Report of the Tennessee Advisory Commission on Intergovernmental Relations

County Employees Serving on their County Commissions: Managing Conflict of Interest to Maintain Integrity and Trust

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Report of the Tennessee Advisory Commission on Intergovernmental Relations

County Employees Serving on their County Commissions: Managing Conflict of Interest to Maintain Integrity and Trust

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January 6, 2016

The Honorable Ken Yager
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301 6th Avenue North
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The Honorable Tim Wirgau
Chair, House Local Government Committee
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Dear Chairman Yager and Chairman Wirgau,

Transmitted herewith is the Commission's report on Senate Bill 466 by Senator Bell and House Bill 985 by Representative Rogers. The study was requested by the Senate State and Local Government Committee and the House Local Government Committee. The Commission chose not to recommend the bill and submits the attached report approved on January 6, 2016, describing alternatives for your consideration instead.

Respectfully yours,

Senator Mark Norris
Chairman

Lynnisse Roehrich-Patrick
Executive Director

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MEMORANDUM

TO: Commission Members

FROM: Lynnisse Roehrich-Patrick
Executive Director

DATE: 5 January 2016

SUBJECT: County Employees Serving on their County Commissions—Final Report for Approval

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The attached Commission report is submitted for your approval. The report responds to a request by the Senate State and Local Government and the House Local Government committees to study Senate Bill 466 by Bell and House Bill 985 by Rogers, which would disqualify all county government employees from serving on their county legislative bodies; the restriction would not apply to members elected before December 1, 2015. Current commissioners reelected on or after December 1, 2015, without an interruption in service, could continue to serve.

The report describes issues raised by the bill and ways to manage conflicts of interest that go beyond what is required by Tennessee law. Examples are drawn from the existing practices of Tennessee counties, previously introduced legislation, and other states' laws and include further restricting voting; restricting service on certain committees; specifically defining conflicts of interest in law; requiring written disclosure of conflicts when voting, ethics training, and local ethics committees; and authorizing state ethics commissions to enforce conflict of interest laws.

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Managing Conflict of Interest to Maintain Integrity and Trust

Those serving in leadership positions, whether public or private, will inevitably deal with ethical dilemmas or conflicts of interest when personal, professional, or public interests compete. Managing conflicts of interest, regardless of their source, is critical to good government. As discussed in a 2007 report by the Carl Vinson Institute of Government at the University of Georgia,

> [m]aintaining public trust in the integrity of government is essential to the success of democratic government. The public expects its elected officials and public employees to conduct themselves with integrity while working for the public good. Public trust in the integrity of government is cultivated when individual public servants act with integrity and the public is aware that they do. An ethical government is often seen by the public as a precondition for making good public policy; political ethics are one basis by which citizens judge official actions.

Managing conflicts of interest, regardless of their source, is critical to good government.

Citizens elect their governmental leaders and expect them to make objective decisions that benefit the general public and not their personal interests. Consequently, Tennessee has legal requirements in place to address conflicts of interest at all levels of government. The law prohibits all public officials and employees from having a direct financial interest in any contract or work that they vote on, let out, oversee, or superintend, and if they have an indirect financial interest they must publicly acknowledge it. For example, an elected leader who owns a business that contracts with the government would have a direct conflict of interest. The law is usually applied to purchasing and business contracts but is also interpreted to include employment contracts because employees would have an interest in their salary and benefits. All public officials and candidates are also required to submit disclosure statements of interests to the Tennessee Ethics Commission, and every city and county is required to adopt and submit a code of ethics.

Concerns remain that the current conflict of interest laws are not sufficient to protect the public interest when elected members of county legislative bodies are also employees of the county. Legislation introduced in 2015, Senate Bill 466 by Bell and House Bill 985 by Rogers, would disqualify all

county employees from serving on the county commission of the county that employs them; the restriction would not apply to members elected before December 1, 2015. Current law allows county employees to serve on their county commissions unless they hold a county-wide elected or appointed office, for example, mayor or executive, sheriff, trustee, register, county clerk, property assessor, trial court judge, any other county-wide office filled by vote of the people or the county legislative body, and director of schools. Although not as clearly stated, current law is generally interpreted to also prohibit service on commissions by employees who work directly for them, such as veterans' service officers and administrative assistants. Both the House Local Government and the Senate State and Local Government committees considered the bill and voted to send it to this commission for study.

County employees serve on 81% of county commissions in the 69 counties that responded to a June 2015 survey of Tennessee's 92 non-metropolitan counties.

Unlike Tennessee's municipalities and county governments in most other states, Tennessee's county structure is similar to the state and federal governments with separate legislative, executive, and judicial branches. This separation of powers lessens the possibility of direct conflicts of interest for commission members who may be county employees because they have only indirect influence over the non-legislative parts of county government. County commissioners who were county employees when they were elected can vote if they have a conflict of interest by making a public disclosure statement before they vote; those who became employees after they were elected cannot vote if they have a conflict of interest. Unlike county commissions, the legislative bodies of some cities have direct administrative control over operations, and the laws are different for their employees—city employees cannot serve on their legislative bodies unless those bodies vote to allow it.

Proponents of the legislation sent to the Commission say that county employees who serve on their county commissions might be biased toward county government and their own interests, including their salary and benefits, compromising the separation of powers. But opponents say that in some of the most rural counties, the schools and the county government are often the biggest employers, and forbidding county employees to serve on their commissions would eliminate some of the most able, knowledgeable, and willing candidates. In fact, county employees serve on 81% of county commissions in the 69 counties that responded to a June 2015 survey of Tennessee's 92 non-metropolitan-government counties. In about 28% of the counties that responded, county employees make up more than 20% of the total commission members; about 14% of all county commissioners are employees of their county governments. The Tennessee County Commissioners Association responded to this mix of concerns by creating an ad hoc committee to review the bill and related issues. It produced a recommendation to allow county employees to serve as county

commissioners but prohibit their voting on improvements in their pay or benefits or the pay or benefits of their spouses.

Even though citizens vote for candidates and choose their leaders, strong conflict of interest provisions are necessary to ensure that elected officials who are in a position to vote in their own best interest cannot do so at the expense of the broader public interest. And although there are situations in which the knowledge and expertise of public employees can make them valuable members of policy-setting entities like the state and county legislative bodies, employees who report directly to those policy-setting bodies should not be able to serve on them, nor should members of their staffs.

Conflict of interest provisions in the law could be strengthened to make conflicts more apparent and to further limit the situations in which commission members can exert undue influence to benefit themselves, their businesses, or their families. Examples from existing practices of Tennessee counties, previously introduced legislation, and other states' laws include further restricting voting, restricting service on certain committees, specifically defining conflict of interest in law, requiring legislators to disclose conflicts in writing when voting, requiring ethics training, creating local ethics committees, and authorizing state ethics commissions to enforce conflict of interest laws. In addition, sitting commissioners who subsequently accept county employment could be added to the list of those currently forbidden to serve; if so, they should be required to resign but allowed to run again in later elections.

Conflict of interest provisions in the law could be strengthened to make conflicts more apparent and to further limit the situations in which commission members can exert undue influence to benefit themselves, their businesses, or their families.

Ensuring Objectivity of Those Serving in Public Office

In a representative democracy, citizens govern themselves—they have power to run for office, support and vote for candidates, and choose those citizens who govern. When asked, citizens often say that local governments do a better job of representing their interests than other levels of government.[1] According to a 2014 Gallup poll, 72% of Americans have a fair amount or a great deal of confidence in their local governments. However, this trust suffers when legislators act more out of self-interest than general public interest. As James Madison said in the Federalist papers, legislators share a "communion of interests" with their constituents and cannot adequately represent the interests of constituents without also representing some of their own.[2]

According to a 2014 Gallup poll, 72% of Americans have a fair amount or a great deal of confidence in their local governments.

Conflict of interest in the public service is defined very broadly. The National Association of Counties (NACo)[3] says that a conflict of interest depends on whether a public official makes a decision that would benefit only the public interest or benefits the official personally, professionally, or financially. The *Encyclopedia of Public Administration and Public Policy* says,

> . . . public service requires action that is not "merely" legally, but also morally, principled. This is couched in terms of where the civil servant's loyalties must lie. While the legally defined aspects of conflict of interest can vary from one government entity to another, the ethical aspects do not. While road maps (written laws and rules) exist that, if followed, may allow someone to claim that a specific kind of conflict of interest does not exist, it is usually not so easy to justify actions that, looked at dispassionately, show a lack of regard for the public good. . . . There is an underlying moral obligation to do what is best for the public as a whole. This does not leave room for the erstwhile public servant to act egotistically, placing the needs of self, whether for money, power, position, or political advantage, ahead of the public's needs. To do so is antithetical to the concept of American public service, but it is the essence of what constitutes a conflict of interest in the public sector.[4]

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[1] http://www.gallup.com/poll/176846/americans-trust-local-government-state.aspx.
[2] Thompson 1995.
[3] NACo is a national organization that represents county governments. For more information, see http://www.naco.org/topics/about.
[4] Williams 2003.

