of four aldermen, two to be elected every two years for four-year terms, and may change from two-year to four-year terms (for mayor also), staggered or non-staggered (6-1-401, 6-1-403, 6-1-405).

TCA 6-18-101 et seq. provides for the council-manager form, under a "commission" consisting of three or five "commissioners" elected from the city at large; the commission appoints and may remove a city manager.

Although TCA 6-1-217 indicates that certain chapters of titles 6 and 7 apply to cities incorporated under TCA 6-1-201 et seq., in reality only chapters 1 and 2 of title 6 are applicable only to these cities, and even a few sections in these chapters express the common law generally applicable to all cities—for example, the following:

The public property of every municipality, of every character and description, used for strictly municipal purposes, shall be exempt from seizure by attachment, execution, or other legal process; nor shall its funds in the hands of its treasurer or depository, be subject to garnishment or other legal process, except as is elsewhere provided. There shall be no priority, by pledge of property or taxes, given to creditors. (6-2-202)

All persons dealing with municipal corporations, shall be put upon inquiry; and in all cases the burden of proof shall be upon them to show the law is pursued as to its powers; and every act, contract, and agreement ultra vires shall be null and void. (6-2-103)

Also inserted by the codifiers is the following, from a 1957 act which is applicable to all cities under 25,000 in population:

It shall be lawful for two (2) or more municipalities, none of which exceed twenty-five thousand (25,000) in population, to engage jointly one (1) building inspector, and to make an agreement specifying how such inspector shall be paid for his services and how his time or services shall be allocated to the respective municipalities. Municipalities shall have this authority regardless of any other law or charter provision to the contrary.

"Municipalities" shall be defined to mean incorporated cities and towns. (6-2-203)

The remaining chapters of titles 6 and 7, TCA, are generally applicable or available to all cities, and are summarized elsewhere in this handbook.

Annexation

Municipal governing bodies are empowered to annex territory by ordinance, under TCA 6-51-101—6-51-113. This subject is fully discussed in the *Annexation Handbook*, published by MTAS. MTAS' Municipal Technical Report No. 16, *Outline for Making an Annexation Study*, April 1976, is a shorter treatment of the subject and should provide all information needed for most annexation undertakings. City officials may obtain either publication from MTAS.

Two contiguous cities may adjust a common boundary by contract to eliminate confusion and uncertainty as to its location or to conform it to a terrain feature; several conditions of compliance are specified. (6-51-302)

Contraction of boundaries

A city may contract its boundaries by ordinance to exclude an area occupied entirely by industry, providing such action is approved by a majority of the total membership of its governing body and a like majority of the county legislative body; the county must also agree to reimburse the city for any city services provided in the area. Any other contraction requires approval by a 3/4 majority in a referendum. (6-51-201)

Newly incorporated city taking over services

The provision giving an annexing city priority in providing public services has been made applicable within a newly formed city by a 1980 act (ch. 489). The governing body must declare its desire to take over existing services, and arbitration, subject to court review, is prescribed in the absence of agreement.

Open meetings

The "Sunshine Law" (8-4401, 8-4402) requires "adequate public notice" and open meetings of "any governing body." The Tennessee Supreme Court, in the case of *Dorrier v. Dark*, 537 S.W.2d 888 (1976),

indicated that this law will be given a broad interpretation, probably applying to public bodies of any type. A 1979 amendment requires that strategy sessions of a governing body involved in labor negotiations must be open to the public at all times. A 1980 act (ch. 800) requires a public vote on every question. Questions about application of this law may be referred to MTAS' consultant on municipal law.

"Conservators of the peace"

An interesting delegation of power and duty is found in TCA 38-203: ". . . and the mayor, aldermen . . . of cities and towns . . . are also conservators of the peace, and required to aid in the prevention and suppression of public offenses, and for this purpose may act with all the power of the sheriff." These officers are named in addition to the usual police officers, but it seems unlikely that they could realistically be expected to exercise such power.

ORDINANCES AND CODES

The legislative enactments of municipal governing bodies are termed "ordinances," and comprehensive enactments, such as regulations governing building, plumbing and electrical work, are called "codes." A compilation ("codification") of all of a city's ordinances is usually referred to as a "code of ordinances." Charters usually spell out the procedures for adopting ordinances, including the number of "readings" (one to three, with two most common; exceptions are sometimes authorized for "emergency" ordinances). The mayor-aldermen law requires three readings for ordinances involving money or the levy of taxes and two readings for all others (6-2-308). The commission-manager law prescribes three readings for all ordinances, but a city by ordinance may establish a procedure to read only the caption on the first two readings and the complete ordinance on the third (6-20-215). Two readings are required by the modified council-manager law (6-32-202).

Adoption of model codes

A number of model codes prepared by professional organizations, such as building, plumbing and electrical codes, are available for adoption by municipal governing bodies. Such a code may be identified in an ordinance adopting it by reference, which avoids the necessity of publication; the same procedure can be used for any federal or Tennessee law, rule or regulation, or other "public record." Three copies of any such material adopted by reference must be placed on file with the city clerk, to be available for public inspection, at least 15 days prior to passage of the adopting ordinance. However, any penalty provisions must be set out in full in the adopting ordinance, which must be published in the manner prescribed for ordinances. If a model building code has been adopted, any subsequent amendment thereof must likewise be adopted unless the governing body, by a vote of at least two-thirds of its total membership, elects not to incorporate the amendment. (6-54-501—6-54-505) TCA 6-54-507 specifically authorizes adoption of "the model traffic ordinance" by reference; presumably the foregoing procedure would apply, except for the requirement to adopt subsequent amendments.

Adoption of code of ordinances

The procedure for making effective a codification of a city's ordinances is spelled out in TCA 6-54-508 and 6-54-509: published notice of a public hearing on the proposed code, holding the public hearing, adoption in accordance with charter requirements for adoption of ordinances, publication of notice of adoption and availability of a copy for public inspection in the city recorder's (clerk's) office. Newspaper publication of the code is specifically not required.

The Municipal Technical Advisory Service will codify a city's ordinances upon request of its governing body. Usually there is a long list of cities waiting for this free service (a city pays only reproduction costs), so a city should not delay in making a request (by resolution or motion of the governing body) when a codification is desired.

CITY COURTS

A constitutional provision empowers the state legislature to "vest such jurisdiction in Corporation Courts as may be deemed necessary." (art. 6, sec. 1)

TCA 16-103 gives "every court . . . power to punish for contempt," and the Tennessee Supreme Court, in *May v. Krichbaum*, 152 Tenn. 416, 278 S.W. 54 (1925), held that a city court may exercise such power (that case involved a charter provision vesting powers of a justice of the peace in the mayor or any other person named by him as city judge and confirmed by a majority of the governing body). However, TCA 23-903 limits punishment for contempt in a city court to a maximum fine of \$10.00.

The state constitution (art. 6, sec. 14) requires a jury to levy any fine over \$50.00. Since city courts cannot have juries, this effectively establishes a maximum fine of \$50.00 in such courts. City courts also lack power to commit persons to jail except for nonpayment of a penalty for an ordinance violation, up to 10 days (at the rate of one day for each \$5.00 of the penalty); however, an indigent person cannot be jailed for this reason. (40-3204) *Tate v. Short*, 41 U.S. 395, 28 L.Ed. 2d 130 (1971).

TCA 16-1201—16-1205 empower the governing body of a *home rule municipality* to create additional divisions of a city court and permits filling such a division judgeship by appointment (by mayor, concurred in by governing body) until the next election. This statute also empowers the governing body of a *home rule municipality* to fix court costs by ordinance, not to exceed those assessed in general sessions courts.

TCA 17-213, quoted in full below, is applicable under the conditions stated in the first paragraph:

In any municipality in this state having a mayor's court or a municipal court presided over by the mayor of the municipality and having no other provision for a municipal judge for such municipality, the governing body of the municipality is authorized by ordinance to provide for the office of municipal judge.

The ordinance providing for the office of municipal judge shall provide (a) that the municipal judge shall be vested with the judicial powers and functions of the mayor or city recorder of such municipality, and shall be subject to the provisions of law and the municipality's charter governing the mayor's court or the municipal court presided over by the mayor or city recorder, (b) for qualifications of the municipal judge, (c) that the municipal judge shall be appointed by the governing body of the municipality, to serve at the pleasure of the governing body, (d) that vacan-

cies in the office shall be filled for the unexpired term by the governing body, (e) for oath of office and bonding of the municipal judge before he shall enter upon the duties of this office, (f) that the cost of making the bond of the municipal judge shall be paid by the municipality, (g) that the salary of the municipal judge shall be fixed by the governing body before his appointment, and shall not be altered during his term of service, and (h) for the designation of a person to serve as judge during the absence or disability of the municipal judge.

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

The general law on "keeping the peace" (title 38, ch. 3) defines "magistrates" to include "the mayor or city or municipal judge or chief officer and the recorder of any incorporated city or town" (38-301). They are vested with authority to "require persons to give security for good behavior, and to keep the peace in the manner provided in this chapter."

Fines and forfeitures imposed by ordinances may be recovered "by action of debt" (6-54-303). Mayors or other officers "charged with the trial of criminal cases" may issue executions for collection of unpaid fines and costs in the same manner as justices of the peace are empowered (6-54-304).

Detailed information relating to city courts is contained in the *Municipal Court Guide*, by Will Swanner, published by and available from MTAS.

MUNICIPAL REVENUES

The primary responsibility of a city's governing body is to determine the functions and activities to be undertaken by the city government and how they shall be financed. Balanced budgets are a necessity. This involves a great deal of interplay between municipal officials and citizens ("politics") and the resulting mix of revenue sources in each city will reflect this process. It seems reasonable to expect that cities will continually be faced with the problem of raising revenues to match rising expenditures. A revenue program based on research and planning may tend to make the process more rational and less likely to incur strong adverse reactions by the citizenry. The following is a general treatment of the major sources of revenue available to Tennessee cities.

Property tax

The mainstay of municipal revenue for nearly all Tennessee cities is the property tax (some small cities make no levy). Many cities derive substantial revenues from other sources, but even in those cities the property tax is the primary "budget balancer" because the tax rate is subject to the discretion of the governing body. A 1973 act wiped out all maximum tax rate limitations, whether imposed by general or private act, but re-imposition of such a limitation by a subsequent charter provision is not prohibited (67-643).

Local assessments generally are made by county assessors;* a property assessment roll must be furnished to each city at cost of reproduction (this apparently supersedes 67-1011 which requires that a copy of the assessor's annual "tax aggregate" showing assessments in each city be certified to the mayor by the first Monday of November). The county board of equalization is the only body in each county to hear appeals from assessments (67-337). The property of privately-owned public utilities (railroads, bus lines, gas companies, etc.) is assessed by the state public service commission, subject to review and revision by the state board of equalization; assessed valuations subject to local taxation are certified to each city recorder or other tax collecting official, and the city bills the company for the amount of property tax due. (67-925—67-938)

Beginning January 1, 1981, and continuing over the next 7 years, and then every 5 years thereafter, a reappraisal of all real property and an equalization of assessments of every county in Tennessee is required, unless the state board of equalization shall determine that reappraisal is unnecessary for a particular county. Upon approval by the board, said

program may be undertaken by the county assessor of property and his staff, or by the state division of property assessments, or a professional firm may be employed to carry out this work. The costs of the program are prorated among the state, counties, and cities; state loans may be made to counties and cities to fund their share of the costs. Localized and nonoperating real property of public utilities in each county must be accomplished in the same year as other locally assessed properties; operating properties shall be re-assessed by the public service commission in accordance with TCA 67-901, et seq. The state board of equalization shall establish a priority and sequence of reappraisal on the basis of need, whereby those counties with lower prevailing levels of appraisal shall be the first to be reappraised. (Ch. 820, 1980 public acts)

Under legislation implementing the "Question 3" constitutional amendment of 1972, the following percentages of full value are used to determine assessments: public utility real and tangible personal property, 55 per cent; industrial and commercial real property, 40 per cent; industrial and commercial tangible personal property, 30 per cent; residential and farm real property, 25 per cent; other tangible personal property, 5 per cent (67-611, 67-616). The railroads won a case upholding a federal statute requiring that their property be assessed at the same level as other commercial and industrial property.*

Intangible personal property is to be classified and assessed as the legislature may direct. Banks and other financial institutions may be taxed in such manner as the legislature may provide, and such taxes are to be in lieu of the property tax on shares of stock, customers' accounts, or any other type of intangible property. (Const., Art. 2, sec. 28)

After completion of a general reassessment of all property, a city must determine the tax rate on the new total assessment that would produce the same amount of property tax revenue that was produced in the preceding year, if it intends to increase such revenue, and then advertise its intention to do so; it may then adopt a higher tax rate than the rate so determined. (67-1016—67-1018)

Supervision and technical assistance for the counties' assessment functions are provided by the state board of equalization and the division of property assessments, office of the state comptroller (67-207—67-236).

In the absence of charter provisions to the contrary, the general law provides for collection of municipal property taxes by the county trustee on the same schedule which applies to county property taxes: due and payable the first Monday in October; delinquent on the following March 1 (67-1101—67-1105). The commission to be retained by the trustee is 2 per cent of the total collected for all units of government above \$20,000; 6 per

*Ch. 609, 1976 Public Acts, amended the law to authorize a city located in two or more counties to make its own assessments and have a board of equalization.

**State of Tennessee v. L. & N. Railroad Co. et al.*, U.S. District Court for Middle Tenn., no. 79-3025, Aug. 15, 1979.

cent on the first \$10,000 and 4 per cent on the next \$10,000 is authorized, to be pro-rated among all units of government (67-1412). TCA 67-1402 provides that a trustee shall "execute such bonds as may be required . . . by the law or any ordinance of any city or town, for the collection and prompt payment of all taxes due said city or town."

Delinquent property taxes may be collected under a general law procedure (6-55-201—6-55-206) or as may be provided in a city's charter. Chapters 11, 12 and 13 of title 67, TCA, also contain provisions respecting collection of delinquent taxes; sec. 67-1323 fixes a time limit for filing suit at six years from January 1 of the year in which the delinquent tax accrued. Joint action with a county is possible and would seem generally to be the preferred approach. If the trustee collects a city's taxes, the delinquent dates and penalties are fixed in TCA 67-1106 "and none other shall prevail and obtain." Chapter 20 of title 67, TCA, governs delinquent tax suits filed by a county trustee on behalf of a city. A 1980 act (ch. 533) sets out conditions for payment of taxes and interest when taxpayers are pursuing appeals, to avoid former situations of cities receiving no tax payments from such taxpayers during the entire time consumed by the appeal process. A publication, *Collection of Delinquent Real Property Ad Valorem Taxes in Tennessee*, by Griffith and Stokes, is available to cities from the Institute for Public Service.

Excise tax on banks

An excise tax of 3 per cent is levied on the net earnings of banks and banking associations, less 10 per cent of taxes paid in the preceding year on real and tangible personal property, to be paid to local governments. A complicated formula is prescribed for allocating such revenue if a bank has branches in more than one city and/or in more than one county. (67-751—67-763)

Tax relief for elderly and disabled

A constitutional amendment approved in August, 1972, mandated relief from property taxes on residences of persons over 65 years of age, on not less than \$5,000 of the full market value, and who receive a total annual income of \$4,800 or less. The amendment also authorized the legislature to provide tax relief to home owners totally and permanently disabled, irrespective of age, in the same manner as provided for the elderly.

Implementing legislation has granted relief to the elderly and to home owners, who are totally and permanently disabled as determined under rules and regulations of the state board of equalization, on the first \$12,000 of full market value (67-646). Disabled veterans have been granted relief from property taxes due on the first \$60,000 of full market value of their homes, irrespective of their total annual incomes; disability

for this purpose was re-defined by ch. 690 of the 1980 public acts. (67-647)

To obtain such relief the taxpayer must apply at least 45 days before the tax delinquent date to the state division of property assessments for a credit voucher in the amount of the tax relief to which he is entitled. He then presents this credit voucher to the collectors of county and municipal property taxes; the county or city presents the credit voucher to the director of the division of property assessments and payment thereon is made by the state to the county or city. (67-648)

A city's governing body may freeze the property taxes on the residence of a taxpayer 65 years of age or older if the taxpayer's combined annual income does not exceed \$12,000. Additional taxes must be paid on any improvements to such residence. (67-649) Legislation in 1980 (chs. 659 and 831) authorize a city's governing body to provide by resolution for deferral of certain property taxes owed by certain low income people on their residences; such taxes must be paid, with 10 per cent annual interest, when a beneficiary dies, or sells or ceases to use the residence.

When delinquent if mailed

"Any tax report, claim, return, statement, remittance, or other tax document required or authorized to be filed with or any payment made to the state or to any political subdivision thereof, which is . . . Transmitted through the United States mail to the state or political subdivision and postmarked no more than twenty-four (24) hours subsequent to the last date for the timely filing of such document or payment, shall not be considered delinquent." (67-1716)

Local option sales tax

The local option sales tax is a spin-off from the state sales tax which was first levied in 1947 at a rate of 2 per cent. In 1963 the General Assembly authorized local governments to levy a 1 per cent sales tax (one-third of the state rate then in effect). The 1976 session of the legislature increased the state rate from 3.5 to 4.5 per cent and raised the maximum local rate from 1.75 to 2.25 per cent. Although the 1976 act fixes the maximum local rate at one-half of the state rate, by its terms no reduction in this maximum would occur if the state rate should at some time be reduced. Any future change in the maximum 2.25 per cent local rate can be accomplished only by specific state legislative action.

Whatever the amount of the local levy, it must be approved by a majority of those voting in a referendum in the affected area (city or county).

State law requires that half of any county levy be distributed on the same basis as the county property tax for schools (ADA). The other half is distributed to the jurisdictions where collection took place; if in a city to

that city, and if outside cities to the county; however, an agreement between a county and city can provide otherwise. A city-only levy is a general fund revenue, subject to appropriation by the governing body, but it would terminate at the end of the city's current fiscal year if the county makes a levy at the same or higher rate.

In June 1980 only one county (Anderson) and one city (Oak Ridge) were not utilizing this source. The county rates were as follows: 1% (9), 1 1/2% (53), 1 3/4% (7), 2% (10), and the maximum 2 1/4% (15). Five cities had levied city-only or higher-than-county sales taxes.

Despite its regressiveness, the local sales tax has enjoyed widespread acceptance. A strong administrative advantage accrues from piggy-backing the tax on the state tax, which avoids setting up duplicating administrative and enforcement machinery. The tax appeals to many city (county) voters because it lightens the load of the property tax and is a means of extracting revenue from non-resident shoppers, tourists and visitors.

Business taxes

The general law providing for privilege taxes on various businesses and activities was comprehensively revised in 1971 and 1972, in the business tax act (codified as ch. 58, title 67, TCA). The former ad valorem tax on inventories of merchants was repealed by this act. Five classifications are established, and the first four are taxable by cities at gross receipts rates of 1/15, 1/10, or 1/8 of one per cent on retailers and 1/40 or 1/60 of one per cent on wholesalers, in addition to a minimum tax of \$15.00, *unless* the city fixes lower rates or establishes the minimum tax rate of \$15.00. Any other "regulatory fee, inspection fee, or special tax or fee of any type or kind" on beer is explicitly prohibited (67-5802). An annual report to the state must be made by June 20 for each year ending May 31, and 15 per cent of the total amount collected by the city in the year must be paid to the state (this is due with the report, but the department of revenue will accept quarterly or monthly installments if a city prefers to pay on such basis). TCA 67-5827 authorizes collection by the department of revenue on behalf of a city, but the department's costs of such collection were determined to be too high to make this procedure feasible.

A "rental tax" of 25 cents may be levied "on each telephone and telegraph pole standing on the streets, or along the streets" (67-4102, item Q). Vending machines may be taxed at the following annual rates per machine: \$1.00 if a penny machine, \$3.00 if it dispenses soft drinks or cigarettes, and \$7.50 for other machines, *unless* the owner exercises an option to pay a state gross receipts tax instead (67-4203, item 65).

Due and delinquent dates are fixed in TCA 67-5807 and 67-5808, and provision is made for collecting delinquent taxes using distress warrants as provided in the sales tax law (67-3033). Possibly the older distress

warrant procedure under TCA 6-55-301—6-55-304 would also be available.

