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Municipal Handbook 2003

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Chapter 23: Countywide Growth Plan, Annexation and Boundary Adjustments, and Dissolution

Countywide Planning

A comprehensive growth policy plan that outlines anticipated new development during the next 20 years is required in each county. The initial draft of the growth plan is formulated by a coordinating committee whose members include representatives from the county, municipalities, utilities, schools, chambers of commerce, soil conservation districts, and other entities. The county and cities may propose boundaries for inclusion in the plan. After the growth plan is developed, the committee conducts public hearings and submits the plan to each city and county government for ratification. The committee may revise the plan upon objection from these local governments. If the governmental entities cannot agree on a plan, any one of them may petition the secretary of state to appoint a dispute resolution panel of administrative law judges to settle the conflict. Once adopted by the July 1, 2001, deadline, a plan may not be amended for three years except in unusual circumstances. The amendment process is the same as that for initial adoption (*T.C.A.* 6-58-104).

The plan identifies three distinct types of areas:

- Urban growth boundaries (UGB)–areas that contain the corporate limits of a municipality and the adjoining territory where growth is expected;
- Planned growth areas–areas outside incorporated municipalities where growth is expected (if there are such areas in the county) and where new incorporations may occur; and
- Rural areas–territory not within one of the other two categories that is to be preserved for agriculture, recreation, forest, wildlife, and uses other than high-density commercial or residential development (*T.C.A.* 6-58-101).

Annexation

Municipalities are empowered to annex territory by ordinance or by referendum (*T.C.A.* 6-51-101–114). *Public Acts 1998, Chapter 1101*, made substantial changes to the law governing annexation, based on whether the annexation occurs before or after adoption of the countywide growth plan required in that act.

Before Adoption of the Growth Plan (T.C.A. 6-58-108)

Annexation by Ordinance

Annexation by ordinance is preserved with certain limitations that generally relate to the right to contest annexations. There are two methods for contesting an annexation ordinance before adoption of the growth plan.

First Method: The county legislative body may contest the annexation, but only after completion of the first three of the following events:

1. Within 60 days of the final passage of the annexation ordinance the county passes a resolution disapproving the annexation;
2. Within the same 60 days, a majority of the property owners *within* the territory to be annexed petition the county to contest the annexation. Each parcel is counted only once; a parcel

with multiple owners is counted if the majority of the owners petition together. The county property assessor has 15 days after receiving the petition to determine if it represents 50 percent of the property holders. The assessor reports to the county executive and to the county legislative body whether the 50 percent threshold has been met. Successful completion of such a petition gives the county standing to contest an annexation ordinance;

3. The county legislative body may then adopt a resolution contesting the annexation and authorizing a suit. The suit must be filed within 90 days of the final passage of the annexation ordinance. Therefore, the resolution in most cases would need to pass in fewer than 90 days. Even if the petition is filed, the county is not required to file suit;
4. No-jury trial — Cases are tried by chancellor or circuit court judge without a jury; and
5. Burden of proof — The burden of proof is on the county to prove that the annexation is "... unreasonable for the overall well-being of the communities involved," or that "the health, safety and welfare of the citizens and property owners of the municipality and [the annexed] territory will not be materially retarded in the absence of such annexation."

Second Method: An aggrieved owner of property that *borders on* or *lies within* the territory proposed for annexation retains the right to contest the annexation under *T.C.A.* 6-51-103 under the following rules:

1. A property owner has 90 days to file suit, rather than the 30 days specified in *T.C.A.* 6-51-103; NOTE: Notwithstanding the statutory language that gives abutting landowners the right to challenge an annexation, *State ex. rel. Cordova Areas Residents for the Env't v. City of Memphis,* 862 S.W.2d 525 (Tenn. App.1992), held that part of the statute unconstitutional. For that reason, only the owners of property that lies within the territory proposed for annexation have standing to challenge the annexation;
2. Jury trial — Plaintiff is entitled to a jury trial; and
3. Burden of proof — The burden is on the city to prove the reasonableness of the annexation.

Annexation by Referendum

Cities still are entitled to annex by referendum under *T.C.A.* 6-51-104 and 105. However, if there are no residents in the territory, annexation by ordinance must be used, and the county may disapprove or intervene in the process as described above (*T.C.A.* 6-58-107).

After Adoption of the Growth Plan (T.C.A. 6-58-111)

Annexation by a City Within Its Urban Growth Boundary

After adoption of the growth plan the county loses its standing to contest annexations based upon the petition of property owners in the territory proposed for annexation.

Within its UGB, a city may use any of the annexation methods provided by Tennessee's annexation law contained in *T.C.A.* Title 6, Chapter 51. This includes annexation by ordinance and by referendum, as modified by the new law. As provided in those statutes, aggrieved owners of property that borders or lies within the territory annexed have 30 days to challenge an annexation. (But see NOTE, under "Second Method.")

After adoption of the growth plan the following rules govern challenges to annexations within the urban growth boundary:

1. Jury Trial — Cases are tried by

a chancellor or a Circuit Court judge without a jury; and

2. Burden of Proof — The burden of proof is on the plaintiff to prove that the annexation is "... unreasonable for the overall well-being of the communities involved" or that "the health, safety, and welfare of the citizens and property owners of the municipality and [the annexed] territory will not be materially retarded in the absence of such annexation."

Annexation by a City Outside its Urban Growth Boundary

A city may annex territory outside its UGB in either of two ways:

1. By obtaining approval of an amendment to its UGB in the same way that the original growth plan was established; or
2. By referendum, under *T.C.A.* 6-51-104 and 105.

Restrictions on Corridor Annexations (T.C.A. 6-58-108(b)(4))

Before Adoption of the Growth Plan

Before adoption of the growth plan, "corridor" annexations achieved by annexing public rights of way; easements owned by governmental or quasi-governmental entities, railroads, utility companies, or federal entities (such as TVA, DOE, etc.); or natural waterways are prohibited, except under the following conditions:

1. The annexed areas also include each parcel of property contiguous on at least one side of the right of way, easement, waterway, or corridor; or
2. The city receives approval by the legislative body of the county in which the territory proposed to be annexed is located; or
3. The owners of the property at the end of the corridor petition the city for annexation; the owners agree to pay for necessary infrastructure improvements to the property; the property is larger than three acres; the property is located within one and one-half miles of the existing boundaries of the city; and the corridor annexation is not an extension of any previous corridor annexation.

Restrictions prohibiting corridor annexations do not apply to annexation by referendum.

After Adoption of the Growth Plan

Restrictions on corridor annexations no longer apply after adoption of the countywide growth plan. Generally, however, *T.C.A.* 6-51-101 et seq. authorize challenges to annexation ordinances by *quo warranto* suits on the ground of the unreasonableness of the ordinance, and require that such challenges be brought within 30 days of the passage of the ordinance. But *State of Tennessee ex rel. Earhart v. City of Bristol,* 970 S.W. 2d 948 (Tenn. 1998), held that the 30-day limitation "does not apply to suits contesting the validity of an ordinance which purports to annex an area that does not include people, private property, or commercial activity and is, therefore, void." In that case, the plaintiffs were permitted on constitutional grounds to challenge certain "strip" annexations done in 1989, to which the plaintiff's property was joined to the city by annexation done in 1995.