Conflict of interest has also been defined more narrowly as "a clash between the public interest and private pecuniary interest" of a public official.[5] In its 2007 report *County Ethics Ordinances—An Analysis and Comparison for Gwinnett County, Georgia*, the University of Georgia's Carl Vinson Institute of Government[6] describes the context that gives rise to this issue:

> Conflict of interest laws generally seek to assist the general public in receiving an official's most objective, best efforts and to address possibly competing private interests or other influence. A general definition of "conflict of interest" is any situation in which someone in a position of public trust has competing professional or personal interests. To some extent, conflicts of interest at the local government level are to be expected, since local elected officials are commonly part-time public servants and necessarily have outside employment or business interest. . . . A conflict of interest may exist even if no unethical or improper behavior actually results from it.[7]

Conflicts for public officials can arise in many areas, including transacting government business, voting, accepting gifts, using confidential information, disclosing financial interests, and holding outside employment. In its 2003 report *Managing Conflict of Interest in the Public Service*, the international Organisation for Economic Co-operation and Development argues that "the primary task for governments and public organizations should be to recognize risks to good governance arising from conflict of interest and put in place robust measures for ensuring that conflicts of interest which arise are rapidly identified and resolved appropriately."[8]

Because eliminating all conflicts of interest is not realistic, the goal is to manage them. As the 2007 Carl Vinson Institute of Government report explains it, "an effective conflict of interest ordinance should ensure that public officials should have the ability to seek reasonable private gain to the same extent as the general public."[9] Tennessee's laws balance the public interest with the public officials' interest in private gain in several ways. For example, a county commissioner who is an architect or engineer at a private company could have a conflict with a contract for a new building

. . . "an effective conflict of interest ordinance should ensure that public officials should have the ability to seek reasonable private gain to the same extent as the general public."

Carl Vinson Institute of Government 2007

[5] Gardner v. Nashville Housing Authority of Metropolitan Government, 514 F.2d 38 (6th Cir. Tenn. 1975).
[6] The Institute provides education, assistance, research, policy analysis, and publications to assist public officials in serving citizens in Georgia and throughout the world.
[7] Carl Vinson Institute of Government 2007.
[8] Organisation for Economic Co-operation and Development 2003.
[9] Carl Vinson Institute of Government 2007.

development, or a commissioner who runs an equipment supply company could have a conflict with a purchasing contract for new equipment. These officials can serve but cannot do business with the county if they own the largest share of the business regardless of whether they abstain from voting on the contract.

Tennessee's law recognizes that local government employees have the same right as other Tennessee citizens to be candidates for public office with some exceptions. In some cities, the legislative bodies have direct administrative control over operations.[10] Consequently, the laws are different for city employees—they can't serve on their legislative bodies unless those bodies allow it by amending their charters or passing ordinances.[11] Metropolitan governments are treated the same.[12] Although Tennessee's three metropolitan governments are structured more like its county governments than like cities, with their executive and legislative functions independent and separate, that is by local choice, not by state law. It's not clear why their employees are treated more like city employees than county employees, and in fact, one of them has several commissioners who are local government employees.

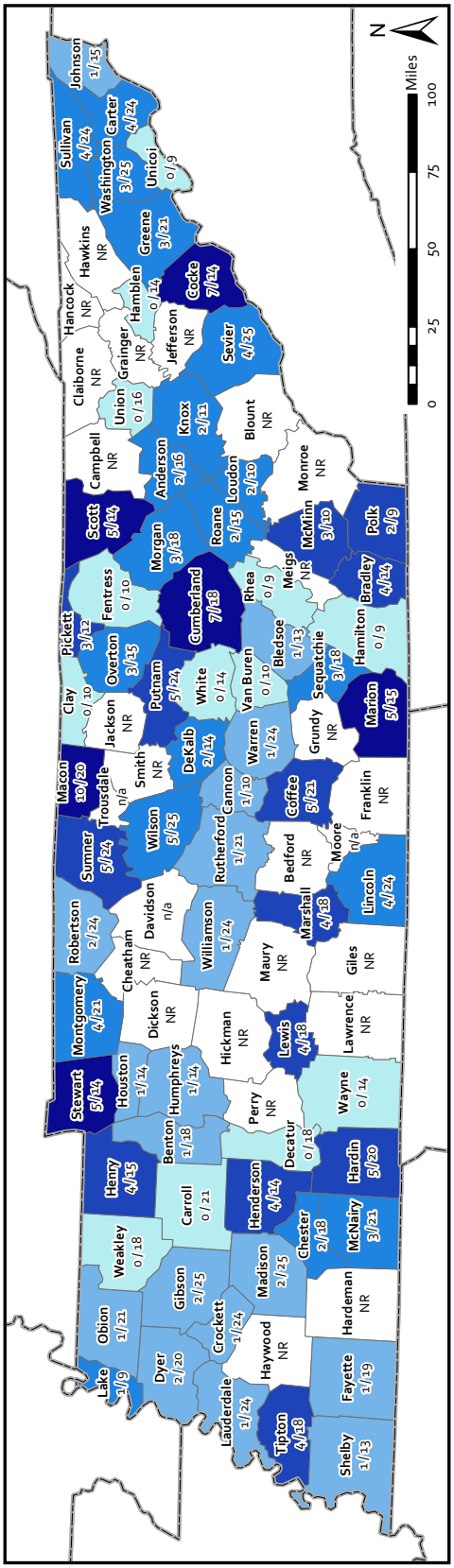
"... The aim should be to prevent personal gain from interfering with a member's independent judgment and from impeding the fair functioning of the legislative process. . . ."

Dennis F. Thompson 1995

Of the 69 county mayors and executives who responded to a June 2015 Tennessee Advisory Commission on Intergovernmental Relations survey, 81% have county employees on their commissions, and 14% of their commissioners are county employees. Eighty-eight percent of the employees serving were employees before they were elected. See appendix A for survey results by county. As illustrated in the following map, about 19% of responding counties have no county employees serving on the county legislative bodies, and in about 28% of responding counties, employees make up more than 20%. In Macon and Cocke counties, half of the commissioners are county government employees.

[10] Some legislative bodies in private act charter cities have administrative powers.
[11] Even when a municipality's charter prohibits employees serving on the legislative body, the legislative body can pass an ordinance allowing employees to serve without amending the charter.
[12] Tennessee Code Annotated, Section 7-51-1501.

County Commissioners Employed by their County Government
Based on survey of county mayors and executives



Percent of County Commissioners Employed by County Government

- 0% (13)
- 1% - 10% (18)
- 11% - 20% (19)
- 21% - 30% (13)
- 31% - 50% (6)

(Number of counties within each range in parentheses.)

NR (23): Counties that did not respond to the survey.

n/a (3): The three metropolitan counties, Davidson, Moore, and Trousdale, are not included because employees of these counties are prohibited from serving on their legislative bodies under current law.

#/# — number of commissioners who are county employees / total commission seats

Prohibitions Against Holding Incompatible Public Offices

In the absence of a controlling statute or constitutional provision, the legal doctrine of incompatible offices may determine whether a county employee can serve on the legislative body that employs them if that employee holds a position that is properly considered an "office." Not all government employees are officers—in fact, most are not—and the question of incompatibility doesn't arise unless someone holds at least two offices.

In the absence of a controlling statute or constitutional provision, the legal doctrine of incompatible offices may determine whether a county employee can serve on the legislative body that employs them if that employee holds a position that is properly considered an "office."

The Tennessee Supreme Court has held that a public "office" is a position in which the individual receives compensation and the term and duties of the office are defined in statute.[13] Examples of officers in Tennessee include probate judges[14] and notaries,[15] as well as the constitutional county officers of mayor or executive, sheriff, trustee, register, county clerk, property assessor,[16] trial court judge, and any other county-wide office filled by a vote of the people or the county legislative body, as well as the director of schools.[17] Examples of positions Tennessee courts have said are not offices within the meaning of this doctrine include veterans' service officers[18] and police officers.[19] If, however, the employee holds two positions properly considered offices, then the incompatibility doctrine may deem the first position vacated when the second position was taken.[20]

Whether two offices are incompatible "depends on the circumstances of each individual case, and the issue is whether the occupancy of both offices by the same person is detrimental to the public interest, or whether the performance of the duties of one interferes with the performance of those of the other."[21] An inherent inconsistency exists where one office is subject to the supervision or control of the other; for example, the offices of city manager and member of the city council are incompatible if the council has authority to appoint, remove, and supervise the city manager, and no statute permits the same individual to hold those offices.[22] See appendix

[13] Day v. Sharp, 128 Tenn. 340 (Tenn. 1913) and Wise v. Knoxville, 194 Tenn. 90 (Tenn. 1952).
[14] Marion County Bd. of Comm'rs v. Marion County Election Comm'n, 594 S.W.2d 681 (Tenn. 1980).
[15] Wheeler v. State, 56 Tenn. 393 (Tenn. 1872).
[16] Tennessee Constitution, Article VII, Section 1.
[17] Tennessee Code Annotated, Sections 5-5-102(c)(2).
[18] State ex rel. Lawson v. Farmer, 189 Tenn. 276, 225 S.W.2d 60 (Tenn. 1949).
[19] Wise v. Knoxville, 194 Tenn. 90 (Tenn. 1952).
[20] See appendix B for additional information.
[21] 67 C.J.S. Officers Section 38 (2008). See also Office of the Attorney General of the State of Tennessee, 2008, Opinion No. 08-177 and Austin 2010.
[22] State v. Thompson, 193 Tenn. 395, 246 S.W.2d 59 (Tenn. 1952) and Office of the Attorney General of the State of Tennessee, 2013, Opinion No. 13-63.