"City tag"

This term is commonly used to describe the regulatory fee levied by some cities on motor vehicles using city streets. Although TCA 6-55-501 provides that "no tax [for the privilege of driving any motor vehicle upon streets] under any guise or shape shall hereafter be assessed, levied or collect ~~a~~ by any municipality," sec. 6-55-502 somewhat equivocally provides that the law shall not "abridge their right to require city automobile tags." In 1969 35 cities levied such fees; 19 of these continued to do so in 1980, ranging from Parsons' \$3.00 to Memphis \$17.75 for passenger cars (the Mayor of Nashville proposed \$25.00 for the 1980-81 budget); 16 of these cities were in West Tennessee (1 in Middle and 2 in East). Several cities, including Knoxville, dropped this source after a 1977 act (ch. 190) limited its application to only residents of a city.

A city may contract with the county clerk of the county in which it is wholly or partially located for the collection of its motor vehicle regulatory fees. (7-51-703)

Refuse collection fees

Many cities charge fees for the collection of garbage and other refuse (71 were doing so in 1975)—some charge only for pickups from commercial enterprises. Memphis, for example, levies fees on all residential and commercial customers, and in FY 1979 collected over \$13 million from this source. Such fees are usually justified on a basis that they are directly related to a tangible service performed and are desirable as a variation from an over-used property tax. However, about the same people pay such fees as those who pay property taxes (though not in the same proportion), and arguments favoring an increase in a property tax rate as an alternative include: (1) refuse collection fees are more regressive, (2) the property tax is a deductible item on federal income tax returns, but the fees are not, and (3) no extra administrative costs are incurred by an increase in the property tax rate.

Local wholesale beer tax

A tax for all cities (and counties) is levied by TCA 57-6-101—57-6-118 on wholesale deliveries of beer to retail outlets in a city (or county), at a rate of 17 per cent of wholesale prices. The tax is paid by each beer wholesaler directly to the city (or county), and monthly reports on such sales are made to the state department of revenue and to each city and county. A city should check to assure that tax payments are being received from beer wholesalers serving the area, based on deliveries to all retail beer outlets in the city, and if there is some doubt about administration of the tax an investigation by the department of revenue may be requested.

This tax produced almost \$30 million for Tennessee cities in 1979.

Tax equivalents

Tennessee cities that operate electric distribution systems are empowered to take tax equivalents up to prescribed maximums under the standard provisions of TVA power contracts, unless a city's charter provides lesser amounts (and some do). The aggregate amount of such tax equivalents in FY 1979 was over \$35 million. Most cities have been receiving the maximum amounts, but some have been taking substantially lesser amounts (any city can determine how it stands in this respect by contacting MTAS). The general law (7-52-302) empowers a city's governing body to prescribe the amount, up to the maximum, after consultation with a power board, but private acts provide otherwise for some cities.

48 1/2 per cent of the increase each year above the amount of tax equivalent paid by TVA to the state in 1977-78 is allocated to counties and cities—70 per cent to counties and 30 per cent to cities. Cities share in this distribution on a population basis. Three per cent of such increases is allocated to cities and counties impacted by TVA power plant construction; any amount not used for this purpose is added to the foregoing 48 1/2 per cent. (67-2401—67-2403)

Tax equivalents not to exceed the taxes that would be payable on property within the city limits may be taken by resolution of a city's governing body from any public works financed under the revenue bond law (7-34-101—7-34-115). Housing authorities "shall agree" to pay in lieu of taxes or special assessments not to exceed the cost of services, improvements or facilities provided (67-507).

Other sources

Inspection fees under building, plumbing, gas, electrical and housing codes and zoning ordinances produce varying amounts of income—sometimes less than the costs of the services involved. An analysis of fees and costs of such services should be made and a fee structure should be established to place such services on a self-supporting basis; to the extent that this is not done such services will be subsidized from general tax funds.

Another source of revenue is parking meters, on streets, and in off-street parking lots. Estimates of income vary from \$1.00 to \$2.00 per capita, and operating costs run from 10 to 20 per cent. Consistent enforcement is necessary if time limits are to serve their purpose of forcing turnover in parking spaces, which can be helpful in maintaining the viability of central business districts in small to medium size cities. Skilled maintenance is also mandatory to keep them in good working order. Acceptance by the public has been high, but occasionally removals have occurred.

Private acts

Some cities have sources of revenue authorized by private acts. Examples are a 1¢ per package tax on cigarettes in Memphis (ch. 295, Private Acts of 1955), a 1 per cent tax on the gross receipts of all businesses in Gatlinburg (ch. 328, Private Acts of 1955), and an amusement tax (.6¢ per 20 cents of admission charge in Knox County and Knoxville (ch. 413, Private Acts of 1957).

State-shared taxes

The distribution of state-shared taxes (except the income tax) is made on a basis of population data certified by the Tennessee state planning office as of July 1 each year. A city may take, at its expense, two city-wide censuses between federal decennial censuses, and may add the census of any annexed area as of the following July 1 (if certified by TSPO). A newly incorporated city is eligible for a share on July 1 following (1) election and installation of its officers and (2) certification of a special census by the Tennessee state planning office (67-3047, par. 1, 54-4-203)

When the original 2 per cent statesales tax was levied in 1947, 12 1/2 per cent was allocated to cities and towns on a population basis, and this has been continued since that time (the present law expresses the portion subject to this allocation as "four-ninths of 4 1/2 per cent," which is the same as 2 per cent).

Two-seventeenths of the state tax on beer (\$3.40 per barrel, under TCA 57-5-201) is distributed to cities, less 2 per cent reserved to the department of mental health for assistance to cities in administering the comprehensive alcohol and drug treatment act of 1973 (57-5-205).

Three-eighths of the state tax of 6 per cent on dividends and interest (dividends from out-of-state corporations, and all interest from bonds) paid by a taxpayer who resides in a city is remitted by the state to the city. Payment is made for all such taxpayers, based on taxes collected in the preceding fiscal year, no later than the following July 31.

Counties of more than 250,000 population (by last federal census) are required to pay to cities of more than 150,000 in such counties 60 per cent of the portion of a state tax on wine and spirits distributed to the counties [57-3-302—57-3-306(d)]

The funds from the foregoing sources can be used for any permissible municipal purpose.

The proceeds from one cent of the state gasoline tax are distributed to cities, to be used for street purposes (MTAS will provide a summary of decisions that have been made on allowable and non-allowable uses). The law requires most purchases over \$2,500 from such funds to be made only after advertisement and competitive bidding. (54-4-201—54-4-205, and

ch. 881, 1980 public acts) TCA 60-421 also allocates for street purposes only, from the state inspection fee on gasoline, the sum of \$619,833 (less \$5,000 allocated to the Center for Government Training) per month for distribution to cities on a population basis.

Other state distributions

In recent years the state general appropriation act has included funds for distribution on a per capita basis for city streets and transportation systems: for the 1980-81 fiscal year the amount is \$6,620,000, provided a city spends for the same purposes at least 20 per cent of its share from its current year's taxes. The state also distributes funds to cities and counties for approved sanitary landfills; for FY 1980-81 the amount is estimated to be 53 cents per capita (see also "solid waste disposal" in chapter 13).

State assistance

Information and data reported by taxpayers to the state may be furnished by the commissioner of revenue when requested by municipal officials for use in ascertaining whether proper local taxes are being paid. (67-134) Any person who divulges or uses such information and data for any purpose other than the collection of municipal revenues can be convicted of committing a felony, which carries a penalty up to a \$5,000 fine, or imprisonment up to five years, or both. (67-139)

CHAPTER 7

CAPITAL FUNDS

Cities frequently need to obtain large sums of money to undertake major construction projects. Dependent on the type of project involved, usually a number of options are available. Large amounts have been provided by the federal government in recent years, through grants and loans, and, to a lesser degree, by the state; the availability of such funds normally should be ascertained first by a city considering a capital project.

For those projects that must be financed by city funds, and to obtain funds to match federal grants, the statutes provide several options. These will be discussed in the sections that follow. Three overriding provisions apply for *all general obligation bonds*: (1) no sale for less than 98 per cent of par value and accrued interest (6-57-302), (2) no fee for selling the bonds can be paid except for legal and fiscal services by a fiscal agent (6-57-304), and (3) advertisement of sale must be placed in a local newspaper and in a New York financial paper having national circulation if the issue is \$400,000 or more (6-57-301). Registered bonds without coupons are authorized by TCA 9-1-111. A 1979 act limits any loan agreement to a period of 40 years. (9-1-115)

Post war public works act

This short title has, in general usage, been applied to the "municipal recovery and post war aid act of 1945," codified as TCA 7-36-101—7-36-133. Eligible projects listed in 7-36-102(9) include virtually all public works that a city could undertake. This partially explains why this is probably the most extensively used bond authorization act.

Another reason for the wide usage of the act is that a referendum is required only when 10 per cent of a city's registered voters sign a petition protesting issuance of bonds to be retired with tax funds (a majority voting on the question is then necessary). Bonds to be retired exclusively by project revenues, or for waterworks or sewerage purposes to meet an emergency declared by a 3/4 vote of all members of the governing body, are not subject to a protest petition. Terms cannot exceed 40 years; no maximum interest rate is prescribed. Unless exclusively secured by revenues, such bonds sold to a federal agency must be advertised (ch. 751, 1980 public acts). Bond anticipation notes, and refunding bonds for bonds maturing or callable within 10 years, also may be issued under this act.* Amendments in 1978 and 1979 authorize issuance of refunding bonds under certain conditions.

*A 1976 act may supersede this and other laws as to capital outlay and anticipation notes—see this section in chapter 8.

These sections authorize bonds for many purposes; approval by referendum is required except for refunding or funding bonds and for the purpose of sharing in construction of or equipping a state educational facility or institution. Terms up to 30 years are authorized; no maximum interest rate is prescribed. Such bonds cannot be issued to the extent that the general obligation debt would be increased above 10 per cent of the assessed valuation in a city under 290,000 or above 15 per cent in a city over 290,000. A sale of such bonds to a federal agency does not need to be advertised.

Special assessments

TCA 7-32-101—7-32-141 empower any city, unless its private act charter provides otherwise, to construct or improve (or reconstruct or reimprove) streets, alleys, or other public places by assessing two-thirds of the costs against abutting property owners on a front-footage basis. The upper limit of any such assessment is one-half the *cash value* of a lot and improvements thereon ("the fair sale price . . . if sold at a voluntary sale"); any excess must be paid by the city. The owners of at least 75 per cent of the front footage involved may petition for an improvement and agree to pay the entire costs, but in this event the maximum assessment is one-half of the *assessed value* of each lot. TCA 7-33-101—7-33-124 authorize issuance of two types of bonds: (1) terms of one to five years, payable from the special assessments (but the city's full faith and credit also must be pledged), and (2) terms not to exceed 20 years to provide funds to pay the city's share of such improvements; no maximum interest rate is prescribed.

TCA 7-33-301—7-33-318 authorize special assessments for streets, sidewalks, other public ways, and sanitary sewers, based on assessed values of benefited properties. Bonds up to 30 years in term, with a maximum interest rate of 6 per cent,* may be issued; if the special assessments are the only security no more than 75 per cent of the total costs can be charged to property owners, but if the city additionally pledges its full faith and credit the entire costs may be so charged. Annual assessments are made, payable at the same time city property taxes are due, or property owners may elect to pay in equal monthly installments. The law somewhat ambiguously seems to require the governing body to act if the owners of 51 per cent of total assessed value of property to be benefited petition for an improvement (7-33-303).

*This statute was not included in a 1980 act (ch. 601) that removed interest rate ceilings from a number of TCA sections.

Cities organized under the commission-manager general law charter may issue bonds under TCA 6-23-101—6-23-113 for a wide range of purposes, but a majority vote in a referendum is required to approve any such issue. The law does not prescribe a maximum term or rate of interest.

Electric plants

Bonds to acquire or improve an electric system may be issued under TCA 7-52-118—7-52-134 if approved in a referendum by a majority voting thereon. A maximum term of 30 years if fixed; no maximum interest rate is prescribed. The bonds may be secured by revenues only, or by revenues and taxes.

CBD improvements

The creation of central business improvement districts by ordinance is authorized in an extensive and detailed 1971 act (codified as TCA 7-84-101—7-84-108). The act grants sweeping powers to municipal governing bodies for this purpose and sets out detailed rules for making assessments and otherwise paying the costs of such districts.

Waterworks and sewerage systems

Bonds secured by revenues only may be issued under TCA 7-35-401—7-35-432 to acquire, construct, extend, equip, improve, operate and maintain a waterworks and/or sewerage system within or without a city's corporate limits. A city may also issue bonds under these sections to exchange for outstanding bonds (7-35-422). The maximum term is 40 years, and there is no limitation on the interest rate.

State grants for sewage treatment works, not to exceed 50 percent of the non-federal portion of costs or 25 percent of the total costs, whichever is higher, are authorized by TCA 53-2017—53-2022. The state department of public health administers this program.

Variable amounts of state grants for sewerage systems, dependent on availability of federal funds, are authorized by TCA 53-2023—53-2028 (from ch. 521 of the 1970 Public Acts). To provide funding a procedure is outlined for issuance of state bonds by the state funding board and imposition of a "sewer users fee" by a city receiving such a grant to produce an amount sufficient to pay the debt service on the bonds; such fee collections are to be remitted by the city to the state funding board. Included in these provisions is authority to discontinue water service to the sewerage system wherever service is available, to refuse water service if such connections are not made, to require connection charges, and to levy other charges necessary to raise funds needed to maintain and operate the sewerage system. Increases in the sewer users fee cannot take place

automatically when base water charges are increased, but must be separately adjudged reasonable and justified.

State loans, funded by the issuance of state bonds, may be made to cities for construction of waterworks, under the "waterworks construction loan act of 1974" (53-2055—53-2072). Such loans are administered by the state department of public health, which is given authority to issue necessary rules and regulations and to enter into agreements with cities with respect to such loans.

Housing

Local housing authorities are authorized to purchase mortgages and make mortgage loans to nonprofit entities or corporations, and to sell bonds therefor by public or private sale; a maximum interest rate is not fixed (13-20-104, 13-20-602). Such authorities are also empowered to issue tax increment bonds to finance redevelopment projects (ch. 854, Public Acts of 1978).

Revenue bond law

Bonds secured by revenues only may be issued to acquire, construct, reconstruct, improve or extend water, sewerage, gas or electric systems within or without a city's corporate limits, under TCA 7-34-101—7-34-118. No referendum is required—only approval by "a majority of all members [of the governing body] then in office." The maximum term is 40 years, and there is no interest rate ceiling. Revenue anticipation notes with terms up to five years, and refunding bonds, are also authorized.

Industrial development corporation

Three or more persons, being both electors and taxpayers of a city, may obtain a charter of incorporation from the secretary of state *after* their proposed application therefor has been approved in a resolution of a city's governing body. Such a corporation shall have at least seven directors, elected by the city's governing body for staggered terms of six years (initially for two, four and six-year terms), who must be both electors and taxpayers of the city; no director can be an officer or employee of the city. The statute declares the purposes to be "inducing manufacturing, industrial, governmental, educational, financial, service, commercial and recreational enterprises to locate in or remain in this state and further the use of its agricultural products and natural resources . . . [and] to promote the control and elimination of all types of pollution which may result from the existence, development or expansion of commerce and industry within the state."

Bonds may be issued by the corporation for terms up to 40 years (no maximum interest rate is fixed), payable solely from its revenues and receipts. A city's governing body is authorized to pledge additionally its

full faith and credit for the bonds *after* two prior conditions have been met: (1) a certificate has been issued by the building finance committee of the industrial development division of the state department of economic and community development, and (2) approval has been voted by a three-fourths majority in an election on the question. The committee's certificate fixes the amount of bonds that may be so secured, the purposes for which the bond funds may be expended, and the method of lease, rental and operation of the project. (7-53-101—7-53-310)

Industrial buildings and parks

Municipal governing bodies may issue bonds for industrial buildings located not more than 10 miles from their city limits, under TCA 7-55-101—7-55-116. Such bonds may be secured only by rentals from such buildings, or the city may additionally pledge its full faith and credit. The same two prerequisites as under TCA 7-53-101—7-53-310 must be met: a certificate from the state building finance committee, and a three-fourths majority approval in an election thereon. Terms up to 40 years are authorized, with no limit on the interest rate. The state's certificate fairly well covers how such a project shall be carried out. The provisions of this act are incorporated by reference in TCA 13-16-203(2) to provide a method of obtaining bonds for industrial parks.

Bonds secured by revenues only to construct, acquire, improve or extend "industrial buildings" [defined in 7-37-102(2)] may be issued under TCA 7-37-106—7-37-116 if approved by a three-fourths majority of those voting in a referendum thereon. The governing body of a city is responsible for assuring that rentals from such a building are sufficient to pay the debt service on the bonds. The maximum term is 40 years; no limit is fixed for the interest rate.

Parking authority

A 1980 act (ch. 826) authorizes formation of a public corporation (designated as a "Parking Authority") to construct and operate off-street parking facilities, after approval by a municipality's governing body. Such an authority would be under control of a board of not less than five directors, appointed by the mayor with the approval of the governing body. Revenue bonds up to 40-year terms may be issued, and may be additionally secured by mortgages on facilities and/or on-street parking meter revenues committed by the city. This act is applicable in counties over 50,000 in population except Davidson and Shelby.

Refunding bonds

Outstanding general obligation bonds may be refunded with bonds having terms up to 30 years, at any interest rate, under TCA 9-10-101—9-10-107. Minimal conditions are prescribed for the refunding process.

The Revenue Bond Refinancing Act of 1937 is codified in TCA 9-12-101—9-12-126. Such bonds can be secured only by revenues from enterprises. Terms up to 40 years are authorized; no maximum interest rate is prescribed. The refunding plan must be submitted to the state director of local finance (in the office of the state comptroller) for review and his comments; after receiving his report, or after 15 days without such a report, the governing body may take final action on the proposed refunding.

A 1976 amendment (ch. 396) requires as a prior condition that the governing body of the municipality shall make a finding, which finding shall be conclusive, that one or more of the following purposes will be accomplished by the refunding: (1) cost savings to the public, (2) removal or modification of one or more restrictive covenants, (3) payment or discharge of all or any part of an issue or series of outstanding obligations, including any interest thereon, in arrears or to become due and for the payment of which sufficient funds are not available. The act also prescribes the manner of taking bids, giving notice, and use of any surplus funds.

(Also see "Public building authority," p.98)

FISCAL ADMINISTRATION

Most private act charters contain provisions respecting fiscal administration, and these would normally prevail. However, some general laws have also been enacted in this area, and, if more restrictive or demanding, may occasionally take precedence over some provisions of private act charters; for example, the general law requiring annual audits would supersede a private act requiring only biennial audits.

Audits

TCA 6-56-101—6-56-104, requiring biennial audits, from a 1917 law, has been superseded by section 6-56-105, which codifies a 1972 act.

TCA 6-56-105 makes the governing body of each municipality responsible for having annual audits made of "all departments, boards, and agencies under their jurisdiction which receive and disburse funds . . . [including] general funds, highway funds, school funds and public utilities," to be completed "as soon as practicable after the end of the fiscal year." Such audits must meet minimum standards prescribed by the state comptroller and shall be subject to approval by his office. The audits may be made by certified public accountants, public accountants, or auditors of the comptroller's office, and if a city fails to have such an audit made the comptroller may direct that one be made, the cost thereof to be paid by the city. Copies must be furnished to the mayor, the "chief executive officer," each member of the governing body, and the comptroller, and "shall also be made available to the press."

Accounting system

A 1975 act (ch. 173, codified in TCA 9-2-102) imposes on the department of audit in the office of the state comptroller "the duty . . . to prescribe a uniform system of bookkeeping . . . in all state, county, and municipal offices." In January 1976 the state comptroller promulgated a *Uniform Accounting Manual for Tennessee Municipalities*, which is available from that office. This manual outlines a system that will meet requirements under this law. The act also contains a proviso that "the comptroller may approve any existing system," and requires the concurrence of the state commissioner of finance and administration in the approval of any system.

MTAS will provide assistance in interpreting and utilizing this manual and will also help a city tie into the computerized accounting service (which also meets the requirements of this law) available from the Local Government Data Processing Corporation.