Annexation by a City in More Than One County (Before and After Growth Plan Approval) (T.C.A. 6-58-108(e))

A city may, by ordinance upon its own initiative, annex only territory within the county in which the city hall is located. There are three primary exceptions:

- A municipality located in two or more counties as of November 25, 1997, may annex in all such counties unless the percentage of the city population residing in the county or counties other than the one in which the city hall is located is less than 7 percent of the total population of the municipality;

- A municipality may annex in the second county if the legislative body of the county in which the territory proposed for annexation is located approves the annexation by resolution; and
- The city may annex in any county in which, on January 1, 1998, it provided sanitary sewer service to 100 or more residential and/or commercial customers.

These restrictions do not apply to annexation by referendum. After growth plan approval, any annexation must also conform to the provisions of the growth plans in both counties.

Plan of Services (T.C.A. 6-51-102)

The plan of services requirements below apply to annexation ordinances that were not final on November 25, 1997.

Scope of the Plan of Services

The governing body of the annexing city must adopt a plan of services that outlines the services to be provided and their timing. The plan must be "reasonable" with respect to both the scope of services and the implementation schedule. The implementation schedule must provide for delivery of services in the new territory that are comparable to those provided to all citizens of the city. The plan must address the following services, whether or not the city currently provides them:

- Police and fire protection;
- Water, electrical, and sanitary services;
- Road and street construction and repair;
- Recreational facilities and programs;
- Street lighting; and
- Zoning services.

If the municipality maintains a separate school system, the plan must also include schools and the impact, if any, on school attendance zones. If the municipality does not have a separate school system, the municipality must provide notice to any "affected" school system at least thirty days before the public hearing on the plan of services.

The plan may exclude services that are provided by another public or private agency, other than those services provided by the county. The city may include services in addition to those required.

Submission to Planning Commission

Before adoption, the plan must be submitted to the planning commission, which must issue a written report on it within 90 days. The city's governing body is required to hold a public hearing on the plan after giving 15 days notice in a newspaper of general circulation in the city. The notice must include the locations where at least three copies of the plan are available for public inspection. If the city is in default on any other plan of services it may not annex any other territory.

Progress Report

Six months after the plan is adopted and annually until it is fully implemented, the city must publish a report on its progress toward fulfilling the plan and must hold a public hearing on the report. These reporting and hearing requirements apply to any plan of services that is not fully implemented.

Amending Plan of Services

A plan of services may be amended under limited conditions:

- An occurrence such as a natural disaster, an act of war, terrorism, or other unforeseen circumstances beyond the city's control;
- The amendment does not substantially or materially decrease the type or level of services or delay the provision of such services; or
- The amendment has received written approval by a majority of property owners by parcel in the annexed area.

Before any amendment is adopted, the city must hold a public hearing preceded by at least 15 days notice.

Challenging Plan of Services Before Adoption of Growth Plan

Before adoption of the growth plan, the county has standing to challenge the reasonableness of the plan of services in the same manner that it is allowed to challenge annexations before adoption of the growth plan. *T.C.A.* 6-51-102 does not make it clear whether property owners within the annexed territory have the right to challenge the reasonableness of the plan of services. However, because they have the right to challenge the reasonableness of annexations, presumably they could argue that the annexation is unreasonable on the grounds that the plan of services is unreasonable.

Challenging Plan of Services after Adoption of Growth Plan

The county loses its right to challenge the reasonableness of the plan of services after adoption of the growth plan. *T.C.A.* 6-51-102 does not make it clear whether property owners within the annexed territory have the right to challenge the reasonableness of a plan of services after adoption of the growth plan. However, because they have the right to challenge the reasonableness of annexations, presumably they could argue that the annexation is unreasonable on the grounds that the plan of services is unreasonable. But it is clear that any aggrieved property owner may sue the city to enforce the plan of services after 180 days following the date the annexation ordinance takes effect. The right to sue ends when the plan of services has been fulfilled. A property owner also may challenge the legality of an amendment to the plan of services within 30 days following adoption of the amendment. If an amendment is found unlawful, it is void, and the previous plan of services is reinstated.

Court's Powers with Respect to Plan of Services

If the court finds the plan of services to be unreasonable or outside the city's powers conferred by law, the city has 30 days to submit a revised plan of services. However, the city may request by motion to abandon the plan of services. In that case, it may not annex by ordinance any part of the territory originally proposed for annexation for 24 months. The city may not annex any territory by ordinance where the court has issued a decision adverse to a plan of services until the court determines whether the city is in compliance.

The court has a duty to issue a writ of mandamus to compel the city to comply with the plan of services, to establish written timetables for the provision of services, and to enjoin the city from further annexations until the services called for in the plan of services have been provided to its satisfaction. The city must pay the costs of the suit if the court finds the city has unlawfully amended a plan or failed to comply with a plan without cause.

Incorporation

After January 1, 1999, a territory may be incorporated only inside a planned growth area after the growth plan is adopted and only with the county legislative body's approval of the growth boundary and city limits (*T.C.A.* 6-58-108). After May 19, 1998, all newly incorporated cities became subject to the following four requirements:

- A new city must enact a property tax that raises revenue equal to at least the annual amount the city receives from state-shared taxes;
- The amount of *situs*-based wholesale beer and local option sales tax revenues generated in the territory on the day of incorporation must continue to be distributed to the county for 15 years,

just as if the territory were annexed (see discussion below under "Tax Revenue Implications");

- The city must develop a plan of services similar to that required for annexation; and
- The proposed city must meet the population and distance requirements established in *T.C.A.* 6-1-201 and *T.C.A.* 6-18-103 (*T.C.A.* 6-58-112).

Tax Revenue Implications of Annexation

When a city annexes territory, the county is "held harmless" for the loss of a portion of tax revenue that was distributed to cities under previous law. Revenue amounts generated in the annexed area by local option sales taxes and wholesale beer taxes that had been received by the county prior to the annexation continue to go to the county for 15 years after the date of the annexation. Any increases in these revenues generated in the annexed area are retained by the annexing municipality. (Note that this does not affect the distribution of the first half of the local option sales tax, which continues to go to education funding.) If commercial activity in the annexed area decreases due to business closures or relocations, a city may petition the Department of Revenue to adjust the payments it makes to the county (*T.C.A.* 6-51-115).

Miscellaneous Provisions

The law requires establishment of a joint economic and community development board to foster communication among all sectors of the community (*T.C.A.* 6-58-114, *T.C.A.* 7-2-101(4)).

The law also allows the creation of a consolidation commission upon petition of 10 percent of the county's voters. (Previous law required the county and principal city to call for a commission.) The provision also prohibits establishment of any new school system (*T.C.A.* 6-58-112).

The Tennessee Advisory Commission on Intergovernmental Relations (TACIR) is charged with monitoring the implementation of Public Act 1101 and reporting its findings and recommendations to the General Assembly (*T.C.A.* 6-58-113).

[NOTE: Large portions of the previous sections were reprinted from *Growth Policy, Annexation, and Incorporation Under Public Act 1101of 1998: A Guide for Community Leaders*, a joint publication by the County Technical Assistance Service, the Municipal Technical Advisory Service, the Center for Government Training, and TACIR.]

Lawsuit Venue

A suit contesting annexation of territory in a county other than the one in which the municipality's city hall is located must be filed in the county where the city hall is located. The chancellor must then change the venue to a county adjacent to either the county where the city hall is located or the county where the proposed annexed territory is located (*T.C.A.* 6-51-103(g)).

Effect of Annexation on Existing Utilities

See Chapter 16, "Utilities."