B for examples of offices and positions that can and cannot be held at the same time.

Existing Conflict of Interest Provisions

Tennessee's general conflict of interest law applies equally to all levels of government and covers both direct and indirect interests.[23,24] Personal financial interest is the key to determining both direct and indirect interests. An official who violates the conflict of interest laws must forfeit pay and compensation for the contract, is dismissed from office, and is ineligible for the same or a similar position for ten years.[25]

Constraints on Voting

Public officials and employees who vote for, let out, oversee, or superintend any work or contract are prohibited from having a direct interest in that work or contract. The law is usually applied to purchasing and business contracts but is also interpreted to include employment contracts because employees would have an interest in their salary and benefits.[26] A direct interest is any contract with the official personally or with any business in which the official is the owner, a partner, or the person with the largest share of the company. An exception to the general conflict of interest law allows persons other than members of county and municipal governing bodies to vote on budgets, appropriation resolutions, and tax rate resolutions, "unless the vote is on a specific amendment to the budget or a specific appropriation or resolution in which such person is directly interested."[27] This provision has been interpreted to allow state legislators but not city or county legislators to vote on budgets even if a direct conflict of interest exists.[28]

Personal financial interest is the key to determining both direct and indirect interests.

Officials can have an indirect interest in a contract and still vote on a related matter but must publicly acknowledge their interest, for example, at a public meeting when the governing body is discussing and voting on the contract. An indirect interest includes any contract in which an official is interested but not directly so, as well as "contracts where the

[23] Tennessee Code Annotated, Section 12-4-101.

[24] Counties can also choose to adopt private acts that are at least as strict as the general conflict of interest law or adopt an optional general law, such as the County Purchasing Law of 1957 or the 1981 Financial Management Act, which are both more stringent. See Tennessee Code Annotated, Section 5-14-101 et seq. and Section 5-21-101 et seq.; http://eli.ctas.tennessee.edu/reference/private-acts; and http://eli.ctas.tennessee.edu/reference/other-statutory-conflict-interest-provisions.

[25] Tennessee Code Annotated, Section 12-4-102.

[26] Libby McCroskey, Lead Legal Consultant, County Technical Advisory Service, interview with Jennifer Barrie, September 1, 2015. See also Office of the Attorney General of the State of Tennessee, 2011, Opinion No.11-50.

[27] Tennessee Code Annotated, Section 12-4-101(a)(1).

[28] Office of the Attorney General of the State of Tennessee, 2003, Opinion No. 03-034.

officer is directly interested but is the sole supplier of goods or services in a municipality or county."[29] Indirect interest is also interpreted to include contracts with officials' spouses if their assets are combined.[30] Because the definition of indirect interest is vague, anticipating how a court would interpret the law can be challenging, but Tennessee courts tend to defer to the judgment of elected officials. For example, the Tennessee Court of Appeals, Eastern Section, held in one case that city commissioners who owned property along the route of a proposed highway improvement did not have an indirect interest since there was no evidence of a contract or interest in a contract between the commissioners and the city.[31]

Tennessee's general conflict of interest law also includes an exception for employees who serve on the governing body of the city or county that employs them, depending on when they began their employment.[32] Local legislators who were government employees when they were elected may vote if they have a conflict of interest in a matter by making a statement before the vote:

> "Because I am an employee of (name of governmental unit), I have a conflict of interest in the proposal about to be voted. However, I declare that my argument and my vote answer only to my conscience and to my obligation to my constituents and the citizens this body represents."

Local government legislators who accept city or county employment after being elected cannot vote on a matter if they have a conflict of interest.

Local government legislators who accept city or county employment after being elected cannot vote if they have a conflict of interest. Tennessee Code Annotated, Section 5-5-102(c)(3)(B), requires members of county and municipal governing bodies who abstain from voting for cause on any issue before the body to inform the chairman, and the vote shall not be counted for the purpose of determining a majority. The vote of a member having a conflict of interest who does not inform the governing body will be void if challenged during the meeting and before any further business is transacted, although in interviews with staff, county mayors and others said this rarely, if ever, happens. The law doesn't say how challenges are to be handled, but in practice, the chairperson of the legislative body would likely consult the county attorney before deciding how to proceed.[33]

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[29] Tennessee Code Annotated, Section 12-4-101(b).
[30] Office of the Attorney General of the State of Tennessee, 2005, Opinion No. 05-017.
[31] Englewood Citizens for Alternate B v. Town of Englewood, 1999 Tenn. App. LEXIS 406 (Tenn. Ct. App. June 24, 1999). See also Office of the Attorney General of the State of Tennessee, 2013, Opinion No. 13-89.
[32] Tennessee Code Annotated, Section 12-4-101(c).
[33] Information gathered from interviews with several county mayors and Libby McCroskey, Lead Legal Consultant, County Technical Advisory Service, October 2015.

Disclosure Statements

According to NACo's 2009 *County Code of Ethics*, county legislators are typically required to file financial disclosure reports with either a state or a county office, using a form that includes an itemized source-of-income statement.[34] All Tennessee public officials and candidates are required to file disclosure statements of interests with the Tennessee Ethics Commission (TEC) listing lobbying activities, professional interests, all sources of income, and other financial information.[35] Although the TEC does not have authority to monitor or verify the content of the statements or enforce any penalties for behavior or conduct, it does issue civil penalties up to $10,000 for not filing or updating the statement on time.[36] Anyone can file a sworn complaint with the TEC about a violation of laws or rules within the commission's enforcement authority.[37]

Codes of Ethics

City and county governments are required to adopt ethical standards addressing acceptance of gifts and disclosure of conflicts of interest, make them available to the public, and submit them to the TEC.[38] The standards cannot contradict existing law and must be at least as restrictive. The law applies broadly to all local public agencies and departments, and although the TEC does not have authority to verify or enforce the adopted standards or regulate behavior of officials, members of city and county governing bodies that do not adopt and file a policy are subject to removal from office. Cities and counties can develop their own ethics policies or adopt model policies developed by the University of Tennessee Municipal Technical Advisory Service (MTAS) and County Technical Assistance Service (CTAS). According to the TEC, most have adopted the MTAS and CTAS model policies.[39]

All Tennessee public officials and candidates are required to file disclosure statements of interests with the Tennessee Ethics Commission listing lobbying activities, professional interests, all sources of income, and other financial information.

[34] Only four other states, Florida, Mississippi, Texas, and Washington, impose financial penalties as high as Tennessee's. In sixteen states, it is a misdemeanor for politicians to knowingly fail to file a disclosure statement. In those states, politicians could potentially go to jail in addition to paying fines for failing to file. Eleven states impose penalties on officials who knowingly omit or misrepresent facts in a disclosure statement. Two states, Alaska and Washington, impose financial penalties. In nine states, it is a misdemeanor, punishable by jail time and fines.

[35] Tennessee Code Annotated, Sections 8-50-501 and 8-50-502.

[36] Tennessee Code Annotated, Sections 8-50-505 and 3-6-205 and Drew Rawlins, Executive Director, Tennessee Bureau of Ethics and Campaign Finance, interview with Jennifer Barrie, August 4, 2015.

[37] Tennessee Code Annotated, Section 3-6-201.

[38] Tennessee Code Annotated, Section 8-17-101 et seq. Cities and counties do not have authority to enforce their codes of ethics.

[39] Becky Bradley, Ethics Specialist, Tennessee Bureau of Ethics and Campaign Finance, e-mail message to Jennifer Barrie, September 8, 2015.

Remedies for Conflicts of Interest

County legislators can be ousted from office for violating conflict of interest laws, but because violations of the law must clearly be willing and knowing actions, not just negligent ones,[40] ousters are rare. Cases may be instituted by the attorney general, a district attorney general, or county attorney either on their own initiative or after receiving a complaint.[41] They are required to investigate any complaint made in writing alleging that a county legislator is guilty of violating the law and upon determination of reasonable cause to institute a proceeding in the appropriate court to remove the official.[42] County commissions and county executives or mayors are not authorized by statute to initiate ouster proceedings.[43]

Any citizen may file a complaint with the Tennessee Comptroller of the Treasury about suspected violations of the conflict of interest laws by letter, online,[44] or by calling the Comptroller's fraud hotline at 1-800-232-5454.[45] In the case of a complaint about a county commissioner's failure to disclose a conflict of interest before voting, the Division of Local Government Audit would investigate the complaint during its next audit. If fraud is alleged, however, the complaint would be referred to a special investigations unit for immediate review. Any material violations of the law would be included in the county's audit report, and county officials would be encouraged to respond. The Comptroller, however, has no enforcement authority.

Any citizen may file a complaint with the Tennessee Comptroller of the Treasury about suspected violations of the conflict of interest laws by letter, online, or by calling the Comptroller's fraud hotline at 1-800-232-5454.