Investment (deposit) of municipal funds

Funds temporarily not needed, up to 80 per cent of "any and all funds of the municipality," may be invested in U.S. government bonds (6-56-106, 6-56-107), TVA obligations (35-326), public housing authority obligations (35-315), industrial building bonds (7-55-114), industrial development corporation bonds (7-53-309), federal savings and loan associations (9-1-107), water treatment authorities (53-6011-last par.).

Any city under the commission-manager general law may deposit funds in a bank or savings and loan association up to the amount insured by an agency of the federal government. (6-22-120) All cities may invest or deposit funds in state or federal savings and loan associations providing certain specified collateral requirements are met for amounts above such insurance coverage. (9-1-107)

A 1980 act (ch. 545) created a "pooled investment fund," to be administered by the state treasurer, for the investment of idle public funds in the hands of local governments.

Appropriations to charitable organizations

A 1978 act prescribes certain conditions for making appropriations to charitable organizations, and delegates supervisory powers to the state comptroller. (6-54-111)

Cash basis law of 1937

This law was enacted to assist cities (and counties) in coping with serious financial problems brought on by the Great Depression of the 1930's. It may be used to fund notes, warrants or other debts not secured by bonds, to refund any existing bonds and accrued interest thereon, and to pay bond redemption premiums and other expenses deemed necessary by the governing body. The governing body is specifically empowered to take final action at one meeting (one reading only) "notwithstanding the provisions of any public or private statute." The bond order must include a pledge to levy property taxes sufficient to retire the bonds, and it becomes effective on passage by the governing body. Publication of the bond order in a newspaper published in the city (or county) "once in each of two consecutive weeks" is required. Maximum terms are 20 years for funding bonds and 30 years for refunding bonds, but the state director of local finance (in the office of the state comptroller) may extend these terms by 10 years. Registered bonds, as to principal only or as to principal and interest, are authorized. No maximum interest rate is specified.

The prior approval of the state director of local finance is required for issuance of bonds under this law, and for this purpose a detailed financial report is specified (9-11-108). As long as any bonds issued under this law are outstanding, complete annual budgets for all operations of the city (or county) must be submitted to the state director of local finance at

least three weeks prior to adoption, and each such annual budget must have his approval before being adopted. (9-11-101—9-11-119)

Some cities utilized this law as they wrestled with serious debt problems, and a general belief prevailed that it would bring lower interest rates because of the state director's oversight and prior approval requirements. In the mid-1950's at least 16 cities were known to be subject to the law (the number could have been higher). As time passed such bonds were retired, and cities discontinued using it because of less financial pressure and to avoid subordination of budget power to the state director; in recent years no city has been submitting annual budgets for approval.

Capital outlay and anticipation notes

Under TCA subsection 7-36-103(18) the issuance of capital outlay notes and bond anticipation notes is subject to prior approval by the state director of local finance. The former can be issued for terms up to three years, which may be extended by the state director for three years; if solely for the purchase of land a term up to seven years is permissible with the same extension permitted. Bond anticipation notes cannot exceed two year terms unless the state director approves an extension up to two years, but such notes to acquire land "or an interest in land" can run up to seven years. The foregoing provisions of the cash basis law of 1937 respecting submission of annual budgets and prior approval by the state director are incorporated in this subsection and apply "during the life of the notes issued."

Tax anticipation notes up to 60 per cent of a city's total appropriations for a current fiscal year are authorized, likewise subject to prior approval by the state director. These must be paid by the end of the fiscal year, and if this is not possible application must be made to the state director "within ten days prior to the close of the fiscal year" for permission to issue funding bonds.

The law states that all "notes or obligations of any municipality," except those outstanding on June 30, 1976, and any extension or renewal of such prior notes shall be subject to its provisions and those of the cash basis law of 1937. A "clincher" is found in subsection (18)(C) (vii): "No note or promise to repay money issued or made contrary to the provisions of this section, whether described herein or not, shall constitute a legal obligation of the municipality, but the same shall be illegal and void."

More information about this law, including forms, can be obtained from the division of local finance, office of the state comptroller, Nashville.

Products from state agencies

The Tennessee prison system operates several industries that turn

out products usable by city governments (e.g., office furniture and equipment, street signs, paint, envelopes and letterhead stationery). A catalog is available from Tennessee State Industries, Station A, Nashville, TN 37203.

A general law makes it mandatory for "political subdivisions" (this term sometimes is interpreted to include cities and towns) to purchase articles "produced or manufactured" in prison industries to meet all of their requirements for such articles if "the department of correction is low bidder" (41-421). Exceptions, however, can be made by a board composed of the governor, commissioner of correction, state treasurer, state attorney general, and state purchasing agent (41-422).

Municipalities are required to buy products available from a state agency or workshop for the blind operating under the Department of Human Services or Division of Services for the Blind, unless delivery within a specified time cannot be made or another law requires procurement from another state agency. (14-14-104)

Life-cycle costing

Cities are required to incorporate in their procurement policies the energy efficiency standards and life cycle costing employed by the state in its procurement policies, unless a city desires to use higher standards. (12-3-301—12-3-313)

Purchasing under state contracts

Cities can make purchases from those contractors who have indicated a willingness to sell to cities at the prices established in their state contracts. The general law provides that such purchases can be made notwithstanding any provisions in local or private acts that require competitive bidding (12-3-401). A catalog detailing the provisions of state contracts is issued and kept up to date in loose-leaf binders by the state department of general services, and a copy of this catalog is available free upon request to the "chief fiscal officer" of each city. [4-3-1105(8)]

Contractor's bond

On any public works contract for more than \$10,000 the contractor must post a bond equal to 25 per cent of the contract price to secure payment of all costs for labor and materials. (12-4-201)

Bids prohibited for professional services

The taking of bids is prohibited "for legal services, fiscal agent or financial advisors or advisory services, educational consultants, and similar services by professional persons or groups of high ethical standards." Contracts for such services "shall be awarded on the basis of recognized competence and integrity." (12-4-106)

Emergency purchases

A 1974 act (ch. 713) made the following grant of general power:

Notwithstanding any other provisions of law a municipality may provide by ordinance for regulations to allow emergency purchases within maximum amounts established by said municipality in said ordinance. A municipality by ordinance may authorize the purchasing agent or such other person designated for the purchase of supplies and materials in such municipality to purchase in the open market any supplies, materials or equipment for immediate delivery in actual emergencies arising from unforeseen causes including delays by contractors, delays in transportation, unanticipated volume of work, the failure to receive competitive bids from prospective bidders and other similar emergencies. The provision for purchases in emergencies shall not be exercised until bids have been advertised and there has been a failure to receive any bids. The ordinance shall provide that permission must be received for such emergency purchases from the chief executive officer of the city or the regulatory board of any agency of such municipality if applicable. The purchasing agent shall attempt to receive competitive quotations from suppliers before making said emergency purchases and a report of such emergency purchases in writing shall be made together with a record of the prices secured together with a full and complete account of the circumstances of such emergency. Such report shall be made within two (2) working days following the date of such purchase or purchase order and shall be kept on file in the office of the city clerk or comptroller or such other person having charge of the records of said municipality or municipal agency and shall be open to public inspection. (12-3-402)

Exemption from gasoline taxes

Municipal exemption from the 4-cent-per-gallon federal excise tax on gasoline is authorized by subsection 4221(d)(4) of the Internal Revenue Code. This exemption is possible on any quantity of gasoline purchased (even as low as five gallons bought from a service station). However, a federal exemption certificate must be filed with the gasoline supplier. Exemption certificate forms are available from the oil companies, not from the federal government.

Each city should check with its oil dealer on handling the exemption deduction. If the city is buying from a local service station, it might be necessary to obtain a credit card and get monthly billings directly from the oil company. Billing practices vary with different companies. Some will automatically take off the federal tax, while others leave it on. In the latter case, the city should deduct the federal tax before making payment. Also, some oil companies may require that an exemption form be filed with each payment while others may require a yearly blanket form. Under federal law an exemption certificate is not valid for more than four

calendar quarters. If buying several brands of gasoline, a separate certificate is needed for each company.

For additional information, city officials should contact the field audit division of the Internal Revenue Service.

The state levies an 8¢ per gallon tax on gasoline and a 9¢ per gallon tax on diesel and other motor vehicle fuels. Municipalities are exempt from these taxes on gasoline or other motor vehicle fuel purchased in quantities of at least 500 gallons, with delivery into city-owned or leased tanks within a 72-hour period, and used exclusively for governmental purposes, in equipment either owned or leased by a governmental agency, and operated only by governmental employees. To qualify for this exemption a city must apply to the commissioner of revenue for a 2-year, numbered tax exemption certificate. (67-3611—67-3615)

Records preservation and destruction

A statutory basis exists for making determinations in this area if a county legislative body creates a "county public records commission." The definition of "public records" subject to the jurisdiction of such a commission includes "all documents, papers, records, books of account and minutes of the governing body of any municipal corporation within said county, or of any office or department of such municipal corporation." The commission, by a majority vote, can authorize the destruction of records, but in the case of municipal records the concurrence of the municipality's governing body is required. After making such a determination, a 90-day waiting period is prescribed to permit a representative of the state librarian and archivist to examine the records to determine whether any should be permanently preserved. Before destruction takes place, the law requires that two copies be "photographed, microphotographed, filmed or microfilmed" by a process that will produce "permanent records of a quality at least as good as is prescribed by the minimum standards of quality for permanent photographic records made and established by the bureau of standards of the United States government." One copy is to be stored in a place protected "from fire and all other hazards," and the other copy is to be stored in a place where it can be viewed by the public "during reasonable office hours." The costs of reproducing and storing municipal records must be paid by the municipality. (10-7-401—10-7-413)

The County Technical Assistance Service of the University of Tennessee has prepared several manuals for the guidance of various offices in preserving and destroying records, under special legislative authorization to do so. (10-7-404) A section of the *Uniform Municipal Accounting Manual* also deals with the matter of records retention (see procedure No. 08-2-0 of the manual).

PUBLIC INFORMATION AND CITIZEN INVOLVEMENT

Inherent in our system of government is the concept of an informed citizenry, capable of making intelligent judgments. But few people will actively *seek* information about their government. Because lack of information can result in unfavorable attitudes toward government in general or toward specific projects, it is important that city officials effectively communicate with those they represent.

The less information a person has, the more he is apt to distort what he does learn and to accept misinformation. Once misconceptions are formed, they are extremely difficult to eliminate. The antidote is a systematic continuous flow of information to the public through a variety of channels.

Why a continuing flow? Because information should be communicated as it develops. A broad public information program must go beyond the limited legal requirements to inform and beyond the occasional news release or annual report. People have a right to know how events and activities, as they occur, will affect them; people also have a right to participate in the decision-making process to the extent consistent with orderly administration.

A well-rounded public information program need not be expensive, in terms of money. But it does require time, thought, effort, and commitment to the principle of full information.

Internal communication

A city's employees should see public relations as a part of their job responsibilities and something that can make their work easier. They should understand the aims and activities of the city and feel they are an important *part* of the city operation. If they don't, money spent on external or *public* information programs will be largely wasted.

A coordinated program of information and training is essential to keep employees up-to-date on city activities, policies or decisions and to make employees more aware of their role as public representatives of the city.

A basic program of internal (employee) communication would include:

1. An employee newsletter, issued on a semi-monthly or monthly basis. The newsletter should deal with city projects and activities but always report immediately any policy changes or plans directly affecting employees.
2. An employee handbook with a section specifically dealing

with the responsibilities of the employee in the city's overall public information program. This section should stress the fact that citizens usually form impressions of city performance from what they see city employees doing (or not doing).

3. Bulletin boards, at major work locations or employee group meeting areas, for posting information. Suggestion boxes might be attached to the boards and employees encouraged to drop in ideas for the city's public information program or reports of citizen comments.

4. Brief, informal meetings between department heads, supervisors and workers whenever a new city policy, change in policy or new program is adopted.

5. A one-page summary of major council actions to be distributed to department heads and supervisors and posted on the employee bulletin boards the day after each council meeting. Emphasis should be on actions which affect the employee directly or about which he may be questioned by the public in the course of his work.

External communication

Keeping the public informed about *what* the city is *doing* and *why* is not "press agentry" for individual officials. It is the duty of any public institution. A city exists to serve its citizens and providing information is just another vital service due those who pay taxes and cast votes. People are entitled to know *what* city officials are doing, *why*, and *how* it will affect them personally.

Much of a city's external (public) communication program is an outgrowth of regular activities such as council meetings, public hearings, and personal and/or official contacts between citizens and municipal officials and employees.

Basic to any on-going public information program is a regular "link" with citizens, a channel of communication which is well-established and not something to be activated only in an emergency. This "link" can be as simple as a weekly column in the local newspaper, dealing with various phases of city activities. Or it can be more elaborate, such as a regular newsletter for citizens. The emphasis, however, is on *regular*: a source of information upon which people can depend on a continuing basis.

A second basic ingredient is a formal method for receiving and responding promptly to citizen complaints and requests for information (such a system is outlined in detail in an MTAS technical report).

If the city does not have some type of handbook for its citizens, telling them who to contact for what, one should be prepared.

Open houses or other such special events can be valuable public

information "tools." Through tours and exhibits not only the purpose but the cost and funding sources for the facility and other city services can be explained.

Often overlooked is the day-to-day flow of information to citizens about what may seem minor activities but which vitally affect residents' relations with city government, such as:

a. Telling people, in advance, when a street will be closed, why, and what alternate routes to use.

b. Putting up a simple sign when a new project, like street paving, is started, to tell people the cost and where the money came from.

c. Using personal letters to residents to solicit cooperation in projects directly affecting them. For example, one city's police chief wrote such a letter when the city began a drive to clear intersections of obstructing shrubbery.

A Mayor's (or Council's) Advisory Committee can be utilized effectively if the membership is representative of all major segments of the community and the committee fully understands its function. Usually such groups fail to function because they are not given specific jobs to perform. Once the group has submitted a report, the city should take some action or publicly announce why it cannot and the group would then be dissolved or given another assignment.

A determined effort should be made to involve citizens early in the development stages of city activities or policies which would directly affect them. It is very difficult to overcome normal citizen apathy, but people will respond if they see a direct benefit or threat to them personally.

Initial efforts may involve no more than getting feedback, in neighborhood meetings, on such things as proposed paving projects. In spite of the problems encountered in trying to obtain such participation, the efforts can pay off handsomely. At the least, people feel better because they were consulted *in advance*. At the most, the city can identify and avoid some real public relations pitfalls that can endanger an entire project.

One thing should be made clear at the start of any consultation with citizens: the city will give fair consideration to all views expressed, but the final decision must be made by the city's leadership on the basis of what is best for the whole community.

BUSINESS REGULATION

Closing out sales

A city may elect to regulate "going out of business" sales, by requiring licenses therefor and making investigations to verify the authenticity of such sales (6-55-401—6-55-413).

Building, alteration and maintenance contractors

Municipalities (and counties) are empowered to license "residential, commercial or assembly builders and residential, commercial or assembly maintenance and alteration contractors," and to provide by ordinance for the administration of such regulation, including performance bonds and revocation/suspension of licenses after appeal to a citizens board and the municipal governing body (7-62-103—7-62-107).

Automobile graveyards

A municipality is empowered by ordinance to license and regulate "any lot or place which is exposed to the weather" on which more than five motor vehicles, not economically practical to make operative, are located (7-51-701).

Electrical work

Incorporated cities and towns may regulate "the business of electricians and electrical work" (6-54-104). A provision exempting employees of a corporation doing work for the corporation was declared unconstitutional in *Matill v. Chattanooga*, 175 Tenn. 65, 132 S.W.2d 201 (1939).

Energy conservation in new buildings

The state legislature adopted by reference the code for energy conservation published by the National Conference of States on Building Codes and Standards. The law also requires cities to enforce this code or higher standards, except in one- or two-family dwellings, outbuildings, and one-story commercial buildings of less than 2,500 square feet. (13-19-101—13-19-107)

Measures for protection of the public

For the declared purpose of protecting "governmental units and for the safety of the general public," the storage of gasoline and other distillates by cities is subject to state inspection, but no inspection fees can be charged for such inspections (60-422).

An old law (originating in 1851-52), probably no longer of any practi-

cal effect, empowers a city to designate a place "at such distance . . . as may be deemed safe" for building a magazine to store gunpowder and other explosives, and to prescribe regulations therefor (53-2301, 53-2302). TCA 6-54-106, likewise derived from the 1851-52 acts, delegates similar regulatory authority to cities.

An 1879 act provides that "it shall be the duty of the corporate authorities of any city or town" to examine theaters and other houses open for public entertainment to determine whether all necessary safeguards are provided to avoid "accident by fire or panic," and if deficient in any respect it is likewise their duty to require "such alterations as will be promotive of the public safety." Plans for such buildings must be approved by the "proper municipal authorities" before construction begins, and failure to make any prescribed alterations will result in forfeiture of license and closing of the building. (53-2303—52-2307)

TCA 53-2308 contains detailed prescriptions for construction of a public garage as part of a building used for "habitational purposes" (fire walls, fireproof materials, sprinklers, etc.).

Municipal fire prevention and building officials, fire chiefs, and mayors of cities without fire departments are given "concurrent jurisdiction" to enforce the provisions of TCA title 53, chapter 25 (the basic law for the state fire marshal's authority); this chapter also supersedes "all less stringent provisions of municipal ordinances" (53-2539).

The "local building inspector" is made responsible for requiring construction of new public buildings to meet the minimum specifications in the 1976 edition of "An Illustrated Handbook of the Handicapped section of the North Carolina state building code" (available from the state fire marshal). These requirements apply to buildings constructed by local governments and other publicly-used buildings such as theaters, restaurants, hotels, factories, office buildings, stadiums, hospitals, voting areas, and convention centers. Provision is made for waivers under specified, limited circumstances, and local governments are exempted from fines or penalties for noncompliance. (53-2546—53-2548)

TCA title 53, chapter 30, regulates the manufacture, distribution, sale and display of fireworks, and requires permits therefor to be issued by the state fire marshal. If a display is to occur within a city, the application for a permit must bear the "signed approval of the chief supervisory officials of the fire and police departments" (53-3007). The chapter concludes with a provision that it "shall in no wise affect the validity of any private act . . . or any city ordinance further prohibiting or restricting the sale or use of fireworks" (53-3016).

Feedlots, dairy farms and egg production houses

A 1979 act exempts such enterprises from zoning restrictions or other

regulations effective after they commenced operations and where they were in operation prior to being annexed by a city. (53-6704)

Sale of intoxicating liquors

Regulation of the liquor industry is primarily a state function, but counties and cities may adopt regulations not in conflict with those of the state. Package stores must be approved by referendum—an option open to all counties and any city of 925 population or more (except in four excluded counties) and banning such stores can likewise be accomplished by referendum. (57-3-106) Applicants for state licenses must first obtain a certificate signed by the mayor or majority of the city governing body, stating (1) that the applicant is of good moral character, (2) that the business site meets all local requirements, and (3) that the application conforms to any limit established on the number of retail licenses. Failure to act in 60 days on an application for such certificate shall constitute approval. Cities (and counties) are authorized to control the location and limit the number of licenses, so long as they do not “unreasonably restrict the availability of alcoholic beverages” to their residents. An appeal from denial of a certificate can be taken to a chancery court within 60 days. (57-3-208)

An elective or appointive public officer cannot hold a liquor license or have any interest in any wholesale or retail liquor business (57-3-210).

The law permits a county or city to impose annual privilege taxes on places serving drinks for consumption on the premises (\$300 for a private club, \$600 to \$1,000 for restaurants according to seating capacity, \$1,000 for a hotel or motel, and \$1,500 for a “Premiere Type Tourist Resort”) (57-4-301). In the case of *Metropolitan Government of Nashville and Davidson County v. Motel Systems*, 525 S. W. 2d 840 (1975), the Tennessee Supreme Court held that this means that only one local government (county or city) can levy such taxes; the opinion is silent on how to determine which one can do so (the one to make the imposition first?), probably because the plaintiff was a consolidated city and county.

Cities can also levy inspection fees on retail liquor licensees, based on wholesale liquor prices, not exceeding 8 per cent in counties under 60,000 in population and not exceeding 5 per cent in larger counties; population data are to be taken from the most recent federal census (57-3-501).

Local option elections to authorize consumption on the premises can be held only in counties over 60,000 in population, in a city of more than 20,000 in such a county, in cities over 110,000, and in a city of more than 28,000 located in two or more counties wherein the federal government owns 55 per cent or more of the property (Oak Ridge) (57-4-103).