Boundary Adjustment

Two contiguous cities may adjust a common boundary by contract to eliminate confusion and uncertainty about its location or to conform the boundary to a terrain feature. Several compliance conditions are contained in *T.C.A.* 6-51-302.

Contraction of Boundaries

A city may contract its boundaries by ordinance after notice and public hearing, providing such action is approved by a majority of the total membership of its governing body. If 10 percent of the voters in the de-annexed area sign a protest petition, a referendum must be held in the area within

75 days. A majority vote determines the result. Another procedure for contraction requires approval by a three-fourths majority in a referendum, but whether this is to be held in the entire city or only the area affected is not specified (*T.C.A.* 6-51-201–204).

Dissolution

A city organized under any general law may be dissolved by a majority of the votes in a referendum on the question in response to a petition signed by 10 percent of the city's registered voters. At least two years must expire between holding such referenda (*T.C.A.* 6-52-201 et seq.).

The general law city manager-commission and modified city manager-council charters specify a higher percentage of a city's registered voters for a valid petition; whether this would prevail over the 10 percent requirement of the other law is uncertain (*T.C.A.* 6-18-108, *T.C.A.* 6-30-104).

Another statute provides for a special tax levy by the county to pay any indebtedness when a municipality is abolished and no new charter is granted and no reincorporation takes place. It also provides for succession if the municipal corporation is later resurrected in a new form (*T.C.A.* 6-52-101 et seq.).

Formerly, cities organized under private acts could be abolished by private acts of the legislature, but this procedure became unconstitutional in 1953 with passage of the Seventh Amendment. This includes a provision that "the General Assembly shall by general law provide the exclusive methods by which municipalities may be ... dissolved." There is no general law authorizing private act municipalities to dissolve, with the exception of the procedure in *T.C.A.* 6-52-401 et seq. That statute provides that the charter of a city of 100 or fewer inhabitants (according to the latest federal census) may be declared forfeited by a Chancery Court if the city has not held elections, levied property taxes, expended funds, or adopted a budget for a period of years.

Merger of Municipalities

Two contiguous municipalities in the same county may merge if a referendum approving the merger passes in both cities. The referendum may be initiated by a joint resolution of the two city councils or by a petition of 10 percent of the registered voters in each municipality. The resolution or petition must state the name of the new municipality and under what charter it will operate. The merger takes place 120 days after the referendum passes and new officials to govern the merged municipalities have been elected (*T.C.A.* 6-51-401 et seq.).

Chapter 24: Airports

State Department of Transportation Assistance

Engineering and other technical assistance is available from the state Department of Transportation to any city or group of cities requesting help with planning, acquiring, constructing, improving, maintaining, or operating airports (*T.C.A.* 42-2-203(a)).

Funding Assistance

The department may give loans, grants, or both to any city or group of cities. Such funds are for planning, acquiring, constructing, improving, maintaining, or operating an airport that is owned or controlled by a city or group of cities (*T.C.A.* 42-2-203(b)).

The department also is authorized to act as agent for a city or group of cities to obtain and disburse federal money and other public and private funds to finance municipal airports. It must act as a municipality's agent for certain federal funds, but this is optional if the municipality's airport has a minimum of 25,000 originating takeoffs annually. At the request of a city or group of cities, the department also may act as agent in contracting and supervising airport construction, improvements, maintenance, or elimination of hazards, regardless of the size of the facility (*T.C.A.* 42-2-203(c), *T.C.A.* 42-2-223, *T.C.A.* 42-5-119).

Governing of Airports

Airport Officer or Board

Authority for planning, constructing, and operating an airport may be transferred by resolution of a city's governing body to an airport officer or board. However, the facility remains the city's responsibility (*T.C.A.* 42-5-112).

Joint Operations

One city may help another city or group of cities develop or operate an airport through a gift of land or personal property, or by a lease or loan with or without interest (*T.C.A.* 42-5-121). Any two or more public agencies (including cities) may agree to jointly develop and operate an airport facility. An ordinance or resolution should specify the agreement's duration, the proportionate interest each agency has in the airport property, the proportionate cost to be borne by each agency, conditions for terminating the agreement, methods for disposing of jointly owned property, and liability for unpaid indebtedness.

A board may be established with members appointed by the participating public agencies. The board's size and the members' terms and compensation should be prescribed in the joint agreement. The board has the power to develop, operate, and police the airport facilities in the names of the participating agencies. The board's budget is subject to approval by the cooperating governing bodies, and the cooperating governing bodies must give their approval before the board can exceed its budget, dispose of any property, or adopt any policing regulations. Eminent domain proceedings may be instituted only by authority of the cooperating governing bodies (*T.C.A.* 42-5-201–205).

Airport Authorities

Any city may establish a municipal airport authority by ordinance and appoint between five and 11 commissioners. Before the authority can become operative, it must apply for and be granted a certificate of incorporation by the secretary of state.

A regional authority may be created by resolutions passed by two or more cities, provided a public hearing is held in each municipality. Each city and county appoints two members, and the airport commissioners appoint an extra member. If they cannot agree on the additional member, that member is named by the governor.

City participation in the authority may be increased or decreased with consent from the authority commissioners and holders of at least 60 percent of any outstanding bonds. An amended certificate must be obtained from the secretary of state for any change in an authority.

Authority commissioners may receive no compensation for service, but they are entitled to be reimbursed for expenses they incur. An executive director and other technical and supporting personnel may be employed. For legal services, the authority may either use the city's attorney or employ its own counsel.

An airport authority has all the powers that could be exercised by a municipality operating an airport except levying and collecting taxes or special assessments (*T.C.A.* 42-3-101–119).

T.C.A. 42-4-101 et seq. create and govern metropolitan airport authorities.

Funding of Airport Development and Operation

A municipality 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 retiring bonds.

Airport costs may be partially or fully funded from the proceeds 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 may not be revised during the term of the lease or contract except as provided in that document (*T.C.A.* 42-5-114–115).

Revenues received by the city from operating or selling an airport may be used for any municipal purpose (*T.C.A.* 42-5-118).

Airport Construction and Expansion

Authority to Use City Resources

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 city boundaries. A city may use land it already owns, or a city may acquire land through purchase, gift, lease, or eminent domain. Land also may be acquired for aviation easements and/or to remove or protect against airport hazards. County approval is required before a city may acquire property outside its corporate limits by eminent domain for an airport (*T.C.A.* 42-5-103).

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

The city may not be prevented from going onto the land in question to conduct surveys and other examinations relating to the proceedings. It may take possession of the land any time after initiating proceedings and may abandon such proceedings any time before a final decree is entered (*T.C.A.* 42-5-108).

Annexation of airport property
If three or more municipalities and counties jointly create a regional airport commission and the regional airport property is not located within a municipality's boundary, no municipality may annex any regional airport property without the prior consent of the legislative bodies of the participating municipalities and counties (*T.C.A.* 6-51-117).

The property of an airport with regularly scheduled commercial passenger service that is in a county rather than in the creating municipality is an annexation-free zone unless the annexation is approved by the governing body of the creating municipality (*T.C.A.* 6-58-116).

Construction Over Public Waters or Submerged Lands
Municipal airports may be established on any public waters, submerged lands, or reclaimed lands within or bordering the city's territorial limits (*T.C.A.* 42-5-105).

Airport Zoning Regulations

Cities must prevent and eliminate airport hazards (structures, trees, or land uses obstructing air space) because they endanger both public safety and the public's investment in airports. In exercising this authority, a city must adopt and enforce zoning regulations for airport hazard areas within city boundaries. If a city cannot eliminate existing hazards under its police powers, it may do so "by purchase, grant, or condemnation" of real property (*T.C.A.* 42-6-112 –113).