Legislative Efforts to Restrict County Employees' Service on County Commissions

The General Assembly has considered three bills in the last two years to reduce conflicts of interest involving county employees who are members of their legislative bodies. Two of those bills sought to forbid them to serve on county commissions altogether. One would have forbidden them to vote on any matter in which they or their immediate family had an interest. None passed, but one was sent to the Commission for study.

Efforts to Prohibit County Employees Serving on County Commissions

Legislation introduced in 2014 (Senate Bill 1513 by Gresham, House Bill 1481 by Faison) would have forbidden local government employees to

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[40] Tennessee Code Annotated, Section 8-47-101; McDonald v. Brooks, 387 S.W.2d 803 (Tenn. 1965); and Jordan v. State, 217 Tenn. 307 (Tenn. 1965).
[41] Tennessee Code Annotated, Section 8-47-102.
[42] Tennessee Code Annotated, Section 8-47-103.
[43] Duncan v. Cherokee Ins. Co., 1987 WL 11329 (Tenn.Ct.App. 1987).
[44] http://www.comptroller.tn.gov/la/LGSfraudReporting.asp.
[45] Tennessee Code Annotated, Section 8-4-403 et seq. For more information see https://www.comptroller.tn.gov/.

serve on the legislative bodies of the governments that employed them. Members who were employees as of the effective date of the law would have been allowed to complete their current term and additional terms if they were reelected without a break in their service. The legislation was amended to prohibit members of all local governing bodies employed by those governments voting on matters in which they have a direct financial interest. The vote of a member required to abstain would not have been counted when determining the majority vote. The amended bill passed in the Senate but never made it to the floor of the House.

Legislation introduced in 2015, Senate Bill 466 by Bell, House Bill 985 by Rogers, would prohibit all county employees serving on county commissions in the counties where they are employed after December 1, 2015, unless they are already members. Current commissioners reelected on or after December 1, 2015, without an interruption in service could continue to serve. See appendix C.

The General Assembly has considered three bills in the last two years to reduce conflicts of interest involving county employees who are members of their legislative bodies.

An amendment to the bill considered by the House Local Government Committee would have allowed county commissions to either "opt-in to" or "opt-out of" the law with a 2/3 vote. Opting-in would allow county employees to continue serving without commissions taking any further action. Opting-out would require commissions to vote to allow county employees to continue serving. Several legislators and stakeholders expressed concern about both options, noting that the commissioners would still be deciding whether county employees could serve, and the counties would need the option to change their decision at a later date. Legislators also discussed requiring approval by referendum, a county-wide vote of the people, and some noted that an additional election could be an unnecessary expense and burden for some counties. None of the amendments were adopted by the committee.

Proponents of the bill argue that county employees who serve on their counties' legislative bodies may vote the interests of their departments and themselves, for example, to increase their salaries, compromising separation of powers and encouraging competition among departments for resources. They highlight Sumner County, where several school employees were elected to the Sumner County Commission in 2014, and the commission subsequently passed a 24% property tax increase, mostly to fund school operations and debt service.[46] Bill opponents argue that schools and county governments are often the biggest employers in rural counties and prohibiting county employees serving would eliminate many willing and able candidates—it is hard enough in these rural counties to

[46] Anthony Holt, Sumner County Mayor, phone conversation with Jennifer Barrie, September 28, 2015. See also http://www.tennessean.com/story/news/local/sumner/2015/01/28/sumner-residents-vent-tax-rate-remains/22473491/.

find people willing to serve on county commissions.[47,48] After hearing these concerns, both the House Local Government and the Senate State and Local Government committees voted to send the bill to the Commission for study. An ad hoc committee created by the Tennessee County Commissioners Association also reviewed the bill and developed recommendations to allow county employees to serve as county commissioners but not to vote on improvements in their pay or benefits or the pay or benefits of their spouses.[49]

A June 2015 survey of county mayors and executives by commission staff found that their experiences with commissioners who are employees are mixed. While 44% of responding county mayors and executives support allowing county employees to serve on their county commission, 20% are opposed, and 36% did not express a clear position for or against. Several respondents and other county government representatives said the bigger concern is commissioners who accept county jobs after being elected continuing to serve. They suggested that these commissioners should be required to resign their seats but allowed to run in a later election and serve again if elected while employed by the county.

While 44% of county mayors and executives who responded to a June 2015 survey support allowing county employees to serve on their county commission, 20% are opposed, and 36% did not express a clear position for or against.

Several states limit who can serve on governing bodies, but county governments in most states are structured differently than in Tennessee. County commissions in Tennessee are primarily legislative bodies, unlike many city governing bodies, which generally have both executive and legislative functions. The 1977 Tennessee constitutional convention changed the counties' governance structure so that it more closely mirrored the federal and state governments with three distinct branches of government: legislative, executive, and judicial.[50] This separation of powers lessens the possibility of direct conflicts of interest for members who may be county employees because they have only indirect influence over the other parts of county government. County commissioners serve part time, like state legislators. County mayors and executives work full time to fulfill the executive function, hire staff, and run the day-to-day operations of the county. The mayor shares executive duties with other elected constitutional county officers, including the sheriff, trustee, register,

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[47] See http://www.tennessean.com/story/news/local/sumner/2015/03/20/sumner-commission-puts-disdain-bill-record/25113549/.

[48] They also expressed concerns about the bill's constitutionality, but those concerns are likely not well founded. Federal courts have not specifically ruled on the constitutionality of laws prohibiting county employees serving on the county governing bodies but have upheld similar laws prohibiting government employees running for office. See United States Civil Service Commission v. National Association of Letter Carriers, 413 U.S. 548 (1973); Broadrick v. Oklahoma, 413 U.S. 601, 37 L. Ed. 2d 830, 93 S. Ct. 2908 (1973); and Phillips v. City of Dallas, 781 F.3d 772 (5th Cir. Tex. 2015).

[49] Charles Curtiss, Executive Director, Tennessee County Commissioners Association, e-mail message to Jennifer Barrie, October 20, 2015.

[50] Tennessee Constitution, Article VII, Section 1.

county clerk, and assessor of property, who all serve four-year terms.

Having a county executive and other constitutional officers who handle operations and administrative tasks separates the role of county commissions from the other parts of county government. This separation of powers distinguishes Tennessee's counties from their counterparts in most other states where the county governing body exercises legislative, executive, and sometimes judicial functions, as did Tennessee's counties before 1978. Many states have legislative bodies that directly supervise county operations and employ the workers. Some states give their counties stronger "home rule" powers than does Tennessee and allow them to decide their own governing structure.[51] Five New England states either have no county governments at all (Connecticut and Rhode Island) or have county governments with very limited functions (Massachusetts, New Hampshire, and Vermont).[52]

A review of other states' laws on whether county employees can serve on their governing bodies indicates that half, including Tennessee, either explicitly prohibit or explicitly allow it. The other half, including the five New England states with limited or no county governments, have no statutes saying whether county employees can serve on their governing bodies.[53] Of the 25 states with laws specifying whether county employees can serve on their governing bodies, seventeen states statutorily forbid it and eight, including Tennessee, explicitly allow it. Alabama is the only one of the seventeen that forbid it in which nearly all county governments have a separation of powers comparable to Tennessee's. Five (Alaska,[54] Delaware, Florida, South Carolina, and Wisconsin) have a mix of county governments, some of which are comparable to Tennessee's and some of which are not. Eleven have no county governments with a

Tennessee's County Government Structure

Tennessee's county governments are unlike Tennessee's city governing bodies and counties in other states:

- Article VII, Section 1, of the Tennessee Constitution, not statute, sets the basic framework for county governments with a legislative body and constitutional officers.
- Since the 1977 Tennessee constitutional convention, county governance structure is similar to state and federal governments with a clear separation of legislative, executive, and judicial powers.
- County commissions have primarily legislative functions separate from the county executive functions.
- Elected constitutional officers—the county mayor or executive, sheriff, trustee, register, county clerk, and assessor of property—share executive duties and run the day-to-day operations of the county.
- Statutes set the structure of Tennessee's city governing bodies—many have both executive and legislative functions.

[51] While Knox and Shelby are the only charter counties that fit this model in Tennessee, both have separate executive and legislative branches. See http://eli.ctas.tennessee.edu/reference/forms-county-government and Knox and Shelby county charters.
[52] US Census Bureau 2013.
[53] The other 20 states with no statutes are Arizona, Colorado, Georgia, Hawaii, Idaho, Kansas, Kentucky, Maryland, Nebraska, Nevada, New Jersey, New Mexico, New York, North Dakota, Ohio, Pennsylvania, South Dakota, Texas, Washington, and Wyoming.
[54] School employees can serve on their legislative bodies. Alaska Stat. Section 29.20.630.

separation of powers like Tennessee's.[55] Of the seven states that explicitly allow county employees to serve on county legislative bodies, one, Arkansas, has county governments with a separation of powers comparable to Tennessee's. Another, Illinois, has some county governments comparable to Tennessee's. County governments in the other five (Iowa, Montana, North Carolina, Oregon, and Utah) are not comparable to Tennessee's.[56]

Efforts to Prohibit County Commissioners Voting when they have a Conflict of Interest

A bill considered by the General Assembly in 2001 (Senate Bill 533 by Cohen, House Bill 666 by Kisber) would have prohibited voting by any member of a city or county governing body, including employees of those bodies, on matters in which they have a conflict of interest and on any procedural actions related to such matters. The bill did not define conflict of interest but did clarify that the vote of a member who abstains because of a conflict would not be counted towards the majority. The bill was never taken up. No similar legislation was introduced until 2015.