State highway patrol and alcoholic beverage commission officers and agents are empowered to assist local law enforcement personnel in cities

that have not authorized the sale of liquor by local option elections [57-3-412(b)].

*Beer**

A city by ordinance may prohibit the sale of beer within the city, or it may by ordinance prescribe regulatory measures not in conflict with state laws. Such measures may include fixing a maximum number of permits, restricting beer permittees to certain zones, establishing hours of opening and closing, and setting other rules to protect the “public health, morals and safety.”

State law requires that a city establish a board to exercise the function of issuing beer permits. The governing body, as in Knoxville, may constitute itself as a beer board for this purpose. Applicants who meet all of the conditions prescribed by state law and the city's ordinances must be issued permits, and they may seek a trial *de novo* in a circuit or chancery court after a refusal by a city to do so.

A city has the same powers as counties in this respect, which means that it must require applicants to meet the following conditions: (1) U.S. citizen, (2) only U.S. citizens can be employed by a permittee, (3) no sales at places which would cause traffic congestion or “interference with schools, churches, or other places of public gathering” (can be prohibited for up to 2,000 feet from such places of public gathering), (4) no sales to be made to minors, and (5) neither the applicant or any person employed has been convicted of a violation of any liquor law or a crime involving moral turpitude within the past 10 years.

A permit may be revoked by a beer board for failure to comply with any state law or city regulation; an appeal from such a decision can also be taken to a circuit or chancery court. (57-5-101—57-5-109)

Antique dealers' records

Antique dealers are required to keep records containing specified information for any item purchased “exceeding the value of fifty dollars” (does “value” mean the price paid by the dealer or an estimated value as an antique?), and to preserve (no time period is specified, so presumably permanently) such records for inspection at any time by any police officer of the city (or county). (62-2201) Dealers in antiques and used jewelry must keep certain records and deliver daily to the chief of police copies of logs containing specified information (ch. 766, 1980 Public Acts).

*This term includes other alcoholic beverages containing not more than 5 per cent alcohol by weight.

Chapter 22 of title 45, TCA, sets out extensive state regulations for conducting a pawnbroker's business. Cities may adopt the provisions of this chapter by ordinance and are also empowered "to adopt such further rules and regulations as the legislative councils . . . may deem right and proper." (45-6-120)

Trailer courts

A chapter regulating trailer courts concludes with a provision that in the event of conflict with a local ordinance or code "the provision which establishes the higher standard for the promotion and protection of the health and safety of the people shall prevail" (53-3220). However, another section provides for inspections of electrical, gas and oil systems, and exempts systems approved by such inspections from compliance with "any local ordinances in conflict." [53-2447(7)] A handicapped person may modify a trailer coach in any manner, including permanent attachments, "to permit such person ease of access to and from the coach." (53-3215)

Air pollution

The air quality act of 1967 (53-3408—53-3422) provides for a comprehensive state program to minimize air pollution. Municipalities and counties are empowered to enact regulations not less stringent than the state's regulations, which shall prevail so long as the state air pollution control board continues in effect a certificate exempting the municipality or county from the state's regulations; periodic review by this board is required to determine whether such exemption should be continued (53-3422). Other acts have made such air pollution regulations inapplicable to the following: (1) "any air contaminant source . . . which burns wood waste solely for the disposition of such wood waste" (53-3422); and (2) "shall not apply to cotton gins" (53-3425).

PERSONNEL

Judicial ouster

A judicial ouster procedure applying to all officers includes persons holding any municipal "office of trust or profit." Note that it must be an "office," filled by an "officer," as distinguished from an "employee" holding a position of employment that does not have the attributes of an "office." The statute (TCA 8-2701) makes subject to such removal any officer "who shall knowingly or willfully misconduct himself 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."

The law makes it a "duty" of the local attorney-general or city attorney, if a written allegation that an officer has been guilty of any of the foregoing offenses is received, to investigate the charges, and if he finds that "there is reasonable cause for such complaint, he shall forthwith institute proceedings in the circuit, chancery, or criminal court of the proper county." An attorney-general or city attorney may likewise act on his own initiative without receiving any formal complaint. (8-2702, 8-2703) Removal from office is required if the officer is found guilty (8-2720).

Interim officers

For offices that can be filled by a city's legislative body, ordinances or resolutions may be enacted to provide for "emergency interim successors." For all other offices, subject to regulations prescribed by the "executive head of the political subdivision," each officer may designate three to seven "emergency interim successors" and their order of succession. (8-2819, 8-2820)

Military service

Municipal employees are included among those public employees guaranteed re-employment rights after active or reserve military service (8-3301—8-3308). Members of reserve components of the U.S. armed forces (including the National Guard) are entitled to leaves of absence while engaged in "duty or training in the service of this state, or of the United States, under competent orders," and they must be given such leave with pay not to exceed 15 working days in any one calendar year (8-3310).

Retirement system

An option open to any city of Tennessee is to cover its employees under the state retirement system. The main features of this system will be described briefly herein. The option to participate is exercised by a resolution of the governing body (the state division of retirement will furnish a draft resolution). The resolution may exclude certain positions of employment, but these can later be included—likewise by resolution. Employees in a temporary status (up to six months) are excluded.

General employees (in group 1) can retire at age 60 or after 30 years of service, and must retire at age 70. Prior to July 1, 1976, policemen and firemen were in group 2, unless a city exercised an option to place them in group 1; group 2 employees must retire at age 55 and 25 years of service,* with extensions possible by special individual approval up to age 65. A 1976 act (ch. 814) provided that all employees entering the system after July 1, 1976 will be placed in group 1. Disability benefits are also provided. An individual's retirement pay is determined on a basis of years of service and his/her highest average salary for any five consecutive years. Effective July 1, 1976, payroll deductions for group 1 employees are 5 per cent up to the Social Security "covered compensation" and 5 1/2 per cent of any salary in excess of this amount; group 2 employees contribute 6 per cent and 7 1/2 per cent, respectively.

Contributions by the employer (city) are determined on an actuarial basis and revised as necessary from time to time. Before making a decision to enter the system, a city should request, by resolution, that an actuarial analysis be made to determine the amount needed to cover prior service (if to be included), how this can be paid, and the initial rate of the city's contributions. The division of retirement (under the state treasurer) will provide a draft resolution for this purpose and additional information relating to procedure and the city's obligations. (8-3901—8-3957)

Many cities have concluded, after a study of available alternatives, that this state system is the most economical and satisfactory way to provide retirement benefits for their employees. On Jan. 1, 1980, 82 cities, including Jackson, Johnson City, Kingsport, and Oak Ridge, were covering substantially all of their employees; seven (including Memphis and Chattanooga) were covering school employees only; and two were covering municipal hospital employees. Of the 184 cities over 1,000 in population, 77 (42 per cent) were under this system; only five under 1,000 were included.

Group insurance

Supplementary authority to establish group insurance (life, hospitali-

*Apparently retirement when 25 years of service has been completed, at a minimum age of 55, was intended; see TCA 8-3905(b).

zation, disability, or medical) plans for municipal officials and employees is found in TCA 8-4110—8-4116. A procedure is outlined as follows: (1) a committee of the governing body recommends a contract with an insurance company authorized to do business in Tennessee, (2) the governing body approves, and may modify from time to time, by majority vote, and (3) "employees and officials shall still have the election of accepting or rejecting such coverage" (whether this is by majority vote in an election open to all eligible persons, or an individual's election, is not clear). The city may pay up to 50 per cent of the costs, and pay deductions are required to pay the remainder. Such a plan can be discontinued only by a two-thirds vote of the governing body, with at least three months' notice thereof to the participants.

The Tennessee Municipal League sponsors a group insurance plan for Tennessee cities that is underwritten by an insurance company. Information about this plan can be obtained from the League office.

Deferred compensation

Authorization to set up deferred compensation programs, so that officials and employees can meet IRS requirements to defer federal income taxes, is found in TCA 8-4301—8-4308.

Workers' compensation

Coverage under the state workers' compensation laws (chs. 9-12 of title 50, TCA) is optional for cities, and becomes effective 30 days after a city files with the commissioner of labor written notice of exercising this option. Cancellation of the coverage may be accomplished at any time by giving such written notice. A decision can also be made to cover only designated departments or divisions of a city government or to cancel on such a selective basis. (50-906)

Unemployment compensation

Participation in this program has been optional for a city, except that municipal hospitals have been mandatorily covered [50-1309 (6) (A)]. Following the recession of 1974, a special program was provided for city employees laid off in areas of unemployment above specified percentages; it was designed to be temporary and a terminal date of March 31, 1976 was fixed. However, Congress in 1976 extended the program to December 31, 1977 (with benefits payable through June 1978).

The 1976 act also mandated state legislation to require unemployment insurance coverage for state and local government employees, effective January 1, 1978. This was done by ch. 330 of the 1977 Public Acts [50-1309(1)(B)].

Handicapped persons

A 1976 act (ch. 457) declares a state policy to encourage and assist in employment of handicapped persons in the public service and prohibits discrimination against such persons in public or private employment. (8-4131)

Non-resident employees

An employee cannot be dismissed or penalized "solely on the basis of nonresidence" in a city; a metro government and any county between 275,000 and 400,000 in population (Knox), including cities therein, are excepted from this law. (8-4135)

Convict labor

A city may apply to the commissioner of correction for the use of convicts on public works projects, which the commissioner may allow, with approval of the governor, if required conditions are met. (41-430)

Employees right to contact elected officials

Any disciplinary action or discrimination against a public employee for communicating with an elected public official is prohibited, with treble damages permitted for violations; however, an employer may correct or reprimand an employee "for making untrue allegations concerning any job-related matter." (ch. 806, 1980 public acts)

CHAPTER 12

EDUCATION

Most city school systems are probably structured and operated in accordance with provisions of private act charters (subject to considerable state regulation). Some general laws are also generally applicable; summaries of these follow. (The state laws and regulations governing school boards and their administration of city school systems will not be covered, as we feel that such information is otherwise available to them in satisfactory form.)

Municipal operation

Education is primarily a county function, but a city is authorized to establish a public school system, provided the system is large enough to offer adequate educational opportunities for students in grades one through 12. In determining whether a system meets this requirement, the state board of education will consider the number of pupils to be served, the financial ability per pupil of the city, and the willingness of residents, as indicated in a referendum, to provide local funds to pay part of the cost of the system. (49-102, 49-233)

A city may levy a tax to establish a school system if two-thirds of those voting in a referendum approve. A municipal school tax can be levied in addition to the county tax. (49-301—49-303) City schools also are entitled to their proportionate share of state funds and county school tax funds, on the basis of average daily attendance. (49-206, 49-305)

A school board in the typical Tennessee city has exclusive control over the school system, but school systems of cities organized under the commission-manager general law are placed under the city manager (49-306, 6-21-801).

Municipal school buildings and property may be used, with the school board's permission, for public, community or recreational purposes, according to rules established by the board. No school officials may be held liable for damages or injury resulting from such use. (49-307, 49-308) Another statute authorizes the state board of education to encourage such uses of school facilities. (49-2401)

Joint operations

If more economical administration and greater efficiency will result, city and county boards may enter into a contract for the county superintendent to supervise operation of city schools. Such a contract, however, does not affect the distribution of county and state funds to city schools. (42-6-101)

A city council may transfer the administration of city schools to the county after approval by a majority of voters in a referendum. City school funds are then used to pay a proportionate share of maintenance and operating costs. In addition, state funds allocated to the city for schools may be used only for the benefit of those schools. Any indebtedness remains the responsibility of the city. (49-404—49-407)

Consolidation of school systems

In counties where separate school systems are maintained in one or more cities, provision is made for establishing a unification educational planning commission. Its duty is to study the need for and problems created by possible consolidation of all schools in the county into one system. If a commission recommends such action, it should also present a plan for consolidation.

The county judge or chairman of the county court, the mayor of each city operating a school system, and the chairman of the school board of a special school district (city school systems are *not* special school districts) each appoint five citizens to the planning commission. Members serve without compensation but may be reimbursed for expenses. Necessary funds are to be appropriated by the county (a city *may* also contribute funds).

The commission must file its report with the state commissioner of education within one year of its first meeting or apply for an extension of time. Before presenting any plan, the commission must hold at least one public hearing. The statute sets out certain terms and conditions that must be included in any such plan.

After the plan has been approved by the state, the governing bodies of the county, affected city(ies) and special school districts must conduct public hearings, then consider and act on the plan. If any one of these bodies approves the plan, a referendum is conducted. Another means of calling for a referendum is a voters' petition numbering at least 10 per cent of the county vote in the last governor's election.

The consolidation plan is considered adopted if approved by a majority of those voting in the area of each school system. (49-415—49-429)

Educational cooperation

Local government units and boards of education may, by agreement, cooperate with other public agencies to adapt educational services and facilities to geographic, economic, population and other factors.

Distribution of funds

State funds for education are distributed monthly to county and city school systems according to a formula established by state laws and in-

clude appropriations for instructional salaries, pupil transportation, textbooks, capital outlay, school lunch programs, special education, and other operating expenses. (49-603)

A city school system is entitled to a proportionate share of funds from county bonds retired by countywide tax levies on the basis of average daily attendance in the city and county systems. The city treasurer must keep these funds separate and use them only as provided for in the bond resolution. The city governing body may, by ordinance, waive its right to all or part of these funds. If taxes for bond retirement are not levied within the city, the city is not entitled to any proceeds from the bonds. (49-711, 49-713, 49-715)

HEALTH AND SANITATION

Health departments

Local health services are primarily state and county functions. Any city in a county with an established health department *may* cooperate in the maintenance of that department and levy taxes to pay its proportionate share of the cost involved (53-312), and it may likewise participate in a multi-county district (53-517); generally, this would seem to be an inequitable policy to adopt, because city residents pay the same county property taxes as outside-city residents.

Two sections of TCA, originating in an 1877 act, which mandate a "board of health" in every city over 5,000 in population and extend the city's health jurisdiction one mile beyond its boundaries, are obsolete; no effort is made to require compliance with this law because of the shift to state and county administration of health programs (53-315, 53-316).

Hospitals

The regulation of local hospitals and other health care centers is a state function (53-1305—53-1307). A hospital built with private funds may be maintained with public funds for up to five years, provided the contract specifically states that the facility is for public use. Cities may also contribute land or money for public welfare hospitals. (53-1401—53-1407)

Water and sewerage systems

Public water supply and sanitary sewerage systems are subject to supervision by the state department of public health. Such supervision includes approval of construction plans, examination of water samples, and enforcement of regulations regarding the operation and maintenance of such systems. State approval of construction or other changes is not required if the state has certified that local approval under local standards is sufficient to safeguard the public health. (53-2001—53-2008) Operators of both water and wastewater treatment plants must also be certified by this department (53-2036).

Subsurface sewage disposal systems also are regulated by the state, with enforcement of such regulations resting with local (county) health officials. No subdivision plan may be approved locally or at the state level until it has been approved by local health officials and no subsurface system may be constructed without a permit from the local health authority. (53-2042—53-2054)

Solid waste disposal

The solid waste disposal act of 1969 calls for a coordinated statewide solid waste disposal program administered by the state department of public health. It is unlawful to discharge waste into any body of water, burn solid wastes, or construct or alter waste processing or disposal facilities or sites except in accordance with state regulations. No new construction can be started or changes made in any such facility or site until plans have been approved by the state. Inspections may be made at any time by the state. Federal grants or loans to cities for construction or modification of disposal facilities must be approved by the state, and applications will be considered only after a local plan for solid waste disposal has been adopted. (53-4301—53-4315) A 1971 act authorized state grants for operational costs, up to \$1.00 per capita per year (53-4317); the actual amount varies with the appropriation and aggregate population of all eligible counties and cities—estimated to be 53 cents for 1980-81.

Refuse, garbage, etc. must be hauled in a closed body truck or be securely covered with tarpaulin. (39-4544)

A 1974 act empowers any city to construct and operate an "energy or resource recovery facility . . . within its corporate limits or within the limits of the county wherein it is located," and another act of 1974 authorizes state loans (by the department of public health) for such purposes (53-4322—53-4342).

A 1976 act (ch. 488), with "whereas" clauses indicating its primary intent was to permit local governments to participate in a TVA-sponsored plan for utilizing solid wastes as fuel, empowers cities and counties to join in any such enterprise. The act is sufficiently general to permit participation in any such plan, not necessarily sponsored by TVA, and would apply to any facility with a primary objective of recovering energy and a secondary objective of recovering recyclable materials. (7-58-102—7-58-110)

Contracts for the use of solid waste for resource and fuel recovery, or among counties and cities for cooperative solid waste operations, cannot exceed a period of 40 years. (7-58-103—7-58-104)

Animal (rabies) control

State law directs the department of public health to administer an anti-rabies program except in counties and cities that have such programs in conformity with the provisions of the law. Local health agencies and county officers assist in administration of the program. (53-901—53-914) A 1980 act (ch. 482) governs the manner of destroying dogs and cats in municipal animal shelters.

PUBLIC SAFETY

Authority to provide police and fire protection are standard features of general and private act charters.

Volunteer fire departments

Volunteer fire departments are often found in smaller cities. An old law (1831), codified in TCA 7-38-101—7-38-104, authorizing "private fire companies" to be formed by "any number of persons resident within a municipality," could be used for this purpose. An interesting provision is found in section 7-38-104: members of such private fire companies, *and of fire companies in incorporated cities and towns*, are exempt from "military duty in time of peace and from serving on juries."

Line of duty injury or death

TCA 7-51-201 includes special provisions for "regular and full-time employees" in a "regular law enforcement department" or "regular fire department," if the city has a plan of compensation for line-of-duty injuries or deaths. A presumption is established that "hypertension or heart disease" of police employees, and "disease of the lungs, hypertension or heart disease" of fire employees, were "suffered in the course of employment" unless this can be overcome by "competent medical evidence." A necessary pre-condition is that the employee underwent a physical examination when employed or prior to occurrence of the disability which disclosed no evidence of such disabilities. In *Brown v. Aetna Life Insurance Co.*, 490 S.W.2d 506(1973), the Tennessee Supreme Court construed this as requiring payment to the widow of a fireman who died of cancer more than a year after the disease was detected and after about three years of employment by the City of Columbia.

A concluding provision in section 7-51-201 creates some doubt as to whether it applies only to fire departments in cities that have a plan of compensation for line-of-duty injuries and deaths, by declaring a legislative intent "to permit *and require* any municipal corporation maintaining any permanent fire department . . . to be covered by its provisions" (italics added).

Minimum retirement allowances

A city with its own retirement system may elect to be covered by TCA 6-54-801—6-54-803, prescribing minimum retirement pay for policemen and firemen with 25 or more years of service: 2 per cent per year and not less than 50 per cent nor more than 60 per cent of his highest monthly salary, plus annual increases not to exceed 3 per cent based on the consumer price index of the U.S. Bureau of Labor Statistics. Any such

adoption "shall be permanent and such action may not be repealed." This law cannot be utilized if the city is under the Tennessee state retirement system or has a system "in which the member's or beneficiary's benefits are computed in conjunction with or reduced by Social Security benefits."

Fire protection outside cities

The revenue bond law, which requires collection of fees and charges to pay the full costs of any services thereunder, was amended in 1975 to add authorization for any incorporated city or town to provide fire protection beyond the city limits "on an individual contractual basis whenever an agreement" therefor has been entered into with the legislative body of the county in which the city or town is located. [7-34-104 (9)] Apparently the agreement with the county would be in the nature of clearance for the city to enter into contracts with individuals to provide such service on a subscription basis. As nearly as possible such subscription fees must produce sufficient revenue to the city to cover the costs of making the service available outside the city. The main significance of this legislation appears to be that it is general law for all cities to provide outside-city service, a power that some cities have obtained in the past through private acts.

Incorporated cities and towns are authorized to enter into contracts for mutual aid in fire protection (6-54-601—6-54-603).