When municipally owned airports are outside city boundaries, the city and the 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 adopt and enforce airport zoning regulations with state approval. If county and city regulations conflict, those approved by the city will be in effect (*T.C.A.* 42-6-103).

Airport zoning plans must be certified by the state Department of Transportation and by the city or regional planning commission before they become effective (*T.C.A.* 42-6-105).

The procedure for adopting airport zoning regulations is much the same as for other zoning regulations. A public hearing must be conducted before an ordinance is enacted or amended. Notice of the time and place of the hearing must be published in a general circulation newspaper at least 15 days before the hearing. An ordinance may not be amended without approval of the agencies originally certifying the ordinance. If the ordinance amendment is disapproved by those agencies, it still may be adopted by a favorable vote of a majority of the entire membership of the city council (*T.C.A.* 42-6-105–107).

A board of zoning appeals shall be established by the city council, which determines the method of appointing the three or five members and fixes their terms and compensation. If the city already has a board of zoning appeals, it may be designated to hear appeals of airport zoning regulations under the terms and conditions contained in *T.C.A.* 42-6-108–109.

Permits for Structures Near Airports
Local zoning regulations generally control erecting structures near airports. However, state permits are required when local zoning has not been adopted to protect airspace around airports from tall structures and under certain other conditions (*T.C.A.* 42-2-227).

Operation and Use Agreements

Provided the public interest is protected, a city may enter into contracts, leases, agreements, grants, or other arrangements for use of all or part of its airport 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 (*T.C.A.* 42-5-110(a)).

A city may contract with one or more persons to operate the airport as an agent for the city for a period not to exceed 50 years (*T.C.A.* 42-5-110(b)).

The city may put liens on personal property to force payment for any charges, repairs or improvements the city makes on it (*T.C.A.* 42-5-111).

Miscellaneous Provisions

Restrictions on Charges for Use of Airports

A city or airport authority may not 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 "regularly scheduled aeronautics." However, a charge may be made for storing aircraft overnight, and a tax or fee may be collected for selling aviation fuel. Metropolitan airport authorities are exempted from this law, and the Department of Transportation may exempt others "for good cause shown" (*T.C.A.* 42-2-107).

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 that are in the city's best interests (*T.C.A.* 42-5-109).

Regulations

When a city acquires or establishes an airport, the local governing body may adopt ordinances and/or regulations to manage the facility and establish penalties for violations whether or not the airport is within the city's boundaries. The city also may appoint airport guards with full police powers to enforce its regulations. The airport is under the full control of the owner-city, but regulations adopted by the city must conform to state and federal laws and standards. An airport outside a city in Davidson, Shelby, Hamilton, and Sullivan counties is not subject to taxation by the jurisdiction in which it is located (*T.C.A.* 42-5-113).

Civil Air Patrol

Civil Air Patrol activities are in the public interest, and cities may appropriate funds for them (*T.C.A.* 42-7-101).

Audits

Any city receiving state funds for its aviation program must allow the state Department of Transportation to audit municipal books to assure the money is being used properly. Refusal to permit such an audit or misuse of aviation program funds may result in withholding of state funds (*T.C.A.* 42-2-222).

Chapter 25: Education

The Tennessee Constitution, Article 1, Section 8, and Article 11, Sections 8 and 12, require the General Assembly to maintain and support a system of free public schools that provides equal educational opportunity for all children. (Also see *Tennessee Small School Systems v. McWherter,* 851 S.W.2d 139 (Tenn 1993); also 2002 WL 31247076 (October 8, 2002)). Each county is required, and some municipalities are permitted, to operate a school system (*T.C.A.* 49-2-102, *T.C.A.* 49-2-401).

The Education and Improvement Act of 1991

The Education and Improvement Act of 1991 altered many aspects of school management, administration, and funding. The act authorizes establishing performance standards and incentive funding to reward schools that exceed the standards. The act establishes a method of measuring educational progress for teachers, schools, and districts and provides for school-based decisions. The act requires that by the year 2000, all school boards must be elected by district, and all school superintendents will be appointed by the school board. The act authorizes creating consolidation commissions to study school consolidations (*T.C.A.* 49-1-101 et seq.).

Municipal Operation

A number of municipalities operate school systems, under either their charters or general laws. In both cases, they are subject to considerable state regulation (*T.C.A.*, Title 49, Chapters 1-6, 10). *T.C.A.* 6-58-112(b) prohibits the establishment of new municipal school systems after May 19, 1998. Cities operating public schools under their charters and levying an additional elementary school tax for operating expenses (other than for grounds, buildings and equipment) are empowered to continue those operations under their charters, provided there is no transfer of children between city and county schools except by agreement between the respective boards of education (*T.C.A.* 49-2-404).

Municipalities that have school systems may, by referendum, levy a municipal school tax above the county school tax. City schools also are entitled to their proportionate share of state funds and county school taxes on the basis of average daily attendance. (*T.C.A.*49-2-103, *T.C.A.* 49-2-403).

Contractual Operation of Municipal Schools

Municipalities are authorized to enter into two kinds of contracts for the operation of municipal schools:

- A city school board and a county school board may enter into a contract for the county superintendent of education to supervise the operation of city schools. Such a contract does not alter the distribution of county and state funds to city schools, but the city is authorized to devote its school funds to payment of the proportionate cost of the maintenance of such schools. The indebtedness of the city school system remains the obligation of the city (*T.C.A.* 49-2-1001).
- The boards of education of two or more school systems are authorized to enter into a contract to establish, maintain and operate a public school or schools jointly. If the city does not have

a school board, the city's governing body may enter into the contract (*T.C.A.* 49-2-1101 et seq.).

Consolidation of School Systems

There are five methods of consolidating city and county school operations in Tennessee (not counting the two contractual methods of operating municipal schools outlined above):

- City-county consolidation (*T.C.A.* 7-1-101 et seq., particularly *T.C.A.* 7-1-108(18), and perhaps *T.C.A.* 7-21-101 et seq.);
- Transfer by referendum of a city school system to the county (*T.C.A.* 49-2-1002);
- Formation of a unification educational planning commission. This method involves an elaborate study of, and plans for, consolidation. The plan is subject to approval by the state Department of Education and the electorate in a referendum (*T.C.A.* 49-2-1201);
- The municipal school system ceases operation, forcing the county to assume operation of the system (*T.C.A.* 49-2-1002); and
- Multi-county consolidation, a method similar to *T.C.A.* 49-2-1201 (*T.C.A.* 49-2-1251).

Distribution of Funds

Generally, a city school system is entitled to a *pro rata* share of funds from the issue of county school bonds (including capital outlay notes) financed by a countywide tax levy, based on average daily attendance in county and city schools. That is true whether the bonds are issued under *T.C.A.* 49-3-1001 et seq. or *T.C.A.* 9-21-101 et seq. Cities are authorized to waive their right to a share of such funds (*T.C.A.* 49-3-1003, *T.C.A.* 9-21-109). However, if the county school project is financed by the county through a loan from the Tennessee State School Bond Authority for "qualified zone academy projects" under *T.C.A.* 49-3-1201 et seq., the county is not required to share the proceeds of the loan with the city school system.
A "qualified zone academy project" means "buildings, structures, improvements and equipment for schools of any local government" (*T.C.A.* 49-3-1202(8) and *T.C.A.* 49-3-1206(d)(2)).