Eleven states forbid county legislators to vote on matters if there are conflicts of interest involving their family members, but these restrictions apply to all county legislators, not just those who are employees of the government.

Twenty states have statutes similar to this bill, prohibiting county legislators voting on matters if there is a conflict of interest.[57] Five of these states (Colorado, Minnesota, Nebraska, Oregon, and Pennsylvania) allow county legislators to vote if their votes are necessary for the board to take action on a matter. Two of the twenty states, Nevada and Virginia, reduce the quorum requirement if a legislator has to abstain from voting on a matter.

Legislation introduced in 2015 (Senate Bill 1288 by Hensley, House Bill 1278 by Butt) would make Tennessee law more stringent as it pertains to local government employees by prohibiting voting by members of a city or county governing body who are employees of the city or county or whose immediate family is an employee of that city or county on any matter in which the member has a conflict of interest. The bill does not define conflict of interest but does clarify that "immediate family" includes a spouse, child, stepchild, brother, sister, son-in-law, daughter-in-law, parent, or grandparent of the member. See appendix D. Representative Butt withdrew her bill after it was approved by both the House Local Government and Senate State and Local Government committees.

Eleven states forbid county legislators to vote on matters if there are conflicts of interest involving their family members, but these restrictions

[55] California, Indiana, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Oklahoma, Virginia, and West Virginia.
[56] See appendix E for a summary of the other states' county structures and laws.
[57] Alabama, Arizona, California, Colorado, Florida, Idaho, Maine, Minnesota, Mississippi, Nebraska, Nevada, New Jersey, Oregon, Pennsylvania, South Carolina, South Dakota, Virginia, West Virginia, Wisconsin, and Wyoming.

apply to all county legislators, not just those who are employees of the government.[58] Most of these states prohibit their voting if there are conflicts involving their spouses[59] and children[60] or dependent children.[61] Idaho forbids voting if household members are affected but does not define who they are. Five states (Alabama, Arizona, Mississippi, Nevada, and South Carolina) prohibit their voting if there are conflicts involving more distant relatives including in-laws,[62] siblings,[63] or parents;[64] grandparents and grandchildren;[65] half-siblings;[66] stepchildren;[67] stepparents;[68] or great-grandparents, great-grandchildren, uncles, and aunts.[69]

Additional Ways to Manage Conflicts of Interest

Existing practices of Tennessee counties and other states' laws offer many examples of ways to limit the effects of conflicts of interest, such as restricting service on certain committees, specifically defining conflict of interest in law, requiring legislators to disclose conflicts in writing when voting, requiring ethics training, creating local ethics committees, and authorizing state ethics commissions to enforce conflict of interest laws.[70]

Restricting Service on Committees Based on Conflicts of Interest

Some Tennessee county commissions limit potential conflicts of interest by forbidding commissioners to serve on certain committees. County commissions can and do consider conflicts of interest when making committee assignments.[71] For example, some do not allow developers to serve on planning committees, and some do not allow county employees to serve on budget committees.

Some Tennessee county commissions limit potential conflicts of interest by forbidding commissioners to serve on certain committees.

[58] Alabama, Arizona, Idaho, Mississippi, Missouri, Nebraska, Nevada, New Jersey, South Carolina, West Virginia, and Wisconsin.
[59] Alabama, Arizona, Mississippi, Missouri, Nebraska, Nevada, New Jersey, South Carolina, West Virginia, and Wisconsin.
[60] Alabama, Arizona, Mississippi, Nebraska, Nevada, and South Carolina.
[61] Missouri, Nebraska, Nevada, New Jersey, West Virginia, and Wisconsin.
[62] Alabama, Arizona, Mississippi, Nevada, and South Carolina.
[63] Alabama, Arizona, Mississippi, Nevada, and South Carolina.
[64] Alabama, Mississippi, Nevada, South Carolina, and West Virginia (if dependent).
[65] Alabama (if dependent), Arizona, Nevada, South Carolina, and West Virginia (grandchildren if dependent).
[66] Arizona and Nevada.
[67] Arizona and Nevada.
[68] Mississippi and Nevada.
[69] Nevada.
[70] See appendix F for legal citations for other states' laws.
[71] Information gathered during interviews with county mayors and executives and other county government representatives.

Specifically Defining Conflict of Interest in Law

Sixteen states specifically define conflict of interest in their laws to make clear what matters local legislators cannot vote on. In five of these states (California, Maine, Minnesota, Nevada, and New Jersey), conflict of interest is defined as a financial interest in a matter the county legislators are taking action on. Seven (Florida, Idaho, Missouri, Nebraska, Pennsylvania, South Carolina, and South Dakota) define it as a financial benefit or harm that is distinguishable from the financial benefits or harms received by the general public or a distinct group of people. Virginia requires county legislators to disqualify themselves from votes in which they would have a personal interest, defined as

Sixteen states specifically define conflict of interest in their laws.

- ownership or an option for ownership of more than 3% of a business;
- personal liability assumed on behalf of a business if the liability exceeds 3% of the business' value;
- annual income in excess of $5,000 from ownership of a business or real or personal property;
- salary or other benefits that exceed $5,000 annually from the use of property, provided by a business or governmental agency; or
- ownership or an option for ownership of real or personal property if the interest exceeds $5,000 in value.

Three of the sixteen states, Alabama, Oregon, and Wyoming, define conflict of interest as a financial interest in a matter and then go further, describing situations that are not considered conflicts of interest. In Alabama, conflicts of interest do not include

- a loan or financial transaction made or conducted in the ordinary course of business,
- an occasional nonpecuniary award publicly presented by an organization for performance of public service,
- payment of or reimbursement for actual and necessary expenditures for attendance at a convention or other meeting, or
- any campaign contribution.

In Oregon, it is a conflict of interest for county legislators to vote on matters from which they would derive a pecuniary benefit or detriment with the exception of

- an interest or membership in a particular business, industry, occupation, or other class required by law as a prerequisite to the holding by the person of the office;
- any action in the person's official capacity that would affect to the same degree a class consisting of all state residents or a smaller

class consisting of an industry, occupation, or other group including one in which the person is a member or is engaged; or

- membership in a tax-exempt nonprofit corporation.

Wyoming defines conflict of interest as a pecuniary benefit in the form of property that does not include property worth less than $20; food, drink, or entertainment that is tax deductible; and political contributions.

Requiring County Legislators to Specifically Describe Conflicts of Interest in Writing

Six states require county legislators to submit written disclosures describing conflicts of interest that may prevent them from voting on specific matters. Four of the states (Colorado, Minnesota,[72] Nebraska, and Pennsylvania) allow county legislators to vote if their votes are necessary for the board to take action on an issue, but the required disclosure must be filed before the vote. In the two other states, Florida and South Carolina, county legislators cannot vote if there is a conflict, but the disclosure can be filed after the vote. Five of the states (Florida, Minnesota [in seven counties], Nebraska, Pennsylvania, and South Carolina) require the disclosures to be filed with the county legislative bodies; Colorado requires the disclosures to be filed with the secretary of state's office.

A few states' ethics commissions have authority not only to investigate but also to enforce conflict of interest laws; Tennessee's does not.

Serving the Public Interest through Ethics Awareness and Enforcement

Training about and enforcement of conflict of interest laws serve the public interest by promoting, encouraging, and maintaining transparency, accountability, and compliance with these laws. Although it is not required, some Tennessee counties have created local ethics committees to review and refer ethics complaints to proper authorities. A few states' ethics commissions have authority not only to investigate but also to enforce conflict of interest laws; Tennessee's does not. County government professional organizations recommend training, and a few states require it, but Tennessee does not.

A Few States Require Ethics Training for County Legislators

Professional organizations, including the International City/County Management Association (ICMA),[73] the Organisation for Economic Co-operation and Development (OECD), the National Association of Counties (NACo), the University of Tennessee's County Technical Assistance Service (CTAS), and the Tennessee County Commissioners Association,

[72] Seven Minneapolis-St. Paul metropolitan counties only.
[73] ICMA is an organization that provides research, assistance, and training for local governments worldwide. For more information, see http://icma.org/en/icma/home.

recommend ethics training for public officials to help manage conflicts of interest. In the March 2009 issue of ICMA's *PM Magazine*, Martha Perego writes "[o]rientations for newly appointed and elected officials are a great opportunity to raise awareness about the complexity of conflicts of interest and their potential to undermine the public's confidence in local government." The OECD, an international organization that promotes policies to improve people's economic and social well-being, recommends that

> While laws and codes, as primary sources, can establish definitions, principles and essential procedural requirements of a conflict-of-interest policy, guidelines, training materials, advice and counseling should also be used to provide practical examples and concrete steps to be taken for identifying and resolving conflict-of-interest situations, especially in rapidly-changing or "grey" areas such as private-sector sponsorship, public-private partnerships, interchange of personnel between sectors, NGO relations, and party-political activity by individuals.[74]

Although not required in Tennessee, public officials can voluntarily participate in ethics training.