Investigation of fires—demolition of buildings

A fire chief, fire marshal, or mayor of a city with no fire fighting force, is designated an assistant to the commissioner of insurance for the purpose of investigating fires, and a report of each such investigation is required on prescribed forms. Such an assistant can order demolition and removal of structures not deemed to be repairable, at the expense of the person responsible for a structure. (53-2408—53-2411)

Firemen's training and certification

A 1974 act (ch. 726) set up a commission on fire fighting personnel standards and education, composed of the commissioner of education *ex officio* and nine members appointed by the governor. A 1975 act (ch. 268) empowered the commission to set minimum training requirements for the various grades of firefighting personnel, to qualify for supplementary bonus pay up to 5 per cent of regular salary but not to exceed \$500 per year. The commission has construed this legislation to be optional; firemen of participating cities who qualify would receive such bonus pay, half of which would be provided by the State if the General Assembly makes the necessary appropriations. A 1976 amendment (ch. 706) attached the commission to the state department of insurance. A director and staff assists the commission; currently their main thrust is a program of certifying firefighters, based on practical and written examinations. (4-24-101—4-24-109)

Police authority outside city

A city's police authority is extended for one mile beyond its boundaries, but not beyond the county line nor within one mile of any other city's boundary, "for the suppression of all disorderly acts and practices forbidden by the general laws of the state." (6-54-301)

Service of warrants and process

Warrants for the arrest of persons charged with municipal offenses committed within a city may be served by a city police officer at any point in the county wherein the city is located. (6-54-302)

A city of more than 50,000 in population having a city court may make "service of process" by registered or certified mail with return receipt requested in "an action of debt involving nonpayment of any ticket or citation issued for any nonmoving traffic violation." (6-54-305) (Other cities might wish to seek an amendment to this law making this procedure available to all cities.)

Citation in lieu of arrest or warrant

Police officers who have observed a violation, or upon investigation have reason to believe a violation of a city ordinance has occurred, may issue a citation to appear for trial of the case instead of making an arrest, providing the person cited signs an agreement to appear and waives issuance of a warrant. If the person refuses to sign such an agreement, the usual procedure of arrest, booking and release on bail (or commitment to jail) applies. This procedure is not to apply to nonresidents of Tennessee, nor to a charge of driving while under the influence of intoxicants or drugs. (7-63-101—7-63-107)

A similar procedure is authorized by a 1976 act (ch. 569, adding TCA 40-827) but certain conditions are specified which would preclude the issuance of citations. The act is somewhat detailed, and city police officials planning to utilize this procedure should carefully study its contents.

Police training

A law specifying minimum police qualifications and otherwise affecting police services is optionally applicable when approved and adopted by a city's governing body. The state law enforcement planning commission is empowered to establish additional minimum qualifications of police personnel and to participate in developing training programs for police personnel. State financial assistance is authorized for training activities "subject to the availability of funds." A salary supplement of \$600 is to be paid to each police officer who annually completes 40 hours of approved in-service training *if the city requires* all of its police officers to undergo such training. The commission is directed to pay 50 per cent of any increase in salary as a result of attaining college credits, up to a maximum of \$500 for

any one police officer, *provided* that the city has filed an acceptable "educational incentive plan." Such salary supplements are subject to the availability of sufficient appropriated funds. (38-1101—38-1113)

Assistance from police training institute

A 1976 act (ch. 603) authorizes the director of the state police training institute, "upon the request of the chief official of any law enforcement agency of . . . a municipality, . . . to designate one or more of the commissioned instructors at the institute to assist such agency in its law enforcement role." An instructor so designated is to serve under the supervision of the agency's chief officials and is to be paid no compensation other than that received as an instructor. (38-807—38-809)

Suppression of nuisances

Offenses specifically designated as "nuisances" by statute, and several other general offenses, including lewdness, gambling, prostitution, selling or exhibiting obscene material, drunkenness, and breach of the peace, are made subject to abatement in a chancery, circuit or criminal court "upon petition in the name of the state, upon relation of . . . any city . . . attorney, or without the concurrence of any such officers, upon the relation of ten (10) or more citizens and freeholders." Any personal property, moneys and stock used in connection with such activities may be ordered by the court to be sold at public auction, and the proceeds thereof are to be shared equally by the state general fund and the general fund of the city whose officers made the seizure. (23-301, 23-302)

Seizure of illegal liquor

Along with sheriffs, state law makes it the duty of city police officers to search for and to capture illicit stills and associated paraphernalia. They are also required "to summarily destroy and render useless such property," as well as "all whiskey, beer, or other intoxicants" found at or near the site *except* beverages on which a federal tax has been paid. Such destruction must take place in the presence of "at least two credible witnesses," and within five days thereafter the officer must file a written statement of all items destroyed with the circuit or criminal court clerk of the county where seized with a copy furnished to the state alcoholic beverage commission. (57-9-101)

Any intoxicating liquors illegally held or being transported, seized by a city police officer, must be turned over to the sheriff within five days; after subsequent sale by the state the proceeds less 10 per cent are to be remitted to the city (57-9-101, 57-9-106, 57-9-115).

Civil emergency

This term is defined to include a "riot or unlawful assembly . . . by

three (3) or more persons acting together without authority of law," a severe "natural disaster or man-made calamity," and the destruction of property or injury of persons by one or more persons so as to constitute "a threat to the peace of the general public or any segment thereof." The mayor or city manager (dependent on the city's charter), or other "chief administrative officer" specially designated by ordinance for purposes of this law, may declare such an emergency, which declaration must be filed with the city clerk or recorder. After such a declaration the chief administrative officer may establish general curfews for specified areas and hours "as he deems advisable [and] . . . necessary," for not to exceed 15 days (certain personnel are excepted), and he may exercise any of the following powers:

- (a) Order the closing of all retail liquor stores.
- (b) Order the closing of all establishments wherein beer or alcoholic beverages are served.
- (c) Order the closing of all private clubs or portions thereof wherein the consumption of intoxicating liquor and/or beer is permitted.
- (d) Order the discontinuance of the sale of beer.
- (e) Order the discontinuance of selling, distribution, or giving away of gasoline or other liquid flammable or combustible products in any container other than a gasoline tank properly affixed to a motor vehicle.
- (f) Order the closing of gasoline stations, and other establishments, the chief activity of which is the sale, distribution or dispensing of liquid flammable or combustible products.
- (g) Order the discontinuance of selling, distributing, dispensing or giving away any firearms or ammunition of any character whatsoever.
- (h) Order the closing of any or all establishments or portions thereof, the chief activity of which is the sale, distribution, dispensing or giving away of firearms and/or ammunition.
- (i) Issue such other orders as are necessary for the protection of life and property. (38-901—38-906)

Reports to police

The general law requires a report to be made to a chief of police on any person in or brought into a city who is "suffering from any wound or other injury inflicted by means of a knife, pistol, gun, or other deadly weapon, or by other means of violence, or suffering from the effects of poison, or suffocation." Such reports are required from "all hospitals, clinics, sanitariums, doctors, physicians, surgeons, nurses, pharmacists, undertakers, embalmers, or other persons called upon to tender aid" to such persons. (38-601)

Workhouse

An old law (from the Code of 1858) empowering "any incorporated town" to maintain a "workhouse or house of correction" is still a part of the Tennessee Code Annotated (41-1401—41-1405).

Sheriffs in small counties

Two 1973 acts (chs. 88 and 355) make it the duty of sheriffs in counties of less than 30,000 in population to enforce a city's ordinances if the city declares its policy in this respect by ordinance and furnishes certified copies of its ordinances to the sheriff and general sessions court of the county. There must also be an agreement with the sheriff, court of general sessions and governing body of the county that the city will pay the costs of such enforcement not covered by court costs collected under its ordinances ("fines" are to be paid to the city, as distinguished from "court costs"). (8-810, 12-9-104, 16-1104)

Civil defense

This term has persisted in usage since World War II, but a general understanding has developed that it encompasses natural disasters and major accidents as well as military actions. As revised by a 1975 act (ch. 54) the term is defined as follows:

"Civil defense" shall mean the preparation for and the carrying out of all emergency functions, other than functions for which military forces are primarily responsible to prevent, minimize and repair injury and damage resulting from disasters, enemy attack, sabotage or other hostile action, or from riot, mob violence, power failure, energy emergency, or the threatened or impending happening of any of the above. These functions include, without limitation, firefighting services, police services, medical and health services, rescue, engineering, warning services, communications, radiological, chemical and other special weapons defense, evacuation of persons from stricken areas, emergency welfare service (civilian war aid), emergency transportation, existing or properly assigned functions of plant protection, temporary restoration of public utility services, and other functions related to civilian protection, together with all other activities necessary or incidental to the preparation for and carrying out the foregoing functions. (7-601)

A state civil defense agency is mandated, under control of the governor "acting through the adjutant general." Each political subdivision (defined to mean "any county, city or community having a civil defense agency") is "directed to establish a local organization for civil defense in accordance with the state civil defense plan and program," and each such "local organization . . . shall perform civil defense functions within the territorial limits of the political subdivision."

The governor is empowered to establish "mobile reserve units . . . to reinforce civil defense organizations," and the governing body or chief executive of each political subdivision is required "to cooperate and to assign personnel of their fire departments, police departments and all other departments and employees of such subdivisions to the mobile reserve units formed pursuant to this chapter upon request by proper authority, provided such requests shall be consistent with the resources of local subdivisions and the demands of maintaining minimum peace time standards of local service." (7-611)

In this event the state is required to "reimburse a political subdivision for the compensation paid and actual and necessary travel, subsistence, and maintenance expenses of employees of such political subdivision while serving as members of a mobile reserve unit, and for all payments for death, disability, or injury of such employees incurred in the course of such duty, and for all losses of or damage to supplies and equipment of such political subdivision resulting from the operation of such mobile reserve unit."

Each political subdivision is specifically authorized to make appropriations for "payment of expenses of its local organization for civil defense" (7-623). State matching grants are authorized for personnel and administrative costs, administered by the state office of civil defense and emergency preparedness, not to exceed in the aggregate the amount appropriated each year to this office. Any local programs must comply with federal requirements to be eligible for such grants, and no program can receive more than 12 1/2 per cent of the total appropriation. If an appropriation is insufficient to provide matching funds for all eligible programs, the available funds are to be prorated.

Two or more counties may form a "multiple county organization" with jurisdiction over the territorial limits of the counties and beyond under mutual aid arrangements. It would seem that counties would be the more logical units for organizing local civil defense organizations, to the exclusion of cities, because their territorial jurisdictions include the areas within cities (7-601—7-632)

Disaster relief

The governing body of a city may apply to the state disaster relief commission for financial assistance to cope with natural disasters when federal funds are not available; up to \$1,000,000 is authorized for a "declared localized disaster." Such grants are subject to the availability of sufficient funds in the contingency reserve account for civil defense and disaster relief. (7-1301—7-1318)

Ambulance service

A city (or county) may provide ambulance services as a governmental

activity or may regulate such services provided by private operators or nonprofit general welfare corporations. No county may provide, license, franchise or contract for such service within a city or in another county without approval of its governing body, and the same requirement applies to a city. (7-61-101—7-61-104) Liability coverage must be provided by insurance or creation of a special fund to pay claims (53-5105).

STREETS AND OTHER PUBLIC WAYS

Cities have long been liable in tort for injuries or damages sustained as a result of defects in streets and other public ways. Although cities formerly enjoyed immunity for "governmental functions," this was no help for maintenance of streets, a function classified as "proprietary." TCA 7-31-101, drawing from the Acts of 1859-60, imposes on all incorporated municipalities "the duty . . . to keep in good repair" any public highway through a city or to any public place therein.

Tennessee law on tort liability was substantially modified by the governmental tort liability act of 1973 (ch. 345, codified as TCA 23-3301—23-3331). This act, as amended in 1975, makes all cities, as well as counties, liable for tort actions, up to prescribed amounts and subject to certain conditions and limitations (see the chapter on "Tort Liability").

TCA 7-31-107—7-31-111 empower municipalities to condemn land for streets and outline procedural requirements therefor.

Plans, specifications and estimates for any public works project exceeding \$25,000 must be prepared by a registered architect or engineer (62-236).

TCA 7-31-113 empowers any municipality to include in a contract for paving a public way a requirement that the contractor guarantee "to maintain and repair the same for such time as the governing body or board thereof shall deem proper."

Ramps for handicapped persons

"Every incorporated city and town" is required to install ramps "at crosswalks, in both business and residential areas, when making new installations of sidewalks, curbs or gutters, or improving or replacing existing sidewalks, curbs or gutters," for the purpose of facilitating the movement of persons in wheelchairs or other handicapped persons. The bureau of highways of the state department of transportation is required to furnish design standards for such ramps, and construction must be in accordance with such standards. (7-31-114)

Damage or obstruction

Actions declared by state law to be misdemeanors include the following: removing or defacing a "post, or guideboard erected on any public way," putting up any "false post or signboard," removing or defacing a lamp or lamppost, throwing into streets or on sidewalks glass, metal objects "or banana peels," and obstructing a public way or sidewalk. If a

mayor and governing body of a city permit any such actions they "shall be guilty of a nuisance." (39-2301—39-2305)

State highways

All costs of designing, constructing and maintaining a state highway through a city are paid by the state and cities are prohibited by law from incurring any expense for these purposes, but the state may contract with a city for such work on a reimbursable basis. The state has the sole authority to select what streets will be designated as highways and to determine specifications for construction of highways. (54-5-201—54-5-205)

If a project will bypass or go through a city, a public hearing must be conducted, in a convenient location, before final plans are adopted (54-5-131).

Industrial highways

Cities are authorized to participate, with the state and county, in the construction and maintenance of highways needed to secure development of an industrial site or park, or to relieve traffic congestion connected therewith. The city will be responsible for the local share of the cost of such highways inside its jurisdiction. Any funds available to the city may be used for this purpose. (54-5-401—54-5-406)

Interstate highway system

Streets designated by the state as part of the interstate system must be maintained by the state. However, the city, not the state, has authority to maintain (and pay for) lighting systems on such streets; such lighting systems must meet state prescribed standards. (54-5-206)

If a city fails to enter into an agreement with the state concerning acquisition of rights-of-way for such streets or does not abide by such an agreement, the state may proceed on its own with the location and construction of such streets in a municipality. This includes the right to exercise the power of eminent domain and to adjust and/or relocate utility facilities. (54-5-207, 54-5-208)

No ordinance may be passed by a city which would cause the loss of federal aid funds to such streets (54-5-209). Cost of relocating utility facilities shall be borne by the state, provided the work meets state approval. (54-5-801—54-5-807)

If interstate connector routes are required, cities and counties may enter into construction agreements with the state. The city (or county) must agree to pay 50 per cent of the cost of the project and to assume all maintenance costs after construction is completed. The city must deposit with the state 50 per cent of the cost of right-of-way acquisition before any

land is obtained for the project; work will not be started until 50 per cent of the remaining cost is deposited with the state. Road or street funds are to be used for paying the local share of the project cost. 54-5-501—54-5-508)

Public bridges

A city and county may agree to construct and to share the costs of a free or toll bridge over any stream in or next to a municipality. Bonds may be sold to finance such a project. (54-11-222—54-11-224)

Controlled access streets

Cities have the authority to designate certain streets as controlled access facilities and to regulate entrance to and exit from them by construction of raised curbs, markers, etc. Construction of any commercial enterprise is prohibited on such streets. The same authority to designate and regulate extends to local service roads adjacent to controlled access streets. (54-16-102—54-16-109)

Cooperative transportation plans

Cities may enter into agreements with the state highway department and state planning office for development of a continuing comprehensive transportation plan to insure that projects reflect the needs and desires of local government. (54-18-101—54-18-104)

Scenic routes—height limits on buildings

Buildings (except silos or barns) constructed on designated scenic routes may not be higher than three stories if within 1,500 feet of the highway. (54-17-115)

Limitation on hot mix asphalt production

A 1976 act (ch. 767) prohibits counties and cities from owning or operating a hot mix asphalt plant or facility, but a facility in existence at the time the act was passed can be continued, replaced, expanded or altered. The product of any such plant or facility cannot be sold, traded, bartered, loaned or given away. The act is inapplicable in the following counties: Crockett, Davidson, Grundy, Madison, Marion, Overton and Shelby. (12-8-101)

PLANNING AND ZONING

Tennessee has been a pioneering state in this field. Laws enacted in the mid-1930's, with the drafting assistance of the TVA staff, have been nationally recognized as model legislation. In 1954 Public Administration Service published a widely acclaimed monograph "Mr. Planning Commissioner," written by Harold W. Miller, the executive director of the Tennessee state planning commission for some 23 years. This commission was reorganized as the Tennessee state planning office (TSPO) in 1972; its local planning division, with six regional offices and a professional staff of 75, provides technical assistance in this field to counties and cities.

Regional planning

The Tennessee state planning office (TSPO), with the approval of the local government planning advisory committee (LGPAC), may create and define the boundaries of planning regions. A regional planning commission of not less than five nor more than 15 members is appointed by the director of TSPO, with the approval of LGPAC, from nominations made by the chief elected official of the county and/or municipality in the planning region; members of the county and municipal legislative bodies shall number less than a majority and shall serve during their respective elected terms; the other (citizen) members are appointed for staggered four year terms.

Such a commission functions as a planning and advisory body for counties and cities within the region, and it may be designated by a municipality's legislative body to act as the municipal planning commission. A prime mission is preparation and maintenance of a regional plan; that part of such a plan approved by a municipal legislative body has the same force and effect as a plan prepared by a municipal planning commission. TSPO, with the approval of LGPAC, may vest such regional planning powers in a municipal planning commission with territorial jurisdiction not more than five miles from the boundaries of the municipality. (13-3-101—13-3-304)

All subdivisions in its region, not within the jurisdiction of a municipal planning commission, must be approved by the regional planning commission (providing it has adopted a regional plan or major road plan), under such regulations as it shall adopt (13-3-401 exempts subdivisions with tracts or parcels five acres or more in size).

Municipal planning commissions

A general law authorizes municipalities to establish planning commissions—it does not supersede private acts applicable to such commissions except as to the "legal status of the municipal plan." After such a

plan has been adopted by a municipal planning commission no public works can be "constructed or authorized" without its approval within 30 days (unless the municipal governing body extends this period); if disapproved a majority vote of the membership of the governing body or other public body is required to override.

Such a commission is to be composed of five to ten members, as determined by the "chief legislative body"; one is to be the chief executive officer (mayor, manager or other officer), one is to be a member of the "chief legislative body" selected by that body, and the remaining members are to be appointed by the chief executive officer for terms so that one member's term will expire each year; the chief executive officer may also remove any appointive member "at his pleasure." (13-4-101—13-4-203) The succeeding chapter (13-4-301—13-4-309) sets out guidelines and requirements for municipal planning regulations; this legislation is supplemental to and does not supersede private acts.

Subdivision regulation

Except in Davidson, Hamilton and Knox counties, curbs, gutters, or sidewalks cannot be required in a subdivision unless public water and sewage systems are to be made available within 18 months after a subdivider requests approval of his plan. (13-7-301)

Zoning

The "chief legislative body" of a municipality is empowered to adopt and amend a zoning ordinance, after 15 days' newspaper notice and a public hearing, "to regulate the location, height, bulk, number of stories and size of buildings and other structures, the percentage of the lot which may be occupied, the sizes of yards, courts and other open spaces, the density of population, and the uses of buildings, structures and land for trade, industry, residence, recreation, public activities and other purposes . . .," and to establish special districts or zones "subject to seasonal or periodic flooding . . . and such regulations may be applied therein as will minimize danger to life and property." A prerequisite to such action is submission of a zoning plan, the text of a zoning ordinance, and zoning maps by the municipal planning commission. Any change therein must be referred to the commission for approval, and if disapproved can be overridden by a majority vote of the entire membership of the legislative body; the same procedure applies to any amendment to the zoning ordinance.

The "chief legislative body" may provide for a board of zoning appeals of three to five members or may designate the municipal planning commission to act in this capacity. On such appeals exceptions may be authorized "in harmony with [the] general purpose and intent" of the zoning ordinance and "to interpret the zoning maps and pass upon disputed questions of lot lines or district boundary lines or similar ques-

tions as they arise in the administration of the zoning regulations." In addition to aggrieved persons, appeals may be taken by an affected "officer, department, board or bureau of the municipality."

These general law provisions are also declared to be supplemental to, and do not supplant or modify, any private acts for a particular city. To the extent not in conflict with such private acts, any city may utilize this general law. (13-7-201—13-7-210)

If a municipal planning commission has been designated as a regional planning commission, the city may exercise zoning powers beyond its boundaries and within the region (procedural requirements of notice to the county and public hearings are specified) if the county is not exercising such zoning power, and the city zoning is nullified at such time as a county may exercise its zoning powers. (13-7-302—13-7-306)

A 1965 act (ch. 222) authorizes creation of a special five member historic zoning commission to have jurisdiction over historic sites and buildings (13-7-401).