T.C.A. 12-10-115(c) requires counties receiving proceeds from a lease, loan agreement, sales contract, or operating contract with a public building authority for school capital outlay purposes to share those proceeds with city school systems in the county just as capital outlay note proceeds are shared. Proceeds need not be shared by the county until they are received. The requirements of *T.C.A.* 12-10-115(c) do not apply in Shelby County.

Lottery Funds for Education Projects

T.C.A. 49-4-901, et seq. create a revolving loan fund to be used to finance K-12 educational facilities. One percent of lottery proceeds will be used as seed money that will allow the Local Development Authority to issue bonds for loans to local education agencies. Only local governments that are funding the local share of the Basic Education Program are eligible to participate in the loan program.

Board Policies on the Internet

Local boards of education must make their operating policies available on the board's Web site if the board has one and if the policies are kept in electronic format (*T.C.A.* 49-2-207).

Educational Records as Evidence

The "Educational Records as Evidence Act" enacts specific procedures for school records custodians to use in responding to a subpoena *duces tecum* for records in cases in which the school is neither a party nor the place where the cause of action allegedly arose (*T.C.A.* 49-50-1501 et seq.).

Enforcement of Compulsory Attendance Laws

A local education agency may make an agreement with the appropriate law enforcement agency to assist in the enforcement of compulsory attendance laws after meeting the restrictions set out in *T.C.A.* 49-6-3007(i).

Pledge of Allegiance

T.C.A. 49-6-101 requires the pledge of allegiance to be recited daily in each school classroom that has a flag. Local education agencies are encouraged to have a flag in every classroom. Students with religious or other objections are exempt from the recitation requirement but must stand quietly while others recite the pledge.

Miscellaneous Provisions

Use of Facilities

With the school board's permission, municipal school buildings and property may be used for public, community, or recreational purposes according to rules established by the board. No school official may be held liable for damages or injuries resulting from such use (*T.C.A.* 49-2-405). Another statute authorizes the state Board of Education to encourage such use of school facilities (*T.C.A.* 49-50-201).

Educational Cooperation

Local governmental units and boards of education may contract with each other to operate joint programs or build shared facilities. The program or facility may be administered by a separate legal entity, an administrator, or a joint board. Such agreements must be reviewed by the state attorney general and Commissioner of Education (*T.C.A.* 49-2-1301–1308).

T.C.A. 49-6-4302 allows local educational agencies to act in partnership with local law enforcement agencies in hiring school resource officers under a state grant program, the Safe Neighborhoods Act of 1998 (*T.C.A.* 38-8-115). Safe-school grants are available to each local education agency in the same percentage the local education agency's share of Better Education Program (BEP) funding bears to total BEP funding. Grants are subject to a 25 percent match and the filing of a proposed plan of spending.

Day Care

Boards of education may establish day-care centers in schools before and after the regular school day (*T.C.A.* 49-2-203(b)(11)). *T.C.A.* 71-3-501 et seq. contain extensive licensing and operational requirements for day-care centers that fall within that statute. A school system that operates day-care centers should consult that statute, the state Board of Education, and the state Department of Human Services, to determine whether its particular day-care program falls within the statute.

T.C.A. 49-2-203(b)(4)(B) authorizes municipal boards of education to lease unused portions of school buildings to private day-care centers under restrictions in that subsection.

Difference in Dropout Rates

Local school systems with more than 100 African-American students are urged to develop a plan to reduce the dropout gap if there is a 5 percent or more difference for three consecutive years between the systemwide dropout rate and the dropout rate for African-American students (*T.C.A.* 49-1-216).

Expulsion or Dismissal for Controlled Substance Possession or Violation

A student who unlawfully possesses any prescription drugs, stimulant drugs, or other controlled substances shall be expelled for at least one calendar year. The director or superintendent may modify this expulsion on a case-by-case basis (*T.C.A.* 49-6-4018).

A teacher convicted of a drug offense must be immediately suspended and dismissed (*T.C.A.* 49-5-511(c)(1)).

Teachers' Religious Rights

Subject to some limitations, teachers and other school employees may:

- Read religious books during noninstructional time;
- Quietly say grace before a meal;
- Wear religious garb or jewelry that does not interfere with the educational environment; and
- Meet with other school employees before or after school or during lunch break for religious study.

The limitations are that:

- Such activities do not interfere with other school employees;
- The religious exercises do not interfere with the educational process;
- Teachers and other school employees do not force others to participate; and
- The religious exercises do not infringe on the rights of others (*T.C.A.* 49-6-8001–8006).

Students' Religious Rights

The Tennessee Students' Religious Liberty Act's purpose is to:

- Clarify and set forth the religious liberty rights of students by statute;
- Aid students and parents in enforcing such rights;
- Create a "safe harbor" for public schools seeking to avoid litigation; and
- Allow free speech and religious liberty rights to the extent permissible under the Establishment Clause of the First Amendment to the U.S. Constitution (*T.C.A.* 49-6-2901–2906).

Among the students' rights contained in the act are the right in a public school to:

- Pray orally or silently, alone or with other students to the same extent and under the same circumstances as a student is permitted to vocally or silently reflect, meditate, or speak on nonreligious matters alone or with other students in such public school;
- Express religious viewpoints to the same extent and under the same circumstances that a student is permitted to express viewpoints on nonreligious topics or subjects in school;
- Speak to and attempt to share religious viewpoints with other students in a public school to the same extent and under the same circumstances that a student is permitted to speak and to attempt to share non-religious viewpoints with other students; and
- Be absent, in accordance with local education agency attendance policy, to observe religious holidays and participate in other religious practices to the same extent and under the same circumstances that a student is permitted to be absent from school for non-religious reasons.

These student rights are contingent upon the activity in question not:

- Infringing upon the right of the school to maintain order and discipline;
- Disrupting the educational process;
- Undermining educational curriculum and assignments;
- Harassing or coercing other people to participate in the activity; or
- Otherwise infringing upon the rights of other persons.

School Employees and Conflict of Interest

There is no conflict of interest that would prevent a school employee's spouse or family members from submitting sealed bids to the school system if the employee has no discretion in the selection of bids (*T.C.A.* 49-6-2003).

Investigations of Applicants for Teaching Positions

All applicants for teaching positions must agree to:

- Release all investigative records regarding their criminal history to the board of education;
- Submit a fingerprint sample and submit to a criminal history check by the Tennessee Bureau of Investigation; and
- Pay any reasonable expenses connected to such investigations upon the first application (*T.C.A.* 49-5-413).

Disclosing Student Records

The local education agency in which a transfer student seeks to enroll may require disclosure and copies of the student's records in accordance with the Family Education Rights and Privacy Act (12 U.S.C. 1232g et seq.), including disciplinary records from educational agencies where the student was previously enrolled (*T.C.A.* 49-6-3001).

School Age Lowered

An amendment to *T.C.A.* 49-6-3001 lowers the age at which students may begin public school from six to five.

Chapter 26: County Functions Related to Cities

Intergovernmental Agreements

There is broad authority in the statutes for cities and counties to jointly exercise powers and for contractual agreements between the two.

Any powers, privileges, or authority of a public agency in Tennessee may be exercised and enjoyed jointly with any other public agency of Tennessee, of any other state, or of the United States, providing (in the case of cities and counties) that this authority "shall apply only to such powers, privileges, or authority vested in their governing bodies" (*T.C.A.* 12-9-104).