Although not required in Tennessee, public officials can voluntarily participate in training. CTAS offers training for county officials and employees in cooperation with the Tennessee County Services Association and the County Officials Association of Tennessee through their County Officials Certificate Training Program (COCTP), which includes technical, managerial, and ethics training for elected officials and employees to help them understand county government operations and serve more effectively. Participants may take individual courses or work toward becoming a certified public administrator. CTAS staff believe the broader understanding of the responsibilities and mechanics of county government afforded COCTP graduates helps them better serve their communities.[75]

Only three states, Alabama, California, and Florida, require county legislators to attend ethics training. Alabama requires them to attend ethics training by the Alabama Ethics Commission within 120 days of being sworn into office. Training must be made available online as well as in person, and a free video on the Ethics Commission website satisfies this requirement.[76] After viewing the video, commissioners must submit their names online, and the information is reported electronically to the Ethics Commission. Commissioners may request free DVD copies of the video

[74] Organisation for Economic Co-operation and Development 2003.
[75] For more information about COCTP, see http://www.ctas.tennessee.edu/sites/default/files/2014_COCTP+Brochure_web.pdf.
[76] http://ethics.alabama.gov/training/Intro.aspx.

but must notify the Ethics Commission in writing that they have completed the training. The training requirement can also be satisfied by completing the Alabama Local Government Training Institute's ethics course.

Members of California's county boards of supervisors must attend two hours of ethics training within their first year of service and at least once every two years thereafter. It can be provided online, in person, or through self-study by commercial organizations, nonprofits, or local governments. The California Fair Political Practices Commission and the Attorney General must be consulted about course content. A free online training course is available on the California Fair Political Practices Commission website.[77] Supervisors must take an online test at the end to prove that they took the course. The California Institute of Local Government offers a self-study program and on-site training for a fee.[78]

County commissioners in Florida are required to attend four hours of training each calendar year. County commissioners can take training from any source they choose, and free online training is available on the Florida Commission on Ethics website.[79] County commissioners must certify on their annual statements of financial interests forms that they have completed the required training.

The University of Tennessee's County Technical Assistance Service (CTAS) recommends that counties create local ethics committees to receive and review ethics complaints and refer the complaints to the appropriate persons or agencies to take action.

Some Tennessee Counties have Formed Local Ethics Committees

Although no state requires it, NACo suggests that counties can form local ethics commissions to monitor the conduct of county officials and enforce the counties' codes of ethics.[80] CTAS recommends that counties create local ethics committees to receive and review ethics complaints and suggests that the committees include county commissioners, one constitutional county officer, and one other board, committee, or commission member, all appointed by the county mayor or executive.[81] According to CTAS, many Tennessee counties have established ethics committees to address ethics complaints, but those committees can only by law screen complaints and do not have enforcement authority.[82] The effectiveness of the local ethics committees has been questioned because they have no enforcement authority. However, the committees do provide a forum for citizen complaints. If the complaints relate to issues covered by counties' ethics policies, CTAS recommends that the committees refer the complaints to the appropriate persons or agencies to take action. For example, if a complaint

[77] http://www.fppc.ca.gov/learn/training-and-outreach.html.
[78] http://www.ca-ilg.org/ethics-education-and-training-ab-1234.
[79] http://www.ethics.state.fl.us/Training/Training.aspx.
[80] Markwood 2009 and National Association of Counties 2008.
[81] University of Tennessee County Technical Assistance Service 2006.
[82] Austin 2010.

alleges a possible criminal violation, the committee should turn the matter over to the district attorney's office.

State Ethics Commissions Enforce Conflict of Interest Laws in a Handful of States

State ethics commissions in only four states have power to enforce conflict of interest laws that affect county legislators.

Many states including Tennessee have state ethics commissions, but most do not have authority to enforce conflict of interest laws. Ethics commissions in only four states (Missouri,[83] Nebraska,[84] Ohio,[85] and West Virginia[86]) have power to enforce conflict of interest laws that affect county legislators. These four commissions range in size from six to twelve members, and all have full-time staffs. Citizens can file complaints, and the commissions then investigate and hold hearings on the matters. If they determine that the conflict of interest laws have been violated, the Missouri, Nebraska, and West Virginia commissions have power to impose fines and issue cease-and-desist orders. Missouri's commission can also issue letters of reprimand. Ohio's commission does not have power to impose penalties but can refer matters to the appropriate prosecutor for criminal prosecution. Referrals remain confidential unless the prosecutor fails to act within 90 days. If the prosecutor fails to act, the commission may disclose that the referral was made.

[83] http://www.mec.mo.gov/.
[84] http://www.nadc.nebraska.gov/.
[85] http://www.ethics.ohio.gov/.
[86] http://www.ethics.wv.gov/Pages/default.aspx.

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Persons Interviewed

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University of Tennessee Municipal Technical Advisory Service

Jim Arnette, Director, Division of Local Government Audit
Tennessee Comptroller of the Treasury

Melissa Ashburn, Legal Consultant, Knoxville
University of Tennessee Municipal Technical Advisory Service

Terry Ashe, Executive Director
Tennessee Sheriff's Association

Steve Austin, Legal Consultant
University of Tennessee County Technical Assistance Service

Laura Baigert, Sumner County Citizen
Sumner Taxpayers Alliance

Mike Bell, State Senator
District 9

Doug Bodary, County Government Consultant, Region 5
University of Tennessee County Technical Assistance Service

Ernest Burgess, County Mayor
Rutherford County

Kenneth Carey, County Mayor
Cumberland County

Carroll Carman, County Mayor
Trousdale County

Rodney Carmical, Executive Director
Tennessee County Highway Officials Association

Fred Congdon, Executive Director
Association of County Mayors

David Connor, Executive Director
Tennessee County Services Association

Charles Curtiss, Executive Director
Tennessee County Commissioners Association

Dana Deem, Municipal Management Consultant, Jackson
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Brent Greer, County Mayor
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Kim McMillan, Mayor
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Jeff Metzger, Legal Consultant
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John New, Former Legislative Liaison
Tennessee Municipal League

Drew Rawlins, Executive Director
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Wesley Robertson, County Government Consultant, Region 2
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Ben Rodgers, County Government Consultant, Region 3
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Courtney Rogers, State Representative
District 45

Sloan Stewart, County Mayor
Moore County

Jerry Stone, Former County Commissioner
Sumner County

Paul Tower, Citizen
McNairy County

Mike Turner, Former State Representative
District 51

Larry Waters, County Mayor
Sevier County

Jim Westbrook, County Commissioner
Weakley County

Tim Wirgau, State Representative
District 75

Jim Wrye, Assistant Executive Director, Communications and Government Relations
Tennessee Education Association

Ken Yager, State Senator
District 12

Appendix A. Survey Results by County

County	2014 Population	Number of County Commission Seats	Percent of County Employees Serving on County Commission as of June 1, 2015	Number of County Employees Serving on County Commission as of June 1, 2015	Number of County Employees who were Employees when Elected	Number of County Employees who became County Employees after Elected
Anderson	75,528	16	13%	2	2	1
Bedford	46,627	18	NR	NR	NR	NR
Benton	16,145	18	6%	1	1	0
Bledsoe	13,931	13	8%	1	1	0
Blount	126,339	21	NR	NR	NR	NR
Bradley	102,975	14	29%	4	5	0
Campbell	39,918	15	NR	NR	NR	NR
Cannon	13,757	10	10%	1	1	0
Carroll	28,370	21	0%	0	NR	NR
Carter	56,886	24	17%	4	4	0
Cheatham	39,764	12	NR	NR	NR	NR
Chester	17,379	18	11%	2	2	0
Claiborne	31,592	21	NR	NR	NR	NR
Clay	7,765	10	0%	0	0	NR
Cocke	35,374	14	50%	7	7	0
Coffee	53,623	21	24%	5	4	1
Crockett	14,668	24	4%	1	0	1
Cumberland	57,985	18	39%	7	7	0
Davidson	668,347	n/a	n/a	n/a	n/a	n/a
Decatur	11,666	18	0%	0	NR	NR
DeKalb	19,268	14	14%	2	2	0
Dickson	50,575	12	NR	NR	NR	NR
Dyer	37,935	20	10%	2	2	0
Fayette	39,011	19	5%	1	1	0
Fentress	17,855	10	0%	0	0	0
Franklin	41,402	16	NR	NR	NR	NR
Gibson	49,472	25	8%	2	2	0
Giles	28,853	21	NR	NR	NR	NR
Grainger	22,864	15	NR	NR	NR	NR
Greene	68,335	21	14%	3	3	0
Grundy	13,425	9	NR	NR	NR	NR
Hamblen	63,036	14	0%	0	NR	NR
Hamilton	351,220	9	0%	0	NR	NR
Hancock	6,657	17	NR	NR	NR	NR
Hardeman	25,965	16	NR	NR	NR	NR
Hardin	25,870	20	25%	5	4	0
Hawkins	56,735	21	NR	NR	NR	NR
Haywood	18,185	20	NR	NR	NR	NR
Henderson	28,009	14	29%	4	4	0