A 1978 act "takes precedence over any . . . ordinance to the contrary," and provides that a home for up to eight mentally retarded, mentally handicapped or physically handicapped persons, plus two additional persons acting as houseparents or guardians, may be maintained in any area zoned for "single family residence" use. Such homes "operated on a commercial basis" are excluded. (13-24-101—13-24-104)

A 1980 act (ch. 747) provides that a dwelling cannot be excluded from a residential zone solely because it was partially or completely constructed in a manufacturing facility; this provision does not apply to "factory-manufactured mobile homes constructed as a single self-contained unit and mounted on a single chassis" and as further defined in TCA 53-4822(2),(4) and (8).

"No municipal, county or regional planning commission or any municipal or county legislative body shall, by ordinance or otherwise, exclude the location or relocation of any facility used to provide telephone or telegraph services to the public. Such facilities shall include those essential to the provision of telephone and telegraph services such as central office exchanges and microwave towers which require a specific location in order to provide the most efficient service to the public. The exclusion of location from local regulation shall not preclude the exercise of reasonable municipal and county police powers including, but not limited to, permit requirements, landscaping, off-street parking or setback lines as an exercise of police powers." (Ch. 749, Public Acts of 1980)

Open space lands

Lower assessments are provided to encourage open space lands in urban areas. Owners can petition the county assessor to classify lands as

"agricultural" (minimum tract size, 15 acres), "forest" (min., 15 acres), or "open space" (min., 3 acres), and if so classified by the assessor the land is assessed and taxed accordingly; an appeals procedure is provided from adverse decisions by the assessor. A procedure is also provided for annual determination of the additional taxes that would be payable if the land were assessed at its real value, and if the land is subsequently converted to any other use such cumulative taxes for the preceding 3 years (agricultural and forest) or 5 years (open space) must be paid on the first assessment roll following such conversion. Municipalities and counties are also empowered to expend funds to acquire "the fee or any lesser interest . . . necessary to achieve the purposes of this Act." (67-652—67-658)

UTILITIES

Many Tennessee cities are operating utility systems under private acts. However, some have used general laws for this purpose, and those under private acts perhaps could shift to a general law if this should be deemed desirable. Some general laws are applicable to all cities. These general laws will be summarized in this chapter.

Eminent domain

Several statutes empower municipalities to condemn land and property rights, within and/or outside city limits, for utility purposes [7-34-104(1), 7-35-101, 7-52-105, 7-36-103(7), 23-1504].

Service beyond corporate boundaries

Any city is empowered to extend "any utility service specifically including waterworks, water plants and water distribution systems and sewage collection and treatment systems" beyond its corporate boundaries, providing proper charges are established "so that any such outside service be self-supporting." However, no city (or other utility agency) may "extend its services into sections of roads or streets already occupied by other public agencies rendering the same service so long as such other public agency continues to render such service." (7-51-401)

Water, sewage, electric, or gas systems

TCA 7-34-104 empowers any municipality to acquire, construct, extend, operate and maintain water, sewerage, electric and gas systems, within or without its corporate limits. If this statute is used, a city must abide by the condition prescribed in section 7-34-103 that the enterprise cannot be operated "for gain or profit or primarily as a source of revenue." If such system is to serve another city, that city's governing body must give its consent. Section 7-34-108 requires that services to the city shall carry the same rates as are applicable to other customers. The governing body is required to fix rates and charges so that the enterprise "shall be and always remain self-supporting" (7-34-114). The purposes for which revenues may be used are specified in section 7-34-115, and include the payment of tax equivalents to the city on property within the corporate limits not to exceed what the taxes would be under private ownership.

Sewerage system

Any city that has issued bonds secured by sewer revenues is empowered to require connection to an available sewer, and to discontinue water services (after 30 days' notice) as a means of compelling compliance

(7-35-201). This section also authorizes combined water and sewer bills, if the contractual obligations of water revenue bonds are not impaired, and the making of contracts with a water board or commission for collection of such bills (including discontinuance of water service).

Ch. 63 of the 1977 Public Acts declared a minimum base rate charge payable by all sewer users to be a tax, in an effort to qualify such charges as deductible items against an individual's Federal income tax. However, the Internal Revenue Service ruled that this tax did not change the status of such charges as users' fees and are not deductible.

Waterworks and sewerage systems

Any city may acquire, construct, extend, equip, operate and maintain a waterworks and/or sewerage system, within or without its corporate limits, under the provisions of TCA 7-35-401—7-35-432. The governing body may retain control of the system or place it under a five-member board appointed by the governing body for staggered five-year terms (or four members for staggered four-year terms and one member of the governing body). An existing gas system can also be placed under this board. In lieu of creating a new board, a water and/or sewer board in existence on or before April 11, 1933, can be vested with the powers and responsibilities of this statute. The governing body also has the option, "by proper ordinance," to elect to perform the powers, duties and responsibilities of such a board, which would have the effect of abolishing the board. The city is required to pay "the reasonable cost and value of any service" provided to it. Contracts with other cities are specifically authorized. Sewer fee increases cannot take place automatically when base water charges are increased, but must be separately adjudged reasonable and justified.

Electric system

TCA 7-52-101—7-52-203, incorporating the municipal electric plant law of 1935 and another 1935 act, is the law under which most municipal electric systems of the state are operated. A city that uses this statute for issuing bonds, unless it is under 2,000 in population or employs a city manager, must appoint a board of public utilities; the excepted cities may appoint such a board.

One provision is applicable to all cities: permission is granted to use "any right-of-way, easement, or other similar property right necessary or convenient in connection with the acquisition, improvement, operation or maintenance of an electric plant, held by the state or any other municipality"; consent for such use is required only from another municipality (7-52-104).

The mayor, with the consent of the governing body, appoints two or four members of the board of public utilities, for staggered four-year

terms, and also a member of the governing body (optionally the city manager, if the city has one) to serve during his term of office. The law makes no provision for abolishing such a board, and legislative action to amend this law would be necessary to authorize abolition. (7-52-107, 7-52-108)

The board has complete control of the electric system, but contracts (with TVA to adopt rate schedules, and for other purposes) must be approved by the governing body (7-52-201). The board may also be given jurisdiction over a water, sewerage or gas system, providing separate accounts are maintained for each system's expenses, revenue and property valuations. The city must pay the same electric rates charges to other customers.

Sections 7-52-301 and 7-52-302 fix the maximum amount of tax equivalents that can be paid by municipal electric systems not governed by private acts, using a formula too complicated to summarize here. Sections 7-52-303 and 7-52-304 control the sharing of such tax equivalents by counties and cities, unless a contract or private act provides otherwise.

Averaging bills

Any utility providing electricity, natural gas, or other fuel to more than 15,000 residential customers must permit payment of bills on a monthly averaging basis; each customer has the option on whether to use such a plan. (65-3501—65-3506)

Damage prevention

The Underground Utility Damage Prevention Act of 1978 prescribes a procedure for recording underground facilities (communications, electricity, gas, petroleum, hazardous liquids, water, steam, sewerage) with each county's register of deeds and notification of intended excavation or demolition. It is applicable to state subdivisions and instrumentalities. (65-3201—65-3212)

Postwar public works act

This act empowers any city, acting alone, or jointly with other cities, counties and/or the state, "to construct . . . operate and maintain any public works project" (7-36-103). Included in the definition of public works are some projects in the "utilities" category: gas and natural gas systems, reservoirs, waterworks, water distribution systems, sewers, sewerage and drainage systems, sewage disposal and treatment plants, and urban transit facilities.

The use of any "right-of-way, easement or other similar property right," held by the state or another municipality, for a public works project by any municipality, is authorized; consent is required only from another municipality (7-36-104). Construction cannot be undertaken in another

municipality without consent of its governing body (7-36-105).

Public transportation

Full powers to acquire, construct and operate any type of public transportation system are vested in counties and municipalities "or any combination thereof," by TCA 7-56-101—7-56-109. A transit authority may be created by ordinance or resolution, in which case it can exercise all of the powers delegated by these sections. Contracting for management of such an enterprise is specifically authorized, as an alternative to direct operation by a municipality/county/transit authority. Service can be extended beyond county lines, and with necessary approvals of their regulatory agencies into adjoining states.

A provision added in 1973 to empower a municipality or county by ordinance to reserve to its governing body the authority to approve the transit budget, fares and/or contract with a management firm apparently applies only with respect to a transit authority created to replace an existing authority set up under a private act (7-56-101).

Additionally, a municipality or county, or combination thereof, may empower a transit authority to "license and regulate all forms of public transportation" such as taxicabs and airport limousines. If an existing system is acquired a municipality/county/combination thereof/transit authority is empowered to make "fair and equitable arrangements" to preserve employees' benefits typically included in union contracts; collective bargaining and voluntary arbitration are also authorized. Strikes are prohibited by section 7-56-108.

Any municipality or county, or combination thereof, may pay a reasonable subsidy for operation by a public or private company, "the amount thereof to be wholly in the discretion of the governing body" (7-56-107).

The regulation, control and franchising of street railways or bus lines is vested by TCA 65-1601 in a municipality's governing body, which may delegate such power to a "municipal regulatory agency" or to the state public service commission. Such jurisdiction shall extend seven miles beyond a city's boundary for cities over 100,000 in population, four miles for those between 50,000 and 100,000, and two miles for those under 50,000. The operating company must obtain the consent of a municipality before using any of its streets (65-1605).

State grants, up to 25 per cent for one city of 5,000 or more or a county containing such a city, and up to 50 per cent for more than one such city or county, are authorized for mass transportation capital projects or technical studies. This program is administered by the area mass transit bureau of the state department of transportation, which is also given a legislative mandate of providing technical assistance to local

governments. Such a city or county is empowered to acquire, operate and maintain mass transportation facilities, or contract with private companies for such services. (13-7-201—13-7-209) A bureau of planning is also directed to assist, to the extent that available funds permit, in development of long range transportation plans (13-9-101, 13-9-102).

Relations with utility districts

Occasionally a city will have to deal with policy questions involving utility districts in its suburban fringe area. At least 10 days prior to a hearing on a petition to create a utility district, the county executive must send by registered mail a notice of such hearing to the mayor or other "chief executive officer" of any city that has a boundary within 5 miles of the proposed district's boundary if the city is over 5,000 in population, or within 3 miles if under 5,000 in population; such notice must also be sent if any city, regardless of size, has "any water, sewerage or gas service facility" within 3 miles of the proposed district's boundary. At the hearing the city may make known its intention of serving the area, whereupon the county executive must give the city 60 days to file its specific plans for doing so. When such plans are filed the county executive must determine a reasonable time (which he may later extend) for the city to provide such service, a decision that can be appealed by either party. The utility district can then be created minus the area to be served by the city or without authority to duplicate the city's service.

A similar procedure is provided with respect to extension of service facilities by existing utility districts, with priority given to a city within the same mileage limitations as above. The county executive likewise makes a determination of a reasonable time for the city to provide the service, which is subject to appeal.

The statute also provides a procedure for consolidating two or more utility districts and for transferring a utility district to a city (7-82-202, 7-82-302).

A city cannot extend its utility service within the boundaries of a utility district unless the county executive makes a determination that the "public convenience and necessity requires other or additional services" (7-82-301). This procedure could be used if a utility district has not become operational or if its services are so unsatisfactory to its customers as to cause them to prefer service from the city. Within 5 miles of a city over 5,000 and within 3 miles of a city under 5,000, the city has prior rights over a utility district, except within the district's boundaries and when the district is actually providing the service; a procedure is outlined in TCA 7-82-302 whereby a district can overcome this presumption of prior rights.

In the event of annexation a city is empowered to take over a utility district's facilities in the annexed area under agreed terms or as deter-

mined by arbitration. If so much of a utility district is annexed as to make operation of the remainder outside the city economically unfeasible, a city probably would have to choose between taking all or none of the district (6-51-111). The taking of facilities owned by an electric cooperative is subject to special rules as to compensation therefor (6-51-112). Before taking all or part of a utility district, a city incorporated after January 1, 1972, must hold a referendum (in the city) thereon (6-51-301)

Oil and gas exploration

Apparently induced by the energy crisis, the General Assembly in 1974 empowered municipalities to undertake oil and gas exploratory ventures:

Notwithstanding any other provisions of law, a municipality, its agencies or divisions thereof, may within or without the state of Tennessee engage in investigating, exploring, prospecting, drilling, and mining for and producing natural gas and oil and mineral by-products thereof, and to construct the appropriate facilities to produce, save, take care of, maintain, treat, and transport natural gas and oil and mineral by-products thereof, or to contract for same with any person, federal agency, municipality or public or private corporation. No municipality, its agencies, or division thereof, is granted any additional power of eminent domain to carry out the provisions of this section. (6-54-110)

Energy production

A 1975 act (ch. 204) empowers any municipality "to construct, purchase, improve, operate, and maintain within its corporate limits or within the limits of the county wherein it is located, an energy production facility or facilities for the production and transmission of energy for heating or cooling or processing purposes and the sale of such energy." Such a facility may utilize "fossil or other fuels." Bonds may be issued under TCA title 6, chapter 16, which must be fully retired from revenue produced by the sale of such energy. (7-54-101—7-54-105)

Private utilities

Privately owned and operated utilities are subject to regulation by the state public service commission. A franchise by a city to such a utility must first be approved by the commission, and appeals can be taken to it from regulatory measures imposed by cities. The commission cannot issue a certificate of convenience and necessity to a second company for service in the same area unless it first determines that existing services are inadequate. A city by ordinance may declare that public necessity requires the services of a competing utility. (65-407, 65-408, 65-417, 65-421).

Telephone lines

TCA 65-2101 grants privileges to certain corporations as follows:

Telegraph and telephone corporations may construct a telegraph or telephone line and erect the necessary fixtures along, or over, or under the line of any public highway, the streets of any village, town, or city, across, or over, or under rivers, or any land belonging to the state, or along, across, or under county roads, and also over the lands of private individuals in pursuance of the general law authorizing the condemnation of the easement of right-of-way for works of internal improvement as set forth in chapter 14 of title 23 of this Code; provided, that the ordinary use of such public highway, streets, or county road be not thereby obstructed or the navigation of said waters impeded.

Following a judicial ruling in 1906 that a city could bar a telegraph company from using its streets to install a telephone business (*Home Tel. Co. v. Nashville*, 118 Tenn. 1, 101 SW 770), an act of 1907 included the following:

While any village or city within which said line may be constructed shall have all reasonable police powers to regulate the construction, maintenance, or operation of said line within its limits, . . . yet no village, town, or city shall have the right to prevent said company from constructing, maintaining, and operating said line within said village, town, or city, so long as said line is being constructed, maintained, or operated within said village, town, or city, in accordance with said reasonable police regulations. (65-2103)

Power lines and pipelines

A law originally enacted in 1909 gives electricity, gas and oil suppliers the privilege of placing lines, wires and pipes as needed along city streets, lanes and alleys, "after having first obtained permission from the governing authorities thereof" (commonly referred to as a "franchise"). Excavations must be made "in such manner as to give the least inconvenience to the public, and shall be replaced with all possible speed by and at the expense of the corporation in as substantial manner as found before being excavated." (65-2205)

Consent to transfer of franchise

No public utility can acquire the franchises or property of another utility company serving a city without the "permission and consent, expressed officially in writing," of the city, "and then only upon such terms and conditions as the said municipal government may prescribe" (6-54-109).

Cable TV

Within limits established by the Federal Communications Commission cities can regulate cable TV and grant franchises for this purpose (e.g., a franchise fee in excess of 3 per cent requires FCC approval). MTAS' Municipal Technical Report No. 1, August 1973, was devoted to this subject, and is available to any city on request. A law was enacted in 1977 (7-59-101—7-59-108) that delegates regulatory power to cities (and counties for unincorporated territory) and prescribes conditions, rights and obligations of a city (or county) and holders of franchises to provide cable TV services.

Water treatment authority

A city (or county) is empowered to create, by resolution or ordinance, a water and wastewater treatment authority, to be administered under direction of a board of five members appointed by the chief executive officer and confirmed by the governing body. The city (or county) may transfer existing treatment works and obligations to such an authority. Such an authority may enter into agreements with local governments to accept transfer of and to operate treatment works. (53-6001—53-6017)

MOTOR VEHICLES

Emergency vehicles

Drivers of authorized emergency vehicles (including police cars and fire engines), when responding to calls or in pursuit of a suspect, may disregard speed limits, signs and signals, subject to certain limitations, but the law also declares that these "provisions shall not relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor shall such provisions protect the driver from the consequences of his reckless disregard for the safety of others." (55-8-108)

Traffic control signals

The design of traffic signals is established by state law: green means "go"; yellow is "caution"; and red means "stop." All signals must have a uniform arrangement of colored lenses: red lenses, in vertical signals above yellow and green lenses, and in horizontal signals to the left of yellow and green; yellow always between red and green lenses. Yellow lights must show for a minimum of three seconds, and a city is responsible for setting timers on signals it owns to comply with this requirement. Right turns on red lights are permitted unless a "NO TURNS ON RED" sign is posted. (55-8-110) Any agency of local government may stamp, etch or otherwise permanently mark on the back of signs, signals, etc., in letters of 1/4 to 3/4 inches in height, to indicate ownership of such items. (55-8-184)

Pedestrian traffic

Cities may, by ordinance, require pedestrians to comply with traffic control devices and prohibit the crossing of a street in a business district or a designated highway except at crosswalks (55-8-133).

Grade crossings protection

Cities, with approval of the state department of transportation, may erect stop signs at railroad crossings considered to be dangerous (55-8-146). The Tennessee Supreme Court has held that a general grant of police power in a city charter empowers the city by ordinance to require a railroad at its expense to install crossing gates or signals if these are reasonably required for the protection of motorists. *Southern Railway Co. v. Knoxville*, 223 Tenn. 90, 442 S.W.2d 619 (1968).

Establishing speed zones

State law prescribes speed limits, but the department of transportation can set lower limits on a basis of engineering and traffic investigation

when deemed necessary for public safety. A city by ordinance can set speed limits for highways and streets within the city, including federal and state highways; it may also install appropriate signs and traffic signals, subject to state approval if on a federal or state highway. (55-8-153)

Parking regulations

Parallel parking on the right is required, except that a city by ordinance may permit parking on the left on one-way streets and angle parking on any street; if on a federal or state highway the state department of transportation must approve angle parking (55-8-161). A disabled veteran or physically handicapped person, displaying a certificate or special license plate, is relieved "from liability for any violations with respect to parking" except parking in a designated fire lane. [55-8-160(e)]

Following fire apparatus

Drivers other than those on official business must stay at least 500 feet behind any fire apparatus answering a call and may not park in the same block as the fire equipment. No driver may cross an unprotected fire hose without permission from the fire department official in command. (55-8-168, 55-8-169)

Equipment on emergency vehicles

Every police and fire department vehicle must have a bell, siren, or exhaust whistle approved by the state department of safety or local police authorities (55-9-201). Blue flashing lights may be used only by full-time, salaried law enforcement officers (55-9-414).

Accident report

Any accident involving bodily injury or death, or damage to a person's property of more than \$200, must be reported. An investigating officer must send a copy of the report to the state department of safety within 24 hours after completing the investigation (a copy is to be kept in the district highway patrol office). Report forms are to be made available by the department to any city police department on request, and reports must be made on these forms. (55-10-107—55-10-111, 55-12-104)

Cancellation of traffic citation

Anyone who cancels a traffic citation or seeks to have one canceled, by any method other than that established by law, is guilty of a misdemeanor. Records of citations required by TCA title 59, chs. 8 and 10, and issued by city police officers, must be audited by the city's fiscal officer. (55-10-204)

State law and additional regulatory power

Cities by ordinance may adopt by reference any appropriate provisions of TCA 55-7-104 (operator's and chauffeurs' licenses), title 55, ch. 8 (Rules of the Road) and ch. 10 (accidents and crimes), and may impose additional regulations not in conflict therewith for the operation of vehicles within a city; violations of such ordinances would be handled as city offenses. Cities are also required to enforce this state law, so that any violations thereof which are not city offenses would be handled as state offenses. Certain offenses are made exclusively state offenses: driving while intoxicated or drugged, failing to stop after an accident, driving while license is suspended or revoked, and drag racing. (55-10-307, 55-10-308)

Vehicle weight

Maximum weight, height and length limits for trucks and trailer-trucks are established by state law, and it is unlawful for any municipal officer to permit any vehicle to exceed such limits on a public highway unless a special permit has been issued by the state commissioner of transportation (55-11-203).