Agencies of political subdivisions that have governing boards separate from the governing body (such as municipal Utility Boards) may enter into interlocal agreements for joint or cooperative action with other similar agencies and other public agencies. Governing bodies of political subdivisions must approve agreements made by their agencies before they take effect (*T.C.A.* 12-9-104(a)).

Governing bodies may likewise enter into contracts "with any one or more public agencies to perform any governmental service, activity, or undertaking that each public agency entering into the contract is authorized by law to perform" (*T.C.A.* 12-9-108).

Urban-Type Public Facilities

Counties are authorized to construct and operate "urban-type public facilities." This term means:

> *…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"* (*T.C.A.* 5-16-101).

Counties may operate these facilities directly through a county department, or they may create a board of public utilities (*T.C.A.* 5-16-102–103). Cooperative undertakings with other governmental units, including "municipalities, towns, utility districts, and improvement districts within the county" are specifically authorized when "mutually advantageous" (*T.C.A.* 5-16-107).

All project plans must be submitted to a regional planning commission or, in the absence of such a commission, the planning commission of the largest city in the county. If neither exists, plans must be submitted to the state planning commission. The planning commission receives the plans "for study and a written report" within 90 days or an extended period fixed by the county governing body (*T.C.A.* 5-16-112).

Following the planning commission review, 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 may proceed if the city fails "to take appropriate action to provide a specified public facility or facilities in a specified area or areas" within 90 days (*T.C.A.* 5-16-111).

Provision is made for transferring to a city rights, duties, property, assets, or liabilities in conjunction with such facilities in the event of annexation, including arbitration for disagreements. The statutory language is the same as that in *T.C.A.* 6-51-111 (*T.C.A.* 5-16-110). (See Chapter 16, "Utilities.")

Fire Protection

The governing body of any county (except a county under metropolitan government) is empowered to create a "countywide fire department" to be headed by a county fire chief appointed by and serving at the pleasure of such body. Fire tax districts may be established by the governing body and an annual fire tax levied in each district to pay its proportionate share of the department's yearly expenses. In this case, city residents may not be taxed unless they receive fire protection services from the countywide department. Alternatively, the county governing body may allocate other revenue from the general fund to provide fire protection to unincorporated areas of the county.

In addition to such direct fire protection services, a county using this statute may:

- Contract with cities to provide services outside corporate limits;
- Contract to provide services to cities;
- Provide emergency ambulance, first aid, and rescue services;
- Adopt fire prevention regulations having the force of law;
- Give aid anywhere in the county at fires, floods, or other disasters;
- Assist local and volunteer fire departments, including with financial aid;
- Provide training and maintenance to any fire department; and
- Set up a communications system for all fire and emergency units in the county (*T.C.A.* 5-17-101 et seq.).

Provision is made for transferring to a city rights, duties, property, assets, or liabilities in conjunction with such facilities in the event of annexation, including arbitration for disagreements (*T.C.A.* 5-17-102(18)).

Further authority for a county to contract with a city to purchase fire protection service is found in *T.C.A.* 6-54-601.

Refuse Collection and Disposal

Counties are authorized to provide refuse collection and/or disposal on a countywide basis. 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 also is authorized.

As with fire protection, districts must be established where refuse collection and disposal service are to be provided. The full costs must be paid from a tax levy within the district and/or charges levied on service recipients. A countywide property tax levy may be used "only if all persons in the county are to be equally served." This is specifically prohibited if any city or special district within the county provides collection and disposal services to its residents (*T.C.A.* 5-19-101–116).

Under the 1991 Solid Waste Management Act, counties are required to provide residents a collection system that consists, at a minimum, of convenience centers with certified operators and attendants (*T.C.A.* 68-211-851). (For further information on the Solid Waste Management Act, see Chapter 14, "Environmental Quality.")

Building Codes

Any county may adopt by reference the "rules and regulations that 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. Such codes are applicable only in a county's unincorporated areas and in cities "which do not elect, now or hereafter, to adopt their own codes regulating the same subject areas" (*T.C.A.* 5-20-101 et seq.).

Zoning

After a county's regional planning commission has submitted a zoning plan, including the text of a zoning ordinance and zoning maps, the county may exercise zoning powers outside municipalities.

The county legislative body also is required to set up a county board of zoning appeals with 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." 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 (*T.C.A.* 13-7-101–115).

Chapter 27: Tort Liability

Tennessee Governmental Tort Liability Act

In 1973, the Tennessee General Assembly enacted a comprehensive Tennessee Governmental Tort Liability Act (*T.C.A.* 29-20-101 et seq.). The act became effective January 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.

Definitions

1. "Employee" is "an official, officer, employee or servant, or any member of any board, agency or commission (whether compensated or not) or any officer, employee or servant thereof ..."; and "regular members of voluntary and auxiliary firefighting, police, or emergency assistance programs" (*T.C.A.* 29-20-102).
2. "Government employee" is (1) "a regular member of a voluntary or auxiliary firefighting, police, or emergency assistance organization of a governmental entity ...;" (2) "persons who are employed in part-time, seasonal, or probationary positions ... if they receive the same benefits or are subject to the same job protection system and rules as other persons employed by that government in comparable part-time, seasonal, or probationary positions ...;" (3) People upon whom has been conferred the status of employee under the Interlocal Cooperation Act (*T.C.A.* Title 12, Chapter 9) or as otherwise "duly authorized by law" (*T.C.A.* 29-20-107).
3. "Governmental entity" means any political subdivision of Tennessee, including, but not limited to, any municipality, metropolitan government, county, utility district, or school district duly created and existing pursuant to the state's constitution and laws; in Shelby County a nonprofit public benefit corporation operating a hospital whose board is appointed by a governmental entity; 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 (*T.C.A.* 29-20-102).
4. "Injury" means death, injury to a person, damage to or loss of property, or any other injury to a person or estate that would be actionable if inflicted by a private person or his or her agent (*T.C.A.* 29-20-102).

Expressly not an employee under the Tennessee Governmental Tort Liability Act is "any person who is not an elected or appointed official or a member of a board, agency or commission ... unless the court specifically finds that all of the following elements exist:

- "The governmental entity itself selected and engaged the person in question to perform services;"
- The governmental entity is liable for, and the person receives from the entity's payroll department, all his or her compensation;
- The person receives the same benefits, including retirement and insurance program eligibility, from the governmental entity;
- The person acts under the control and direction of the governmental entity as

- to both results and means and details by which the result is accomplished; and
- The person is entitled to the same job protection and grievance rules that apply to other employees.

Determination of Liability

The statute provides that governmental entities are not liable for their torts except as provided in the statute. The act states, "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 such governmental entities wherein such governmental entities are engaged in the exercise and discharge of any of their functions, governmental or proprietary. ... When immunity is removed by this chapter, any claim for damages must be brought in strict compliance with the terms of this chapter" (*T.C.A.* 29-20-201).

Waiver of Immunity

A governmental entity may waive its immunity from suit only by express provisions or endorsement of a policy or contract of insurance authorized by this law to cover its liabilities. The law also provides that any contract of insurance to cover liabilities under federal law shall not be construed or deemed to be a waiver of such immunity (*T.C.A.* 29-20-404).

Situations Where Immunity is Removed

Governmental entities are not immune from suit for injuries resulting from an employee's negligent operation of a motor vehicle or other equipment while in the scope of his or her employment. However, this provision does not repeal *T.C.A.* 55-8-101, *T.C.A.* 55-8-108, or *T.C.A.* 55-8-132, which relate to operating authorized emergency vehicles. The immunities provided by these sections are expressly continued (*T.C.A.* 29-20-202).