County	2014 Population	Number of County Commission Seats	Percent of County Employees Serving on County Commission as of June 1, 2015	Number of County Employees Serving on County Commission as of June 1, 2015	Number of County Employees who were Employees when Elected	Number of County Employees who became County Employees after Elected
Henry	32,204	15	27%	4	4	0
Hickman	24,384	21	NR	NR	NR	NR
Houston	8,267	14	7%	1	0	1
Humphreys	18,135	14	7%	1	1	0
Jackson	11,568	18	NR	NR	NR	NR
Jefferson	52,677	21	NR	NR	NR	NR
Johnson	17,859	15	7%	1	1	0
Knox	448,644	11	18%	2	2	0
Lake	7,631	9	11%	1	1	0
Lauderdale	27,382	24	4%	1	1	0
Lawrence	42,274	18	NR	NR	NR	NR
Lewis	11,906	18	22%	4	2	1
Lincoln	33,637	24	17%	4	3	1
Loudon	50,771	10	20%	2	2	0
Macon	23,003	20	50%	10	7	0
Madison	98,178	25	8%	2	1	1
Marion	28,407	15	33%	5	5	0
Marshall	31,269	18	22%	4	4	0
Maury	85,515	22	NR	NR	NR	NR
McMinn	52,626	10	30%	3	2	1
McNairy	26,267	21	14%	3	3	0
Meigs	11,701	11	NR	NR	NR	NR
Monroe	45,233	10	NR	NR	NR	NR
Montgomery	189,961	21	19%	4	1	3
Moore	6,319	n/a	n/a	n/a	n/a	n/a
Morgan	21,660	18	17%	3	3	0
Obion	30,941	21	5%	1	1	0
Overton	22,028	15	20%	3	1	2
Perry	7,822	12	NR	NR	NR	NR
Pickett	5,124	12	25%	3	3	0
Polk	16,730	9	22%	2	1	NR
Putnam	74,165	24	21%	5	4	1
Rhea	32,641	9	0%	0	NR	NR
Roane	52,748	15	13%	2	2	0
Robertson	68,079	24	8%	2	2	0
Rutherford	288,906	21	5%	1	1	0
Scott	21,987	14	36%	5	5	0
Sequatchie	14,704	18	17%	3	3	0

County	2014 Population	Number of County Commission Seats	Percent of County Employees Serving on County Commission as of June 1, 2015	Number of County Employees Serving on County Commission as of June 1, 2015	Number of County Employees who were Employees when Elected	Number of County Employees who became County Employees after Elected
Sevier	95,110	25	16%	4	3	1
Shelby	938,803	13	8%	1	1	0
Smith	19,009	23	NR	NR	NR	NR
Stewart	13,279	14	36%	5	5	0
Sullivan	157,047	24	17%	4	4	0
Sumner	172,706	24	21%	5	6	0
Tipton	61,623	18	22%	4	2	2
Trousdale	8,002	n/a	n/a	n/a	n/a	n/a
Unicoi	17,963	9	0%	0	NR	NR
Union	19,113	16	0%	0	NR	NR
Van Buren	5,633	10	0%	0	NR	NR
Warren	39,969	24	4%	1	1	0
Washington	126,242	25	12%	3	2	1
Wayne	16,913	14	0%	0	0	0
Weakley	34,373	18	0%	0	0	0
White	26,301	14	0%	0	0	0
Williamson	205,226	24	4%	1	1	0
Wilson	125,376	25	20%	5	5	0

n/a: The three metropolitan counties, Davidson, Moore, and Trousdale, are not included because employees of these counties are prohibited from serving on their legislative bodies under current law (Tennessee Code Annotated, Section 7-51-1501).

NR: Counties that did not respond and questions that were left blank.

Sources: Survey data from county mayors and executives and population data from US Census Bureau.

Appendix B. Positions that Can and Cannot Be Held at the Same Time

Serving in two public offices at the same time may be prohibited by constitution, by statute, or by the common law doctrine of incompatible public offices. Not all government positions are offices. The Tennessee Supreme Court has held that a public "office" is a position in which the individual receives compensation and the term and duties of the office are defined in statute.[87]

Article II, Section 26, of Tennessee's constitution states that individuals cannot "hold more than one lucrative office at the same time." The Tennessee Supreme Court has held that a lucrative office is one whose pay is affixed to the performance of its duties.[88] The court has held that Article II, Section 26, prohibits the holding of more than one lucrative office in state government at the same time and does not apply to either county or municipal offices.[89]

> No Judge of any Court of law or equity, Secretary of State, Attorney General, Register, Clerk of any court of Record, or person holding any office under the authority of the United States, shall have a seat in the General Assembly; nor shall any person in this State hold more than one lucrative office at the same time; provided, that no appointment in the Militia, or to the office of Justice of the Peace, shall be considered a lucrative office, or operative as a disqualification to a seat in either House of the General Assembly.

State law expressly prohibits holding certain public offices at the same time. For example, Tennessee Code Annotated, Section 5-5-102, forbids county mayors, sheriffs, trustees, registers, county clerks, and property assessors to serve on county legislative bodies.

The common law doctrine of incompatible public offices, which applies to both state and local public offices, prevents a person from holding two public offices at the same time if "the occupancy of both offices by the same person is detrimental to the public interest, or whether the performance of the duties of one interferes with the performance of those of the other." If the individual holds two public offices, then the incompatibility doctrine may deem the first position vacated when the second position was taken.[90]

Examples of Positions that Can be Held at the Same Time

A county court judge can serve as a criminal court judge if one of the positions is uncompensated. Hodge v. State, 135 Tenn. 525, 188 S.W. 203, 1916 Tenn. LEXIS 45 (1916)

A state senator can serve in the office of school director or school board member because the office of school director is "filled by the people or by representatives of the people other than the Executive or the General Assembly." Wallace v. Grubb, 154 Tenn. 655, 289 S.W. 530, 1926 Tenn. LEXIS 164 (1926)

A county court clerk can serve as ex officio general sessions court clerk because a statute conferring additional duties on a public officer ex officio does not have the effect of appointing him to a second office. Hancock v. Davidson County, 171 Tenn. 420, 104 S.W.2d 824, 1937 Tenn. LEXIS 122 (1937)

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[87] Day v. Sharp, 128 Tenn. 340 (Tenn. 1913) and Wise v. Knoxville, 194 Tenn. 90 (Tenn. 1952).
[88] Hodge v. State, 135 Tenn. 525, 188 S.W. 203, (1916).
[89] Boswell v. Powell, 163 Tenn. 445, 43 S.W. 495 (1931) and Phillips v. West, 187 Tenn. 57, 213 S.W.2d 3 (1948).
[90] State ex rel. Little v. Slagle, 115 Tenn. 336, 89 S.W. 326, 1905 Tenn. LEXIS 67 (1905).

A county judge or chair can serve as an ex officio member of a county highway commission because the ex officio position does not confer on the judge a second office of trust or profit. Cheatham County v. Murff, 176 Tenn. 93, 138 S.W.2d 430, 1939 Tenn. LEXIS 104 (Tenn. 1940)

A county superintendent of schools can serve as a state senator because Article II, Section 26, prohibits holding more than one lucrative office in state government and does not apply to local offices. Phillips v. West, 187 Tenn. 57, 213 S.W.2d 3, 1948 Tenn. LEXIS 410 (1948)

A circuit court clerk can serve as ex officio general sessions court clerk because a statute conferring additional duties on a public officer ex officio does not have the effect of appointing him to a second office. Clay County v. Stone, 208 Tenn. 1, 343 S.W.2d 863, 1961 Tenn. LEXIS 388 (1961)

A deputy sheriff can serve as interpreter in a criminal prosecution because an interpreter is appointed on a case-by-case basis and does not hold an office within the meaning of Article II, Section 26. Office of the Attorney General of the State of Tennessee, 1999, Opinion No. 99-211

Examples of Positions that Cannot be Held at the Same Time

An elected constable automatically vacates that office upon becoming a general deputy sheriff because those offices cannot be held at the same time under the common law doctrine of incompatible public offices. State ex rel. Little v. Slagle, 115 Tenn. 336, 89 S.W. 326, 1905 Tenn. LEXIS 67 (1905)

An incumbent member of the Tennessee General Assembly cannot run for reelection to the General Assembly and run for delegate to the Constitutional Convention because both are lucrative state offices and cannot be held at the same time under Article II, Section 26. Office of Attorney General of the State of Tennessee, 1998, Opinion No. 98-054

A candidate for election or reelection to state or local office cannot serve on the State Election Commission, even though the municipal position is not a lucrative state office, because Tennessee Code Annotated, Section 2-1-112(a), forbids candidates for election or reelection to any state or local office to serve as a member of the State Election Commission. Office of Attorney General of the State of Tennessee, 2002, Opinion No. 02-117

A county medical examiner in whom the county commission has vested the duties of county coroner is prohibited by Tennessee Code Annotated, Section 5-5-102(c)(2), from serving as a county commissioner. Office of Attorney General of the State of Tennessee, 2011, Opinion No. 11-74

An elected or appointed member of a county soil conservation district cannot be a state legislator because both are lucrative state offices and cannot be held at the same time under Article II, Section 26. Office of Attorney General of the State of Tennessee, 2013, Opinion No. 13-18

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Article II, Section 26, does not apply to the following situations because none involve two state offices; however, the common law doctrine of incompatible public offices, other statute or private act, or judicial code of ethics may prohibit holding both at the same time.