Seized conveyances

The proceeds from sale of vehicles, aircraft, vessels or other conveyances forfeited because of use in commission of certain crimes are to inure to the benefit of a city if such property was seized by its law enforcement personnel (or jointly by them and county personnel). (40-4110)

Disposal of abandoned motor vehicles

TCA 55-16-103—55-16-109 provide the authority and procedure for cities to take possession and dispose of certain abandoned motor vehicles. Under this law, an "abandoned motor vehicle" is defined as one which is:

- (1) over four years old and is left unattended on public property for more than thirty days; or
- (2) regardless of age, is left illegally on public property for a period of more than 48 hours; or
- (3) regardless of age, is left on private property without the consent of the owner, or person in control of such property, for more than 48 hours.

When an abandoned motor vehicle also is over five years old and has no engine or is otherwise totally inoperable a city, if the vehicle is on city property, or any person upon whose private property it is found, may dispose of it to a demolisher without any notice to the owner, without holding any auction, and without producing any title. Otherwise, the

following procedure applies:

Any city police department may take into custody an abandoned motor vehicle found on public or private property. Such action must be reported immediately to the state motor vehicle division, on a form provided by that division, for verification of ownership. A police department taking into custody such a vehicle shall thereafter notify, within 15 days, by registered mail, return receipt requested, the last known registered owner of such vehicle and all lienholders of record that the vehicle has been taken into custody. The notice must describe the vehicle by year, make, model, and serial number; set forth the location of the facility where the motor vehicle is being held; and inform the owner and any lienholders of their right to reclaim the vehicle within three weeks after the date of the notice, upon payment of all applicable towing, preservation, and storage charges. The notice must also state that the failure of the owner or lienholders to exercise their right to reclaim the vehicle, within the time provided, shall operate as a waiver of all their rights, title, and interest in the vehicle and as consent for the sale of the vehicle at a public auction.

If the identity of the registered owner cannot be determined, if the registration contains no address for the owner, or if it is not possible to determine with reasonable certainty the identity and addresses of all lienholders, a notice by publication shall be made in a newspaper of general circulation in the area where the motor vehicle was abandoned. This publication notice must be made within the time prescribed for notice by registered mail and have the same contents required for a notice by registered mail.

Regardless of how notice is given, it must set forth the effect and consequences of the failure to reclaim the abandoned motor vehicle in a stated time. If an abandoned motor vehicle is taken into custody and is not reclaimed, the police department shall sell it at a public auction. The purchaser of the motor vehicle takes title free and clear of all liens and claims of ownership, receives a sales receipt from the police department and, upon presentation of such sales receipt to the state department of revenue, receives a certificate of title for the vehicle. The sales receipt only is sufficient title for purposes of transferring the vehicle to a demolisher for demolition, wrecking, or dismantling and, in such case, no further titling of the vehicle is necessary.

The proceeds of the sale of an abandoned motor vehicle shall be used for payment of the expenses for the notice and auction and the costs of towing, preserving, and storing the vehicle. Any remainder shall be held for the owner of the vehicle and any lienholders for 90 days. If not claimed, these funds shall then be deposited in a special account which shall remain available for the payment of expenses resulting from the impoundment and sale of other abandoned motor vehicles when the proceeds from such sales are insufficient to meet the expenses and costs.

When the chief fiscal officer of the city finds that money in the special fund is more than the reserves likely to be needed for such purposes, he may transfer the excess to the general fund. However, if the special fund thereafter becomes temporarily exhausted, claims against it shall be met from the general fund to the limit of any transfers previously made thereto.

This law also provides that motor vehicles left for more than 10 days in commercial garages, under certain circumstances, shall be deemed to be abandoned and shall be reported by the garagekeeper to the police department. Such vehicles may then be taken into custody by the police department and sold in accordance with the procedures outlined above, unless the motor vehicle is reclaimed and the garagekeeper is paid. The proceeds of the sale shall be first applied to the garagekeeper's charges for services, storage, or repair and any surplus proceeds shall be distributed as in the case of other sales.

It should be pointed out that this law does not authorize cities to go on private property to remove junk vehicles without the authorization of the owner or person in control of such premises. However, when such persons are willing to cooperate, this law does provide an efficient and expedient procedure for disposing of such vehicles by the city or the person owning or in control of the premises.

Highway safety programs

Municipalities of Tennessee are authorized to carry out highway safety programs within their jurisdictions if such programs are approved by the governor and are in accordance with the uniform standards of the secretary of commerce promulgated pursuant to the provisions of the federal highway safety act of 1966 (55-20-101).

CHAPTER 19

AIRPORTS

The state aeronautics bureau cooperates with federal and municipal governments in the development of aviation and aviation facilities (42-2-108). Engineering and other technical assistance is available from the bureau to any city or group of cities requesting help with the planning, acquisition, construction, improvement, maintenance or operation of airports [42-2-112(a)].

Funding assistance

The bureau may give financial assistance, in the form of a loan or grant or both, to any city or group of cities. Such funds are to be used for planning, acquisition, construction, improvement, maintenance or operation of an airport owned or controlled by a city or group of cities. [42-2-112(b)]

The bureau also is authorized to act as agent for a city or group of cities in obtaining and disbursing federal money and other public and private funds available to finance municipal airports (it must act as a municipality's agent for certain federal funds, but this is optional with a municipality if its airport has a minimum of 25,000 originating emplanements annually). At the request of a city or group of cities, the bureau may also act as agent in contracting and supervising airport construction, improvement, and maintenance, or elimination of hazards, regardless of the size of the facility. (42-2-112, 42-5-119)

Audits

Any city receiving state funds for its aviation program must allow the bureau to conduct audits of municipal books to make sure the money is being used properly. Refusal to permit such an audit or misuse of aviation program funds can result in the withholding of state funds. (42-2-134)

Approval of project applications

The bureau must approve any project application by a city for federal funds before the application can be submitted to the federal government (the only exceptions are cities maintaining larger than feeder, trunk line or secondary airports). If a project is approved, the funds must be received and disbursed by the bureau on behalf of the city. (42-2-135)

Payments for use of airports

A city or airport authority cannot require payment of a license fee, tax or other charge for any public use (landing or taking off) of an airport by planes weighing up to 12,500 pounds unless the aircraft is used by a

scheduled commercial airline. However, a charge can be made for overnight storage of aircraft. (42-2-140)

Permits for structures near airports

Local zoning regulations generally control the erection of structures near airports, but under certain conditions state permits are required. Permits are required if local zoning is not in effect. (42-2-141)

Land acquisition

Any city may use public funds to plan, establish, develop, construct, enlarge, improve, equip, operate, regulate, protect and police airports and air navigation facilities whether or not they are inside the boundaries of the city. A city may either use land already owned by the city or may acquire it through purchase, gift, lease or eminent domain proceedings. Land may also be acquired for aviation easements and/or to remove or protect against establishment of airport hazards.

A city may also acquire, by any of the above means, existing airport or air navigation facilities. However, if the facility is owned or controlled by the state or other public agency, it cannot be taken over without that agency's consent. (42-5-103, 42-5-104)

Municipal airports may be established on any public waters, submerged lands or reclaimed lands within or bordering on the territorial limits of the city. (42-5-105)

Air navigation facilities established by municipalities must be supplementary to and conform to the design and operation of state and federal facilities. (42-5-106)

Right of eminent domain

If a city owns or operates an airport, it is legally considered to be doing so for a public purpose (42-5-107). Property for such a facility can be acquired by eminent domain proceedings. The city cannot be prevented from going onto the land in question to make surveys and other examinations relating to the proceedings. It may take possession of the land at any time after proceedings have been initiated and may abandon such proceedings at any time prior to the entry of a final decree. (42-5-107, 42-5-108)

Disposing of airport property

Unless there are specific limitations included in grant or loan agreements, a city must sell or lease an airport or any portion of it in accordance with state laws or the city charter. If the facility is transferred to another governmental unit, however, disposal is on terms deemed by the city governing body to be in the best interest of the city. (42-5-109)

Operation and use agreements

Provided the public interest is protected, a city may enter into a contract or lease for use of all or part of its airport facility by a person or persons for a term not to exceed 50 years, unless other limitations are included in any loan or grant agreements. If the city operates the facility, the city establishes the terms and conditions of any agreements and fixes uniform charges, fees or rentals for the privileges, services, or uses of the buildings. In determining these charges, the city should consider the cost to the city of operating the facility. If the city wishes, it may contract with one or more persons to operate the airport as agent for the city, for a period not exceeding 50 years. (42-5-110)

To force payment for any charges for repairs or improvements the city makes to personal property, the city has liens on the property. (42-5-111)

Airport officer or board

Authority for planning, constructing and operating an airport may be transferred by the city governing body, by resolution, to an airport officer or board. However, the facility remains a responsibility of the city. (42-5-112)

Regulations

When a city acquires or establishes an airport, the local governing body may adopt ordinances and/or regulations necessary for managing the facility, whether or not it is within the city's boundaries, and may establish penalties for violations. The city may also appoint airport guards, with full police powers, to enforce its regulations. The airport is under the full control of the owner-city and no other city has any authority to charge a license fee or occupation tax on operations at the airport. All regulations adopted by the city must conform to state and federal laws and standards. (42-5-113)

Funding of airport development and operation

The city is authorized to levy and appropriate taxes or other funds for airport development and operation. If the amount is in excess of any charter limitation, the tax levy must be approved by a majority of the city's voters unless the levy is for the retirement of bonds.

Airport costs may be funded partially or fully from the proceeds of the sale of bonds issued by the city. Any fees, rents or other revenues pledged as security for bonds and fixed by the terms of a contract or lease cannot be revised during the term of the lease or contract except as provided in that document. (42-5-114--42-5-116)

Revenues received by the city from the operation or sale of an airport

may be used for any municipal purpose. (42-5-118)

Joint operations

One city may assist another city or group of cities in developing or operating an airport through a gift of land or personal property or a lease or loan with or without a charge or interest. (42-5-121)

Any two or more public agencies (including cities) may agree, by ordinance or resolution, to joint development and operation of an airport facility. The ordinance or resolution should specify the duration of the agreement; the proportionate interest each agency has in the property, facilities, etc., involved; the proportionate cost to be borne by each agency; conditions for termination of the agreement and methods for disposing of jointly-owned property and facilities; and liability for unpaid indebtedness.

A board may be established with members appointed by the participating public agencies. The size of the board and the terms and compensation of members should be prescribed in the joint agreement. The board would have the power to develop, operate and police the airport facilities in the names of the participating agencies. The board's budget would be subject to approval by the cooperating governing bodies no later than 30 days prior to the first day of the fiscal year. The cooperating governing bodies would also have to approve before the board could exceed its budget, dispose of any property or adopt any policing regulations. Eminent domain proceedings can be instituted only by authority of the cooperating governing bodies.

To provide the board with money needed to carry out its responsibilities, a joint fund should be established. Each participating agency must provide the share of the fund outlined in the joint agreement. Any federal or state contributions or loans and revenue from the operation of the airport would be paid into the fund. Disbursements would be made by order of the board. (42-5-121--42-5-205)

Airport zoning regulations

Cities have the right to prevent or eliminate airport hazards (structures, trees or land uses obstructing air space) because they endanger both public safety and the public's investment in airport facilities. In exercising this authority a city may adopt and enforce zoning regulations for airport hazard areas within city boundaries. If existing hazards cannot be eliminated under a city's police powers, it may do so "by purchase, grant or condemnation" as provided for condemning real property. (42-6-112, 42-6-113)

When municipally-owned airports are outside city boundaries, the city and county may develop joint regulations or the county may, by

resolution, authorize the city to adopt regulations.

If the city feels county regulations are not adequately enforced or if the county fails to adopt regulations, the city may, with state approval, adopt and enforce airport zoning regulations. If there is conflict between county and city regulations, those approved by the city will be in effect. (42-6-101--42-6-103)

Airport zoning plans must be certified by the state aeronautics agency and by the city/or regional planning commission before becoming effective. (42-6-105)

The procedure for adopting airport zoning regulations is much the same as for municipal regulations. A public hearing must be conducted before the ordinance is enacted or amended. Notice of the time and place must be published in a general circulation newspaper at least 15 days before the hearing. The ordinance cannot be amended without approval of the agencies originally certifying the ordinance or, if disapproved, by a favorable vote of a majority of the city council. (42-6-105—42-6-107)

A zoning board of appeals shall be established by the city council, which determines the method of appointing the three or five members and fixes their terms of office and compensation. The term of at least one member should expire each year. If the city already has a zoning board, this group may hear appeals from airport zoning regulations.

An appeal may be brought to the board by an individual or by an official department or agency affected by an act or decision of the enforcing official. The board has the power to:

- 1) Hear complaints and decide whether enforcement errors have been made.
- 2) Hear and decide requests for special exceptions or for interpretation of the zoning map
- 3) Hear and decide requests for variances based on undue hardship to a property owner.
- 4) Require an owner granted a hardship variance to allow the city, at its expense, to erect and maintain obstruction markers and lights.

Airport authorities

Any city may, by ordinance, establish a municipal airport authority and appoint five persons as commissioners. The first appointees are designated to serve for terms of from one to five years; thereafter each new appointee is named for a five-year term. Before the authority can become operative, it must apply for and be granted a certificate of incorporation by the secretary of state. This certificate is placed on record in the county register's office.

A regional authority may be created by resolutions passed by two or more cities, provided a public hearing is held in each municipality. Each municipality appoints one member and if the authority consists of an even number of cities, a member is named by the governor. Terms for all members are five years. Procedure for obtaining and filing the certificate of incorporation is the same as above.

Participation by cities in the authority can be increased or decreased, if the commissioners of the authority and holders of at least 60 per cent of any outstanding bonds consent. An amended certificate must be obtained from the secretary of state for any change in an authority.

Authority commissioners can receive no compensation for service but are entitled to expenses incurred. A chairman and vice-chairman are elected from among the commissioners. An executive director and other technical and supporting personnel may be employed. For legal services the authority may either use the attorneys of cities or employ its own counsel.

An airport authority has all the powers which would be exercised by a municipality operating an airport, except that of levying and collecting taxes or special assessments. (42-3-101—42-3-119)

Civil air patrol

Civil air patrol activities are considered to be in the public interest and cities may appropriate funds for them. (42-7-101)

TORT LIABILITY

In 1973 the Tennessee General Assembly enacted a comprehensive local government tort liability act (ch. 345, codified as TCA 23-3301—23-3331). The act was effective Jan. 1, 1974, and was made applicable only to claims or actions arising after that date. It applies to any political subdivision of the state, including any municipality or any instrumentality of government created by a municipality. Until its repeal in 1975, the act included a provision which exempted local governmental entities if their legislative bodies had acted by January 1, 1975, to claim the exemption.

For an understanding of the act, it is necessary to keep in mind the definitions of certain words used in the act. "Governmental entity" means any political subdivision of the State of Tennessee including, but not limited to, any municipality, metropolitan government, county, utility district, or school district, duly created and existing pursuant to the constitution and laws of Tennessee, or any instrumentality of government created by any one or more of the named local governmental entities or by an act of the General Assembly. The word "employee" means and includes any official whether elected or appointed, officer, employee or servant, or any member of any board, agency, or commission (whether compensated or not), or any officer, employee or servant thereof, of a governmental entity, including the sheriff and his employees. The word "claim" means any claim brought against a governmental entity or its employee as permitted by the act. The word "injury" means death, injury to a person, damage to or loss of property or any other injury that a person may suffer to his person, or estate, that would be actionable if inflicted by a private person or his agent.

The form of the legislation was "closed-end," i.e., it provided that governmental entities are not liable for their torts except as provided in the statute. TCA 23-3307 provides: "Except as may be otherwise provided in this chapter, all governmental entities shall be immune from suit for any injury which may result from the activities of said governmental entities and their exposure to liability, the act must be examined. The act discharge of any of their functions, governmental or proprietary."

In order to determine the activities engaged in by governmental entities and their exposure to liability, the act must be examined. The act prescribes certain procedures which a person having a claim for an injury must take before the governmental entity can be held liable, and there are also limitations placed upon the amount which a person may recover under the act.

Immunity from suit of governmental entities is removed for injuries resulting from the negligent operation by any employee of a motor

vehicle or other equipment while in the scope of his employment. For instance, a governmental entity is not immune from suit for injuries caused by the negligent operation of its garbage trucks, police cars, or fire trucks and equipment. However, this provision does not act as a repeal of TCA 59-8-101, 55-8-108 or 55-8-132, relating to the operation of authorized emergency vehicles, and the immunities provided by these sections are expressly continued.

Immunity from suit of a governmental entity is removed for any injury caused by a defective, unsafe, or dangerous condition of any street, alley, sidewalk or highway owned and controlled by the governmental entity. This provision does not apply unless constructive and/or actual notice to the governmental entity of such condition is alleged and proved in addition to the procedural notice, to be noted later.

Immunity from suit of a governmental entity is removed for any injury caused by the dangerous or defective condition of any public building, structure, dam, reservoir or other public improvement owned and controlled by the governmental entity. Immunity is not removed for latent defective conditions, nor shall this section apply unless constructive and/or actual notice to the governmental entity of such condition is alleged and proved in addition to the procedural notice, to be noted later.

TCA 23-3311 provides that immunity from suit of all governmental entities is removed for injury proximately caused by a negligent act or omission of any employee within the scope of his employment unless the injury:

- (1) arises out of the exercise or performance or the failure to exercise or perform a discretionary function, whether or not the discretion is abused;
- (2) arises out of false imprisonment pursuant to a mittimus from a court, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of mental anguish, invasion of right of privacy, or civil rights;
- (3) arises out of the issuance, denial, suspension or revocation of, or by the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order or similar authorization;
- (4) arises out of a failure to make an inspection, or by reason of making an inadequate or negligent inspection of any property;
- (5) arises out of the institution or prosecution of any judicial or administrative proceeding, even if malicious or without probable cause;
- (6) arises out of misrepresentation by an employee whether or not such is negligent or intentional;

- (7) arises out of or results from riots, unlawful assemblies, public demonstrations, mob violence and civil disturbances; or
- (8) arises out of or in connection with the assessment, levy or collection of taxes.

Since the removal of immunity from suit for injury caused by negligent acts or omissions of employees is an exception to the earlier provision in the act declaring total immunity, the eight listed exceptions in section 23-3311 are in effect categories in which governmental entities are immune from suit. Except for these listed categories, governmental entities are liable for any injury proximately caused by a negligent act or omission of any employee within the scope of his employment.

The remainder of the act prescribes the procedure for making claims against governmental entities, for determining liability, the limitations on liability, and the means by which claims or judgments may be satisfied. An important provision relates to liability of employees.

Under the act, any person having a claim for injury to person or property against a governmental entity or its employee must give written notice to the governmental entity as a condition precedent to any recovery from the governmental entity or employee. Such notice must be given by registered or certified letter by United States mail to the chief administrative officer of the governmental entity within 120 days after the cause of action arises. The letter must set forth with particularity the time and the place of the incident from which the claim arises, the nature of the injury sustained by the claimant, and the amount of damage the claimant seeks. This section shall not be strictly construed where the municipality has been reasonably apprised of the occurrence of the incident from which the claim results and, by such notice, with the exercise of proper diligence, the municipality could have apprised itself of the circumstances relating to the incident. Failure to comply fully with the notice requirements is a valid and complete defense to any liability of a governmental entity.

The next step in the procedure is action on the claim by the governmental entity or its insurance carrier. If the claim is denied or no action taken on it within 60 days after its receipt, the claimant may institute an action in the circuit court. This action must be commenced within twelve months after the cause of action arises. A significant provision of the act gives circuit courts exclusive original jurisdiction over any action brought under the act, and the action is heard and decided without intervention of a jury.

Suits filed under the act must be brought in the county in which said governmental entity is located. A governmental entity operating in more than one county shall be deemed to be located in the county where its principal office is found.

An officer or body appointed by the governing body of any govern-

mental entity may, subject to such regulations and procedures as may be prescribed by the governing body, compromise and settle any action for damages or relief sought under the act. If no such appointment has been made, the chief administrative officer of such governmental entity shall be deemed to have been appointed and to have such power.

