

APPENDIX

- A. ETHICS PROVISIONS PROVIDED BY STATUTE.
- B. OCCUPATIONAL SAFETY AND HEALTH PROGRAM PLAN.

APPENDIX A

ETHICS PROVISIONS PROVIDED BY STATUTE.

Appendix A

1. Campaign finance.

All candidates for the Chief Administrative Office (Mayor), any candidates who spend more than \$500, and candidates for other offices that pay at least \$100 a month are required to file campaign financial disclosure reports. Civil penalties of \$25 per day are authorized for late filings. Penalties up to the greater of \$10,000 or 15 percent of the amount in controversy may be levied for filings more than 35 days late. It is a Class E felony for a multicandidate political campaign committee with a prior assessment record to intentionally fail to file a required campaign financial report. Further, the treasurer of such a committee may be personally liable for any penalty levied by the Registry of Election Finance (Tennessee Code Annotated §§ 2-10-101 – 2-10-118).

Contributions to political campaigns for municipal candidates are limited to:

- a. \$1,000 from any person (including corporations and other organizations);
- b. \$5,000 from a multicandidate political campaign committee;
- c. \$20,000 from the candidate;
- d. \$20,000 from a political party; and
- e. \$75,000 from multicandidate political campaign committees.

The Registry of Election Finance may impose a maximum penalty of \$10,000 or 115 percent of the amount of all contributions made or accepted in excess of these limits, whichever is greater (Tennessee Code Annotated §§ 2-10-301 – 2-10-310).

Each candidate for local public office must prepare a report of contributions that includes the receipt date of each contribution and a political campaign committee's statement indicating the date of each expenditure (Tennessee Code Annotated §§ 2-10-105 – 2-10-107).

Candidates are prohibited from converting leftover campaign funds to personal use. The funds must be returned to contributors, put in the volunteer public education trust fund, or transferred to another political campaign fund, a political party, a charitable or civic organization, educational institution, or an organization described in 26 U.S.C. 170(c) (Tennessee Code Annotated § 2-10-114).

2. 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 (Tennessee Code Annotated § 6-2-402, Tennessee Code Annotated § 6-20-205, Tennessee Code Annotated § 6-54-107 – 6-54-108, Tennessee Code Annotated § 12-4-101 – 12-4-102).

3. Disclosure conflict of interests.

Conflict of interest disclosure reports by any candidate or appointee to a local public office are required under Tennessee Code Annotated §§ 8-50-501, et seq. Detailed financial information is required, including the names of corporations or organizations in which the official or one immediate family member has an investment of over \$10,000 or 5 percent of the total capital. This must be filed no later than 30 days after the last day legally allowed for qualifying as a candidate. As long as an elected official holds office, he or she must file an amended statement with the Tennessee Ethics Commission or inform that office in writing that an amended statement is not necessary because nothing has changed. The amended statement must be filed no later than January 31 of each year (Tennessee Code Annotated § 8-50-504).

4. Consulting fee prohibition for elected municipal officials.

Any member or member-elect of a municipal governing body is prohibited under Tennessee Code Annotated § 2-10-124 from "knowingly" receiving any form of compensation for "consulting services" other than compensation paid by the state, county, or municipality. Violations are punishable as Class C felonies if the conduct constitutes bribery under Tennessee Code Annotated § 39-16-102. Other violations are prosecuted as Class A misdemeanors. A conviction under either statute disqualifies the offender from holding any office under the laws or Constitution of the State of Tennessee.

"Consulting services" under Tennessee Code Annotated § 2-10-122 means "services to advise or assist a person or entity in influencing legislative or administrative action, as that term is defined in § 3-6-301, relative to the municipality or county represented by that official." "Consulting services" also means services to advise or assist a person or entity in maintaining, applying for, soliciting or entering into a contract with the municipality represented by that official. "Consulting services" does not mean the practice or business of law in connection with representation of clients by a licensed attorney in a contested case action, administrative proceeding or rule making procedure;

"Compensation" does not include an "honorarium" under Tennessee Code Annotated § 2-10-116, or certain gifts under Tennessee Code Annotated § 3-6-305(b), which are defined and prohibited under those statutes.

The Attorney General construes "Consulting services" to include advertising or other informational services that directly promote specific legislation or specifically target legislators or state executive officials. Advertising aimed at the general public that does not promote or otherwise attempt to influence specific legislative or administrative action is not prohibited. Op. Atty.Gen. No. 05-096, June 17, 2005.

