



Municipal Technical Advisory Service  
INSTITUTE *for* PUBLIC SERVICE

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## Policy Making Appointees and Legal Advisors

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Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](http://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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## Policy Making Appointees and Legal Advisors

**Reference Number:** MTAS-913

Also classified as non-covered under the act are policy-making appointees. When a publicly elected official appoints an individual to serve on a policymaking level, such an appointed individual is not covered by the act. To fall within the policy-making appointee exception, the staff member must be appointed by and serve solely at the pleasure or discretion of the elected official and must formulate policy rather than simply implement or apply the policy to others. In *Elrod v. Burns*, 427 U.S. 347, 1976, the courts ruled that “in determining whether an employee occupies a policymaking position, consideration must be given to whether the employee acts as an advisor or formulates plans for the implementation of broad goals.”

Immediate legal advisors to elected officials also are not covered by the act. “Immediate advisors are defined as ‘staff who serve as advisors on constitutional matters or legal matters and who are not subject to the civil service rules of the employing agency.’” 29 C.F.R. § 553.11(d). City attorneys are clearly outside the coverage of the act because they advise on legal matters and generally are not subject to the civil service rules of the organization.

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*DISCLAIMER: The letters and publications written by the MTAS consultants were written based upon the law at the time and/or a specific sets of facts. The laws referenced in the letters and publications may have changed and/or the technical advice provided may not be applicable to your city or circumstances. Always consult with your city attorney or an MTAS consultant before taking any action based on information contained in this website.*

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