The court, before holding a governmental entity liable for damages, must first determine that the act(s) of employee(s) was (were) negligent and the proximate cause of the plaintiff's injury, that the employee(s) acted within the scope of his (their) employment, and that none of the exceptions listed in TCA 23-3311 are applicable to the facts before the court.

Provision benefits employees

Another significant provision of the act is for the benefit of employees of governmental entities. No claim may be brought against an employee or judgment entered against an employee for damages for which the governmental entity is liable under the act unless the amount of damages sought or judgment entered exceeds the minimum limits set out in the act or the amount of insurance coverage actually carried by the governmental entity, whichever is greater, and the governmental entity is also made a party defendant to the action. Governmental entities are also authorized to insure any or all employees against all or any part of their liability for injury or damage resulting from a negligent act or omission.

Several sections of the act deal with payment of claims or judgments against governmental entities. Any claims approved for payment by a governmental entity or any final judgment obtained against a governmental entity shall be paid from funds appropriated or reserved for that purpose or in the discretion of the governmental entity may be paid in not more than 10 equal annual installments commencing the next fiscal year or in such other manner as is agreed upon by the claimant and governmental entity. Installment payments shall bear interest at six per cent per annum on the unpaid balance. If the judgment is below \$5,000, a lump sum payment must be made.

Joint reserve funds allowed

Any governmental entity may create and maintain a reserve or special fund or may jointly with one or more other local governmental entities make contributions to a joint reserve or special fund for the purpose of making payment of claims against the cooperating governmental entities when they become payable pursuant to the act, or for the purpose of purchasing liability insurance to protect the cooperating governmental entities from any or all risks created by the act.

Any governmental entity is authorized to purchase insurance to cover its liability under the act. Every policy or contract of insurance purchased

by a governmental entity as authorized by the act must provide minimum limits. TCA 23-3323 provides that no judgment or award rendered against a governmental entity may exceed the minimum amounts of insurance coverage for death, bodily injury and property damage liability specified in the act, unless such governmental entity has secured the insurance coverage in excess of the minimum requirements, in which event the judgment or award may not exceed the applicable limits provided in the insurance policy. Any governmental entity electing to self-insure its liability shall have the same limits of liability as if insurance had been purchased.

Minimum limits set

Every policy or contract of insurance purchased by a governmental entity as authorized by the act shall provide:

(a) Minimum limits of \$20,000 for bodily injury or death of any one person in any one accident and \$40,000 for bodily injury or death of any two or more persons in any one accident. However, in cases arising out of the ownership, maintenance, and use of automobiles, the minimum limits shall be \$50,000 for property damage or because of bodily injury or death of one person in any one accident, and \$300,000 because of bodily injury or death of two or more persons in any one accident. In the event a governmental entity is unable to purchase insurance to cover its obligations under the law, except through an assigned risk pool, then for purposes of TCA 23-3327 the limits of liability shall be \$10,000 for injury to any one person resulting from one accident and \$20,000 for all injuries resulting from one accident, with a limit of \$5,000 for property damages resulting from any one accident.

(b) A minimum limit of \$10,000, except as provided above, for injury to or destruction of property of others in any one accident.

The law is comprehensive, but it does not affect certain existing statutes. TCA 23-3305 exempts any action in eminent domain initiated by a landowner (inverse condemnation) under TCA 23-1423 and 23-1424, and states that there is no implied repeal of those statutes. TCA 23-3306 makes the law inapplicable to any action brought by an employee under the workmen's compensation laws of Tennessee.

Insurance

A group insurance plan to protect local governmental units under this law is sponsored by the Tennessee Municipal League; detailed information about this plan may be obtained from TML.

COUNTY FUNCTIONS RELATED TO CITIES

Various statutes empower county governments to provide services similar to or the same as those provided by city governments. Municipal officials should be aware of such laws, as they may offer opportunities for cooperative undertakings and consolidation of service activities. The manner of county financing of such services may also be of concern to a city, as the county property tax overlays a city's tax and is paid by city taxpayers and outside-city taxpayers alike (with some exceptions for rural school bonds and rural road levies).

The inequity of financing outside-city services from a county-wide tax levy payable by city taxpayers is obvious. The sheriff's office and county roads fall within this area of concern; the rationale usually offered for such financing is that the sheriff's jurisdiction includes cities and county roads are used by city residents and providers of products to the city's markets. A more clear-cut example of an inequitable situation is the former practice in Knox County of financing indigent hospitalization for outside-city residents from the county general fund; as a result of a lawsuit the county assumed this service for the entire county, and the City of Knoxville terminated its program which had been costing about \$1.5 million annually.

There is broad authority in the statutes for the joint exercise of powers by cities and counties, and for contractual agreements between the two levels of government (see "Intergovernmental agreements" in chapter 22).

Public works

The "county recovery and post war aid act of 1945" (5-11-101—5-11-124) empowers county governments, singly or jointly with other counties/cities/the state, to construct, operate and maintain a wide assortment of public works. Nearly as broad as the act for cities (TCA 7-36-102), the definition of "public works project" in 5-11-102 includes airports, public buildings, parks and recreation facilities, water and sewer systems, and industrial parks, in addition to many projects normally undertaken by counties. Bonds may be secured by the "unlimited taxing power of the county, or portion thereof as the case may be," or may be secured by revenues from projects only. General obligation bonds for certain projects, including "public buildings other than schools," must be retired by county-wide tax levies; if for schools outside of a city that maintains a city school system that tax levy cannot apply inside the city. If the county has a city that maintains its street system, the county governing body has the option of making a tax levy for county roads, bridges, etc. countywide or to apply only outside the city. (5-11-119) If revenue bonds are used, the

county must fix and revise from time to time "rates, fees or charges . . . so that such public works project shall be and always remain self-supporting." (5-11-120)

TCA 5-10-401—5-10-412 also empower a county government to construct, operate and maintain public works projects (unlike the foregoing statute joint undertakings with other units of government are not authorized). The definition of "public works projects" in 5-10-402 includes many projects typically undertaken by cities. The inclusion of "sewers, sewage disposal systems, and sewage treatment plants" is subject to a requirement of consent by the governing body of a city if located within three miles of the city's boundaries. "Water lines or mains" are authorized if connected to a city's water supply system with the consent of its governing body. Only general obligation bonds are authorized, to be retired by a tax levy countywide or "upon the taxable property in a portion only of the county."

"Urban type public facilities"

Such facilities are defined in TCA 5-16-101 to mean "sanitary and storm sewer lines and facilities, plants for the collection, treatment and disposal of sewage and waste matter, facilities and plants for the incineration or other disposal of garbage, trash, ashes and other waste matter, and/or water supply and distribution lines, facilities and plants, chemical pipelines and docks; and in counties having a population according to the 1960 federal census or any subsequent federal census of not less than 11,900 nor more than 11,925 [Wayne], of not less than 17,300 nor more than 17,500 [Hardin], and of not less than 600,000 [Shelby], fire protection."

Cooperative undertakings with other governmental units, including "municipalities, towns, utility districts and improvement districts within the county," are specifically authorized on such terms as may be "mutually advantageous" (5-16-107). Bonds may be issued under TCA 5-11-101—5-11-124, and may be general obligation, revenue, or a combination thereof.

Plans for any projects must be submitted to a regional planning commission, or, in the absence of such a commission, to the planning commission of the largest city in the county, and if neither of the former exist to the state planning commission, "for study and a written report" within 90 days or such extended period as the county governing body may fix. Following this, if a facility is to be located within five miles of any part of a city's boundary a resolution petitioning the city to provide the facility, together with a full report of the county's plans (engineering and financial feasibility reports, etc.), must be presented to the city; the county can proceed if within 90 days thereafter the city fails "to take appropriate action to provide a specified public facility or facilities in a specified area or areas." (5-16-111)

Provision for transfer of such facilities to a city in the event of annexation is made, including arbitration in absence of agreement; the statutory language is the same as that found in the annexation law (5-16-110).

Fire protection

The county governing body of any county (except a county under metro government) is empowered to create a "county-wide fire department" to be headed by a county fire chief appointed by and serving at the pleasure of such body (5-17-101, 5-17-103). Fire tax districts must be established by the governing body, and a property tax (in addition to the regular county tax) must be levied in each district to pay its allocated part of the department's expenses each year.

In addition to such direct fire protection services, a county utilizing this statute may (1) contract with cities to provide services without their corporate limits, (2) contract to provide services to cities, (3) provide emergency ambulance, first aid and rescue service, (4) make fire prevention regulations having the "force of law," (5) give aid in the event of fire, flood or other disaster, (6) assist local and volunteer fire departments, including "financial aid," (7) provide training and maintenance services to any fire department, and (8) set up a communications system for all fire and emergency units in the county. Reference is made to transfers to annexing cities as provided in the general annexation law. (5-17-102)

The obvious intent of this law, to require the costs of fire protection to be borne by the beneficiaries, has been countermanded by a later amendment to another statute (requested by the Knox County Commission in 1978) which empowers a county legislative body to appropriate funds to a non-profit volunteer fire department or to a fire department organized under TCA 5-17-101 [5-9-101(24)].

Refuse collection and disposal

Counties are empowered to provide collection and/or disposal services on a countywide or direct basis (5-19-101—5-19-116). A county agency may be given this function, or contracts for the service may be made with "any municipality, any utility or other service district, any private organization or any combination of such entities." Joint action with other counties and municipalities is also authorized. The county is empowered to make "regulations which shall have the force of law governing all collection and disposal operations and practices." If a district is established wherein such service is to be provided the full costs thereof must be paid from a tax levy within the district and/or charges levied on recipients of the service. A countywide property tax levy can be used "only if all persons in the county are to be equally served," and this is specifically prohibited if any city or special district within the county provides such services to its residents (5-19-108).

Recreation

TCA 11-21-101—11-21-109 is enabling legislation empowering counties "to acquire, develop, maintain, and make available to the inhabitants of the county, public parks, preserves, parkways, playgrounds, recreational centers, county forests, wildlife areas and other conservation areas, and to promote and preserve the health and general welfare of the people, to encourage the orderly development and conservation of natural resources, and to cultivate good citizenship by providing adequate programs of public recreation."

Building codes

Any county may adopt by reference the "rules and regulations which have been prepared by technical trade associations or model code organizations regulating building construction, plumbing and gas installation, any portion of such rules, or any amendments of such rules," after complying with certain procedural requirements (including filing three copies of such a code in the county clerk's office for 90 days prior to adoption, and published notice thereof). Such codes are applicable only in unincorporated areas of a county and in cities "which do not elect, now or hereafter, to adopt their own codes regulating the same subject areas." (5-20-101—5-20-106)

Zoning

After a regional planning commission has submitted a zoning plan, including the text of a zoning ordinance and zoning maps, a county may exercise zoning powers outside municipalities, but if the ordinance covers more or less than the area covered in the commission's plan it must be referred to the commission for approval; if disapproved by the commission the county legislative body must approve by a vote of two-thirds of its entire membership to override. Amendments can be made, after 30 days' notice and a public hearing, after being submitted to the regional planning commission for approval; if disapproved a majority vote of the entire membership of the body is required.

The county legislative body is also required to set up a county board of zoning appeals, composed of three or five members, to hear appeals and to "make special exceptions to the terms of the zoning regulations in harmony with their general purpose and intent." Appeals can be taken not only by aggrieved persons but also by "any officer, department or board of the county affected." The position of county building commissioner, with power to issue or withhold building permits, may be established by a county legislative body to enforce its zoning regulations. (13-7-101—13-7-115)

CHAPTER 22

MISCELLANEOUS

Private act charters usually enumerate a long list of corporate powers to be exercised by governing bodies and other municipal officers. Such a list of powers is found in TCA 6-2-201 for cities incorporated under the mayor-aldermen general law.

General laws granting miscellaneous powers to all cities include the following:

Appropriations to safety councils approved by the Tennessee Safety Council (7-51-501).

"It shall be the duty of the mayors, commissioners, councilmen, aldermen, chiefs of police, recorders, municipal judges, marshals, and policemen of each municipal corporation, to faithfully maintain and enforce. . .the statute laws relating to lewdness, drunkenness, gaming, and the sale and manufacture of intoxicating liquors. . ." (6-54-401).

Contributions from general funds may be made to a "watershed development authority" if all or a portion of it is located in the county in which the city is located, but no special tax therefor can be levied (6-56-108).

Conflicts of interest

No "officer" of a municipality can have a direct or indirect interest in any contract made with it, nor may he speculate in its bonds or "other evidences of indebtedness" (6-2-402, 6-54-107, 6-54-108). A similar prohibition applies to any "officer, committeeman, director, or other person whose duty it is to vote for, let out, overlook, or in any manner to superintend, any work or any contract in which any municipal corporation. . .shall or may be interested" (12-4-101). This law was the basis of voiding a contract in the case of *Newbern ex rel. Flowers v. Flatt et al.*, 503 S.W.2d 916 (1974).

Every candidate for an *elective* city office must file with the secretary of state a statutorily-prescribed report dealing with possible conflicts of interest. The report is due no later than 10 days after the last day for filing as a candidate, and annually thereafter on or before January 15; if no change has occurred the annual report may consist of simply a negative statement. (8-4125—8-4128).

Campaign financial disclosure

Candidates for elective municipal offices must file reports required by ch. 861 of the 1980 public acts, which comprehensively revised state law on this subject. A candidate for an office that pays less than \$100 per

month is exempt unless more than \$500 was spent. A candidate for a city's "chief administrative officer" must file regardless of salary or amount of campaign expenditures.

Relief of unemployment

The local economic adjustment act of 1975 (9-14-101—9-14-108) contains a broad delegation of power to cities (also counties and development districts) to accept grants and loans from the federal and state governments and to act jointly in "activities designed to alleviate or moderate existing or potential conditions of severe economic adjustment, resulting from termination or closure of major industries or firms, unemployment caused therefrom, and other hardships. . . and other conditions. . ."

National defense

Funds can be appropriated and real or personal property can be leased, loaned, sold or donated to the state and federal governments "for purposes of local, state and national defense and for the use of the national guard" (7-518).

Eminent domain

Powers of eminent domain supplemental to powers conferred by other laws are delegated to municipal corporations by TCA 23-1504, 23-1505, and 23-1528—23-1541. A handbook on this subject, *Eminent Domain in Tennessee*, by Charles E. Griffith III and Ogden Stokes, is available to cities from the Institute for Public Service, The University of Tennessee.

Reformatories

Cities may, in their discretion, construct and maintain "reformatory institutions for the reformation, correction, employment, instruction, and education of neglected, evil disposed, vicious, or incorrigible youths of both sexes" (37-401—37-459).

Public defender's services

A city may be reimbursed for expenses incurred by a public defender's office up to the amount determined by the executive secretary to the Supreme Court that the state would have otherwise spent to provide legal counsel to the indigent persons involved. (40-4028)

Industry and tourism promotion

The attraction of new industries and tourists to a community are often the objects of municipal endeavors, and the expenditure of municipi-

pal funds for such purposes is authorized. A city may appropriate from its general fund up to \$30,000 annually (\$60,000 if a joint effort with a county—presumably \$30,000 from each, but this is not explicitly stated). Additionally, a municipal governing body may levy up to a two cents tax rate to create a special fund for such purposes, or citizens may call for a referendum on such a tax levy by petition signed by five per cent of a city's registered voters. (6-54-201, 6-54-202) "Two (2) or more counties or cities or counties and cities" may jointly employ area industrial agents and "appropriate and expend funds" therefor (50-1511).

Municipalities may develop and maintain industrial parks, issuing bonds therefor under any one of several specified other acts and exercising the powers delegated in TCA 7-55-101—7-55-116 (industrial building bond act of 1955) and 7-53-101—7-53-309 (industrial development corporations act of 1955). Such a park may be controlled by the governing body or by a board or commission established by ordinance or resolution. Two or more cities can act jointly. (13-16-201—13-16-207).

Municipalities are authorized to make "voluntary contributions" to the staff division for industrial development, "to be known as Industrial Promotion Contributions," in amounts equal to 5 cents per capita, based on the most recent federal decennial census (4-14-107).

Libraries

General authority for cities and counties to maintain public library systems and to levy taxes therefor was included in a 1963 act (ch. 370). Joint action by cities and counties is also authorized. If a tax levy is countywide it must be shared on a population basis with any city library system supported by city taxes. (10-3-101—10-3-108) Participation by a city in a regional library system is authorized by TCA 10-5-101, and city appropriations therefor may be made under TCA 10-5-104.

Abandoned property

The Uniform Disposition of Unclaimed Property Act of 1978 governs the disposition of unclaimed or abandoned personal property by public agencies, including municipalities (the act does not apply to real property). The state treasurer is responsible for administering the act. (64-2901—64-2932).

Recreation

Municipal recreational programs are authorized by general law, including joint programs by two or more cities. The governing body of a city has the option of placing such a program under a recreation board or commission, a school board, or a park board. (11-24-101—11-24-110) Technical assistance in the operation of parks and recreation programs is available from the department of conservation. (11-9-108).

Forests

Cities are authorized to purchase and maintain lands for forestry purposes, under regulations approved by the state forester. The governing body is empowered to act after two weeks' public notice that such a plan is being considered. Control of the use of such lands and disposition of the income therefrom is vested in the governing body. (11-23-101—11-23-105).

Public building authority

To provide a means of financing a joint building for the City of Knoxville and Knox County, a 1971 act (ch. 126) empowers any city and/or county (except a county having a metropolitan form of government) to establish a public building authority, which can issue revenue bonds, lease building space, and take all other necessary actions as owner of such a building. Only a city and/or county can create such an authority, but after a commitment to lease space on the part of a city and/or county the jurisdiction(s) must make whatever tax levies are necessary to meet the terms of the lease. (12-10-101—12-10-123).

Intergovernmental agreements

Agreements for the joint exercise of powers may be entered into with other cities, counties, and other public agencies of the state and the federal government, providing the "powers, privileges or authority [are] vested in [the] governing bodies. . . of political subdivisions" (12-9-104). Governing bodies may likewise enter into contracts "with any one or more public agencies to perform any governmental service, activity or undertaking which each public agency entering into the contract is authorized by law to perform." (12-9-108)

Cemeteries

Cities may act as trustees for cemeteries or burial places inside the city boundaries, or within five miles of the city boundaries, when appointed to do so by any person or court of competent jurisdiction (46-3-101). A city may bring or join in a suit to terminate use of land as a cemetery and to have the remains of deceased persons removed and reburied elsewhere. Authority for taking such action, however, extends only to land within one mile of the city limits and not beyond the boundaries of the county or within another municipality. (46-4-103)

Housing

Extensive and detailed laws relating to housing authorities, urban renewal, slum clearance, etc. are codified in TCA title 13, chapter 20 (these laws are not being summarized in this publication). Permissive authority to make payments to persons relocated by public projects is

granted by TCA 13-11-111. A 1973 act (ch. 313) created the Tennessee housing rehabilitation corporation for the purpose of insuring mortgages and contracts of mortgage insurance and otherwise assisting in the provision of housing for low-income persons (13-22-101—13-22-114). Another act of the same year (ch. 241) created the Tennessee housing development agency and empowered it to issue bonds and otherwise raise capital funds for housing projects (13-23-101—13-23-132).

Gardening

Cities may participate in community gardening programs, primarily by providing suitable vacant land, administered by the department of agriculture through county extension agents. (43-24-101—43-24-108)

Dissolution

A city organized under the mayor-aldermen general law may be dissolved by a majority of the votes cast in a referendum on the question, called in response to a petition signed by 10 per cent of the registered voters in the city (6-2-501—6-2-506). Another statute provides for a special tax levy by the county to pay off any indebtedness, and also for succession if later the municipal corporation is resurrected in a new form (6-52-101—6-52-107). In a city under the commission-manager general law 20 per cent of the registered voters must sign such a petition, and the governing body continues to act as trustees to terminate its affairs (6-18-104, 6-18-112, 6-18-113). The same procedure is prescribed for a city under the modified council-manager law (6-30-104). Formerly cities organized under private acts could be abolished by private acts of the legislature, but this procedure became unconstitutional with the adoption of Amendment No. 7 in 1953, which includes a provision that "the General Assembly shall by general law provide the exclusive methods by which municipalities may be . . . dissolved. . . ."

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