Governmental entities are not immune from suit 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, including any traffic-control devices. This provision does not apply unless constructive and/or actual notice to the governmental entity of the condition is alleged and proved (*T.C.A.* 29-20-203).

Governmental entities are not immune from suit 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 the condition is alleged and proved (*T.C.A.* 29-20-204).

Governmental entities may be sued for injury proximately caused by a negligent act or omission of an employee within the scope of his or her employment, unless the injury arises or results from:

- Riots, unlawful assemblies, public demonstrations, mob violence, or civil disturbances;
- Assessing, levying, or collecting taxes;
- Exercising or performing or failing to exercise or perform a discretionary function, whether or not the discretion is abused;
- False imprisonment pursuant to a *mittimus* from a court, false arrest, malicious prosecution, intentional trespass, abuse of process, libel, slander, deceit, interfering with contract rights, inflicting mental anguish, or invading right of privacy or civil rights;
- Issuing, denying, suspending, or revoking or failing or refusing to issue, deny, suspend, or revoke any permit, license, certificate, approval, order, or similar authorization;
- Failing to make an inspection or making

- an inadequate or negligent inspection of any property;
- Instituting or prosecuting any judicial or administrative proceeding, even if malicious or without probable cause;
- Misrepresentation by an employee, whether or not such is negligent or intentional; or
- Y2K-related computer failures occurring before January 1, 2005 (*T.C.A.* 29-20-205).

The nine exceptions listed above are categories in which governmental entities may not be sued for the negligent acts of their employees. 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 or her employment.

T.C.A. 29-20-201 grants immunity from suit to all members of boards, commissions, agencies, authorities, or other governing bodies of governmental entities arising from their affairs except for willful, wanton, or grossly negligent acts.

Procedures Under the Act

The remainder of the act provides the procedure for making claims against governmental entities, for determining liability, limitations on liability, and the means of satisfying claims or judgments. An important provision relates to employee liability.

A governmental entity or employee is given 60 days to answer or otherwise respond to a claim, action, or suit. If the claim is denied, the claimant may institute an action in the Circuit Court. This action must commence within 12 months after the cause of action arises. A significant provision gives Circuit Courts exclusive original jurisdiction over any action brought under the act (except in Shelby County where General Sessions Court has concurrent jurisdiction up to jurisdictional limits), and the action is heard and decided without jury intervention, unless a non-governmental defendant also is sued. In these cases, any party may request a jury.

Suits filed under the act must be brought in the county where the 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 located.

An officer or body appointed by the governing body of any governmental 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 the governmental entity shall be deemed to have been appointed and to have such power.

Before holding a governmental entity liable for damages, the court must first determine that:

- The employee act(s) was (were) negligent and the proximate cause of the plaintiff's injury;
- The employee(s) acted within the scope of his (their) employment; and
- None of the exceptions is applicable (*T.C.A.* 29-20-301–313).

Several sections of the act deal with paying 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. At the governmental entity's discretion, claims may be paid in not more than 10 equal, annual installments commencing the next fiscal year or in such other manner agreed upon by the claimant and governmental entity. Installment payments shall bear interest at 6 percent per annum on the unpaid balance. If the judgment is less than $5,000, a lump sum payment must be made (*T.C.A.* 29-20-312).

Protection for Employees
No claim may be brought or judgment entered against an employee for damages for which the governmental entity is liable under the act, except in alleged medical malpractice cases. No claim for medical malpractice may be brought or judgment entered against a health care practitioner for damages unless the amount sought or judgment entered exceeds either the minimum limits set in the act or the insurance coverage actually carried by the governmental entity, whichever is greater, and the governmental entity also is made a party defendant.

No claim may be brought or judgment entered against an employee for injury proximately caused by an act or omission of the employee within the scope of his or her employment for which the governmental entity is immune in amounts exceeding those established for governmental entities (see "Governmental Liability Caps") unless the act or omission was willful, malicious, criminal, for personal financial gain, or medical malpractice committed by a health care practitioner and the claim is brought against the health care practitioner. Only doctors and nurses are considered health care practitioners under the act (*T.C.A.* 29-20-310 (b) and (c).

Local governmental entities may insure any or all employees against all or any part of their liability for injury or damage resulting from a negligent act or omission, or they may indemnify their employees for claims for which the governmental entity is immune upon such terms and conditions as the local government may deem appropriate. Cities also may insure or indemnify volunteers working under the direction of an employee from claims for which the governmental entity is immune. The indemnification amount may not exceed the liability limits established for governmental entities, except for claims for which there is no liability cap (see "Governmental Liability Caps") (*T.C.A.* 29-20-310, *T.C.A.* 29-20-406).

Governmental Liability Caps
The act caps at specified dollar amounts the liability exposure of local governments for tort claims. Every policy or insurance contract purchased by a governmental entity must provide these minimum coverage amounts. The caps (or minimum coverage amounts) in the chart below apply in each accident.

Governmental vehicles may be considered uninsured motor vehicles. However, the applicable limits of liability for cities for claims arising out of the operation of a government vehicle are equal only to the limits of *T.C.A.* 29-20-311 (*T.C.A.* 56-7-1201(d), *T.C.A.* 56-7-1202(c)).

The law is comprehensive, but it does not affect certain statutes. Any action in eminent domain initiated by a landowner (inverse condemnation) under *T.C.A.* 29-16-123 and *T.C.A.* 29-16-124 is explicitly exempted

Date Cause of Action Arose	Liability Cap for Death or Injury to One Person	Liability Cap for Death or Injury to All Persons	Liability Cap for Property Damage
On or after July 1, 1987, but before July 1, 2002	$130,000	$350,000	$ 50,000 *(applies to causes of action arising on or after July 1, 1992)*
On or after July 1, 2002, but before July 1, 2007	$250,000	$600,000	$ 85,000
On or after July 1, 2007	$300,000	$700,000	$100,000

from the caps (*T.C.A.* 29-20-105). Similarly, the caps do not apply to any action brought by an employee under Tennessee's workers' compensation laws (*T.C.A.* 29-20-106).

Joint Reserve Funds Allowed: TML Risk Management Pool

The Tennessee Municipal League (TML) has established a liability insurance pool to serve member cities with low-cost, reliable liability coverage. Detailed information about the pool is available from TML.

Any governmental entity is entitled to create and maintain a reserve or special fund or, with one or more other local governmental entities, contribute to a joint reserve or special fund to pay claims against the cooperating governmental entities pursuant to the act, or to purchase liability insurance to protect the cooperating governmental entities from any or all risks created by the act (*T.C.A.* 29-20-401).

Recreation Liability

See the liability section in Chapter 20, "Parks and Recreation."

Community Service: Criminal and Juvenile Offenders

A municipality, its officers, and its employees will not be liable to the offender, his or her family, or other persons for acts of a state criminal law offender or a municipal ordinance offender performing public service work if the municipality exercised due care in supervising the offender (*T.C.A.* 41-3-107).

If a municipality or other organization exercised due care in supervising a juvenile performing community service work, immunity is granted to such entities for:

- Any injuries sustained by the juvenile;
- Injuries to others caused by the juvenile;
- Any act of the juvenile; and
- Liability for the juvenile or his or her family for death or injuries caused by the juvenile (*T.C.A.* 37-1-131(a)(7)).