A constable and a part-time town police officer.
Office of Attorney General of the State of Tennessee, 1999, Opinion No. 99-095

A county commissioner and a road board member.
Office of Attorney General of the State of Tennessee, 2000, Opinion No. 00-159

An alderman and a county constable.
Office of Attorney General of the State of Tennessee, 2001, Opinion No. 01-152

A juvenile court referee and an appointed counsel in a criminal case.
Office of Attorney General of the State of Tennessee, 2001, Opinion No. 01-162

A city court judge and a juvenile court referee.
Office of Attorney General of the State of Tennessee, 2006, Opinion No. 06-123

A county soil conservation district member and an elected county official.
Office of Attorney General of the State of Tennessee, 2013, Opinion No. 13-18

A county commissioner and a clerk and master for the chancery court in the same county.
Office of Attorney General of the State of Tennessee, 2014, Opinion No. 14-23

An interim chief of police and an interim city administrator.
Office of Attorney General of the State of Tennessee, 2014, Opinion No. 14-50

Appendix C. Senate Bill 466 by Bell, House Bill 985 by Rogers

SENATE BILL 466
By Bell

HOUSE BILL 985

By Rogers

AN ACT to amend Tennessee Code Annotated, Title 2; Title 5; Title 6; Title 7; Title 8 and Title 12, relative to county government.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 5-5-102, is amended by deleting subdivision (c)(1) in its entirety and substituting instead the following:

(1) Notwithstanding any law to the contrary, any county employee shall be disqualified from serving as a member of the county legislative body for the county that employs such county employee, by reason of being a county employee. Any member of a county legislative body who is a county employee on December 1, 2015, shall not become disqualified and may continue in office as a member of the county legislative body pursuant to this subdivision (c)(1) for the remainder of the member's term. Any member of a county legislative body who is a county employee on December 1, 2015, who is reelected to the county legislative body on or after that date, without any interruption in holding such office, may continue in office as a member of the county legislative body.

SECTION 2. Tennessee Code Annotated, Section 5-1-210(4), is amended by deleting the subdivision in its entirety and substituting instead the following:

(4) For the size, method of election, qualification for holding office, method of removal, and procedures of the county legislative body with such other provisions with respect to such body as are normally related to the organization, powers, and duties of governing bodies in counties; provided, however, any county employee shall be disqualified from serving as a member of the county legislative body for the county that

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employs such county employee, by reason of being a county employee; provided, further, that any member of a county legislative body who is a county employee on December 1, 2015, shall not become disqualified and may continue in office as a member of the county legislative body for the remainder of the member's term. Any member of a county legislative body who is a county employee on December 1, 2015, who is reelected to the county legislative body on or after that date, without any interruption in holding such office, may continue in office as a member of the county legislative body.

SECTION 3. Tennessee Code Annotated, Section 2-12-102(b), is amended by adding the following language at the end of the subsection:

As used in this subsection (b), "qualifies as a candidate for any public office" means when a person has made a formal announcement of candidacy; has filed a petition seeking nomination for election to public office; or has received contributions or made expenditures or given consent for a campaign committee to receive contributions or make expenditures for the person's election to public office.

SECTION 4. Tennessee Code Annotated, Section 12-4-101(c), is amended by adding the following language as a new subdivision:

(4)

(A) This subsection (c) shall apply to:

(i) Any member of a local governing body of a county who is also an employee of such county on December 1, 2015, and who continues in office for the remainder of the member's term; or

(ii) Any member of a local governing body of a county who is also an employee of such county on December 1, 2015, and who is reelected to the governing body, without any interruption in holding the member's office.

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(B) Nothing in this subsection (c) shall authorize any member of a local governing body of a county who is also an employee of such county to qualify as a candidate for the local governing body after December 1, 2015.

SECTION 5. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 6. This act shall take effect December 1, 2015, the public welfare requiring it, and shall apply to any election or vacancy occurring on or after such date.

Appendix D. Senate Bill 1288 by Hensley, House Bill 1278 by Butt

HOUSE BILL 1278
By Butt

SENATE BILL 1288

By Hensley

AN ACT to amend Tennessee Code Annotated, Title 5 and Title 12, relative to local government.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 5-5-102, is amended by adding the following new subdivision to subsection (c):

(4)

(A) Notwithstanding this section and § 12-4-101, effective July 1, 2015, if a member of a local governing body of a county or municipality, or the member's immediate family, is also an employee of the county or municipality, the member is prohibited from voting on any matter in which the member has a conflict of interest.

(B) As used in this subdivision (c)(4), "immediate family" means a spouse, child, stepchild, brother, sister, son-in-law, daughter-in-law, parent, or grandparent of the member.

SECTION 2. Tennessee Code Annotated, Section 12-4-101, is amended by adding the following new subdivision to subsection (c):

(4)

(A) Notwithstanding this section or § 5-5-102, effective July 1, 2015, any member of a local governing body of a county or a municipality who is also an employee of the county or municipality, or whose immediate family is an employee of the county or municipality, shall, regardless of when the member's employment began, not vote on matters in which the member, or the member's immediate family, has a conflict of interest.

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(B) As used in this subdivision (c)(4), “immediate family” means a spouse, child, stepchild, brother, sister, son-in-law, daughter-in-law, parent, or grandparent of the member.

SECTION 3. This act shall take effect on July 1, 2015, the public welfare requiring it.

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Appendix E. Summary of States' County Structures and Laws

	County Structures Similar to Tennessee's	Some Counties' Structures Similar to Tennessee's	County Structures Not Similar to Tennessee's
Statute Prohibits County Employees Serving	**1**	**5**	**11**
	Alabama	Alaska, Delaware, Florida, South Carolina, Wisconsin	California, Indiana, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Oklahoma, Virginia, West Virginia
Statute Allows County Employees to Serve	**2**	**1**	**5**
	Arkansas, *Tennessee*	Illinois	Iowa, Montana, North Carolina, Oregon, Utah
No Statute Allows or Prohibits County Employees Serving	**2**	**1**	**17**
	Hawaii, North Dakota	Pennsylvania	Arizona, Colorado, Georgia, Idaho, Kansas, Kentucky, Maryland, Nebraska, Nevada, New Jersey, New Mexico, New York, Ohio, South Dakota, Texas, Washington, Wyoming
No County Governments or Limited County Governments	**0**	**0**	**5**
			Connecticut, Massachusetts, New Hampshire, Rhode Island, Vermont

Sources: Murphy 2009 and US Census Bureau 2013.

Appendix F. States' Conflict of Interest Law Citations

State	Conflict of Interest Law Citation
Alabama	Title 36, Chapter 25
Alaska	Title 29, Chapter 20, Article 1
Arizona	Title 38, Chapter 3, Article 8
Arkansas	Title 21, Chapter 8
California	Government Code Title 9
Colorado	Title 24, Article 18
Connecticut	n/a no county governments in state
Delaware	Title 29, Part V, Chapter 58
Florida	Title X, Chapter 112, Part III
Georgia	Title 21, Chapter 5
Hawaii	Division 1, Title 7, Chapter 84, Part II
Idaho	General Laws Title 74, Chapter 4
Illinois	Chapter 5 Governmental Ethics Act
Indiana	Title 3, Article 5, Chapter 9
Iowa	Title II, Subtitle 2, Chapter 68B
Kansas	Chapter 75, Article 43, Conflict of Interest
Kentucky	Title VII, Chapter 61
Louisiana	Title 42, Chapter 15, Part 2
Maine	Title 30-A, Part 1, Chapter 1, Subchapter 1, Section 5 and Title 30-A, Part 2, Subpart 3, Chapter 123, Subchapter 1
Maryland	General Provisions Title 5, Subtitle 5
Massachusetts	none
Michigan	Chapter 46, Act 156 of 1851 County Boards of Commissioners
Minnesota	Government Miscellany Chapter 10A
Mississippi	Title 25, Chapter 4
Missouri	Title 8, Chapter 105
Montana	Title 2, Chapter 2, Part 1
Nebraska	Chapter 49, Article 14
Nevada	Title 23, Chapter 281A
New Hampshire	none
New Jersey	Title 40A, Chapter 9, A. Municipalities and Counties
New Mexico	Chapter 10, Article 16
New York	General Municipal Law Article 18
North Carolina	Chapter 153A, Article 4, Part 3
North Dakota	none
Ohio	Title 1, Chapter 102
Oklahoma	Title 19, Chapter 6
Oregon	Title 22, Chapter 244
Pennsylvania	Title 65, Part II, Chapter 11
Rhode Island	n/a no county governments in state
South Carolina	Title 8, Chapter 13
South Dakota	Title 6, Chapter 6-1

State	Conflict of Interest Law Citation
Tennessee	Title 12, Chapter 4, Section 101, Title 8, Chapter 17 & Chapter 50, Part 5
Texas	Local Government Code Title 5, Subtitle C, Chapter 171
Utah	Title 67, Chapter 16
Vermont	none
Virginia	Title 2.2, Subtitle I, Part E, Chapter 31
Washington	Title 42
West Virginia	Chapter 6B
Wisconsin	General Organization of the State Chapter 19, Subchapter III
Wyoming	Title 6, Chapter 5, Article 1