Drug Task Force Members

A limited number of drug task force members are volunteer employees of the state for tort liability purposes (*T.C.A.* 8-42-101(a)(3)). *T.C.A.* 8-7-110 affirms the rights, powers, duties and immunities of these task force officers throughout the judicial district.

Annual Reports on Tort Liability Activities Required

Municipalities, counties, utility districts with more than 5,000 customers, human resource agencies, public building authorities, development districts, public hospitals, and nonprofit volunteer fire departments that receive funds appropriated by a county or municipal legislative body, human resource agency, public building authority, or development district must file an annual report of their tort liability activities for the previous fiscal year with, and on a form prescribed by, the state treasurer. The report is due March 30, 2001, and on March 30 each year thereafter for three years.

Emergency Communications District Boards

Emergency communications district boards organized under *T.C.A.* 7-86-105 are expressly declared immune from any claim, complaint or suit that relates to or arises from any conduct of the affairs of the board, except in cases of gross negligence of the board or its members. However, that immunity does not extend to any employee of the district (*T.C.A.* 29-20-108).

Chapter 28: Miscellaneous

Abandoned Property

The Uniform Disposition of Unclaimed Property Act of 1978 governs the disposition of unclaimed or abandoned personal property, defined as property in a political subdivision's possession that is unclaimed for one year. The act does not apply to real property and is most commonly used to reclaim utility deposits. The state treasurer is responsible for administering the act. Any holder of abandoned property worth $50 or more is required to keep a record of the owner's name and last known address for 10 years and to attempt to notify the apparent owner if there is an accurate address (*T.C.A.* 66-29-101 et seq.). Cities may request that property in the treasurer's hands that remains unclaimed be returned to the city under procedures outlined in *T.C.A.* 66-29-121(c). *T.C.A.* 66-29-129(b) sets a civil penalty equal to 10 percent of the value of the property each year it is not delivered to the treasurer. The penalty cannot exceed 25 percent of the value of the property or $50,000, whichever is less. These penalties do not apply to inadvertent omissions of property having a value of less than 10 percent of total reportable property.

Balloon Releases

Cities are specifically included in an act that prohibits releasing more than 25 nonbiodegradable, helium-filled balloons. Several counties are exempted from this act by population (*T.C.A.* 68-101-108).

Cemeteries

Cities may act as trustees for cemeteries or burial places inside the city boundaries or within five miles of the city boundaries when so appointed by any person or court of competent jurisdiction (*T.C.A.* 46-3-101). A city may bring or join a suit to terminate the use of land as a cemetery and to have the remains of deceased persons removed and buried elsewhere. Authority for taking such action, however, extends only to land within one mile of the city limits and not beyond a county's boundaries or within another municipality (*T.C.A.* 46-4-103). With approval by a resolution of the governing body, a cemetery company may purchase up to 200 acres of land within a city for perpetual use (*T.C.A.* 46-2-101).

Care of Children

Municipalities "are authorized and empowered to establish, erect, operate, and maintain homes for the care and treatment of dependent and neglected, unruly, and delinquent children, and to purchase services from any agency, public or private, which is authorized by law to receive or provide care and/or services for children" (*T.C.A.* 37-2-204).

City Recorder or Clerk Certification

With the exception of certain classes of clerks and recorders (lawyers, certified public accountants, city managers and administrators with a master of arts degree in public administration, and persons who have served as both a city recorder and city judge for at least twenty-five years), cities with populations of 1,500 or more that employ a municipal clerk or recorder are required to have one person meeting the certification qualifications established by the secretary of state. Certification requires at least 100 hours of education courses. Credit hours are given to those with associate's or bachelor's degrees.

Also, certification from the International Institute of Municipal Clerks satisfies the requirement (*T.C.A.* 6-54-120). Municipal clerks or recorders hired after July 1, 1994, are allowed four years to meet the certification qualifications. After attaining certification, a clerk or recorder must attend a minimum of18 hours of continuing education courses every three years to remain certified.

Conflicts of Interest

Municipal officers and employees are permitted to have an "indirect interest" in contracts with their municipality if the officers or employees publicly acknowledge their interest. An indirect interest is any interest that is not "direct," except it includes a direct interest if the officer is the only supplier of goods or services in a municipality. A "direct interest" is any contract with the official himself or with any business of which the official is the sole proprietor, a partner, or owner of the largest number of outstanding shares held by any individual or corporation. Except as noted, direct interests are absolutely prohibited (*T.C.A.* 6-2-402, *T.C.A.* 6-20-205, *T.C.A.* 6-54-107–108, *T.C.A.* 12-4-101–102).

Gardening

Cities may participate in community gardening programs administered by the Department of Agriculture through county extension agents. The city's primary role is to provide suitable vacant land (*T.C.A.* 43-24-101 et seq.).

Housing

Extensive and detailed laws relating to housing authorities, urban renewal, etc., are codified in *T.C.A.* Title 13, Chapters 20–23. These laws are not summarized in this publication.

The Tennessee Housing Development Agency (THDA) was created in 1973 and empowered to issue bonds and otherwise raise capital for housing projects (*T.C.A.* 13-23-101 et seq.). The state realty transfer tax and mortgage tax were increased in 1988 for THDA grants to cities and other eligible political subdivisions to construct and rehabilitate housing for low- and moderate-income families.

Libraries

Cities and counties have general authority to maintain public library systems and levy taxes for them. Joint action by cities and counties also is authorized. If a tax levy is countywide, it must be shared on a population basis with any city library system supported by city taxes (*T.C.A.* 10-3-101 et seq.). A city may participate in and make appropriations to a regional library system (*T.C.A.* 10-5-101–107). The state Library and Archives Management Board may enter into a contract for state/local matching funds to finance local library positions subject to approval by the local legislative body that appropriates library funds (*T.C.A.* 10-1-104).

Solemnization of Marriages by Mayors

Mayors may perform marriage ceremonies in all Tennessee counties and retain any related gratuities (*T.C.A.* 36-3-301).

Medical Assistance

Political subdivisions may appropriate funds directly to the Department of Health to provide medical services to recipients of public assistance or supplemental security income or to needy persons in similar circumstances (*T.C.A.* 71-5-131).

National Defense

Municipalities may appropriate funds and lease, lend, sell, or donate real or personal property to the state and federal governments "for purposes of local, state, and national defense and for the use of the National Guard” (*T.C.A.* 58-1-510).

Port Authorities

A municipality or any two or more municipalities acting jointly may establish a port authority (*T.C.A.* 7-87-101 et seq.).

Public Defender

A city may be reimbursed for expenses incurred by a municipal public defender’s office up to the amount the state would have spent to provide legal counsel to the indigents involved. This amount is determined by the executive secretary to the Supreme Court (*T.C.A.* 40-14-209).

Relocation Assistance

When a city construction project is undertaken with federal or state financial assistance and it requires residents to be moved from their homes or businesses to be moved from their locations, the city must follow the procedural and payment rules of the Uniform Relocation Assistance Act (*T.C.A.* 13-11-101 et seq.).

Safety Councils

Cities may make appropriations to safety councils approved by the Tennessee Safety Council (*T.C.A.* 7-51-501).

Unemployment Grants

The Local Economic Adjustment Act of 1975 broadly delegates power to cities, 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 ...” (*T.C.A.* 9-14-101–108).

Watershed Development Authority

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 may be levied (*T.C.A.* 6-56-108).

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

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