5. Bribery offenses.

a. A person who is convicted of bribery of a public servant, as defined in Tennessee Code Annotated § 39-16-102, or a public servant who is convicted of accepting a bribe under the statute, commits a Class B felony.

b. Under Tennessee Code Annotated § 39-16-103, a person convicted of bribery is disqualified from ever holding office again in the state. Conviction while in office will not end the person's term of office under this statute, but a person may be removed from office pursuant to any law providing for removal or expulsion existing prior to the conviction.

c. A public servant who requests a pecuniary benefit for performing an act the person would have had to perform without the benefit or for a lesser fee, may be convicted of a Class E felony for solicitation of unlawful compensation under Tennessee Code Annotated § 39-16-104.

d. A public servant convicted of "buying and selling in regard to offices" under Tennessee Code Annotated § 39-16-105, may be found guilty of a Class C felony. Offenses under this statute relevant to public officials are selling, resigning, vacating, or refusing to qualify and enter upon the duties of the office for pecuniary gain, or entering into any kind of borrowing or selling for anything of value with regard to the office.

e. Exceptions to 1, 3, and 4, above include lawful contributions to political campaigns, and a "trivial benefit" that is "incidental to personal, professional, or business contacts" in which there is no danger of undermining an official's impartiality.

6. Official misconduct, official oppression, misuse of official information.

a. Public misconduct offenses under Tennessee Code Annotated §§ 39-16-401 – 39-16-404 apply to officers, elected officials, employees,

candidates for nomination or election to public office, and persons performing a governmental function under claim of right even though not qualified to do so.

b. Official misconduct under Tennessee Code Annotated § 39-16-402 pertains to acts related to a public servant's office or employment committed with an intent to obtain a benefit or to harm another. Acts constituting an offense include the unauthorized exercise of official power, acts exceeding one's official power, failure to perform a duty required by law, and receiving a benefit not authorized by law. Offenses under this section constitute a Class E felony.

c. Under Tennessee Code Annotated § 39-16-403, "Official oppression," a public servant acting in an official capacity who intentionally arrests, detains, frisks, etc., or intentionally prevents another from enjoying a right or privilege commits a Class E felony.

d. Tennessee Code Annotated § 39-16-404 prohibits a public servant's use of information attained in an official capacity, to attain a benefit or aid another which has not been made public. Offenses under the section are Class B misdemeanors.

e. A public servant convicted for any of the offenses summarized in sections 2-4 above shall be removed from office or discharged from a position of employment, in addition to the criminal penalties provided for each offense. Additionally, an elected or appointed official is prohibited from holding another appointed or elected office for ten (10) years. At-will employees convicted will be discharged, but are not prohibited from working in public service for any specific period. Subsequent employment is left to the discretion of the hiring entity for those employees. Tennessee Code Annotated § 39-16-406.

7. Ouster law.

Some Tennessee city charters include ouster provisions, but the only general law procedure for removing elected officials from office is judicial ouster. Cities are entitled to use their municipal charter ouster provisions, or they may proceed under state law.

The judicial ouster procedure applies to all officers, including people holding any municipal "office of trust or profit." (Note that it must be an "office" filled by an "officer," distinguished from an "employee" holding a "position" that does not have the attributes of an "office.") The statute makes any officer subject to such removal "who shall knowingly or willfully misconduct himself in office, or who shall knowingly or willfully neglect to perform any duty enjoined upon such officer by any of the laws of the state, or who shall in any public place be in a state of intoxication produced by strong drink voluntarily taken, or who shall

engage in any form of illegal gambling, or who shall commit any act constituting a violation of any penal statute involving moral turpitude" (Tennessee Code Annotated § 8-47-101).

Tennessee Code Annotated § 8-47-122(b) allows the taxing of costs and attorney fees against the complainant in an ouster suit if the complaint subsequently is withdrawn or deemed meritless. Similarly, after a final judgment in an ouster suit, governments may order reimbursement of attorney fees to the officer targeted in a failed ouster attempt (Tennessee Code Annotated § 8-47-121).

The local Attorney General or City Attorney has a legal "duty" to investigate a written allegation that an officer has been guilty of any of the mentioned offenses. If he or she finds that "there is reasonable cause for such complaint, he shall forthwith institute proceedings in the Circuit, Chancery, or Criminal Court of the proper county." However, with respect to the City Attorney, there may be an irreconcilable conflict between that duty and the City Attorney's duties to the City, the Mayor, and the rules of professional responsibility governing attorneys. Also, an Attorney General or City Attorney may act on his or her own initiative without a formal complaint (Tennessee Code Annotated §§ 8-47-101 – 8-47-102). The officer must be removed from office if found guilty (Tennessee Code Annotated § 8-47-120).

Appendix B**Downtown Central Business Improvement District**

SITUATE in the Fifth (5th) Civil District of Sevier County, Tennessee, and within the corporate limits of the City of Sevierville, Tennessee, said area being the same as, and identical to, the (C-1) Central Business District as established by the "Zoning Map of the City of Sevierville, Tennessee" dated October 10, 1981, as provided by Ordinance No. 414, and being more particularly described as follows:

BEGINNING at a point marking the intersection of the southerly edge of the right of way of Main Street with the easterly edge of the right of way of the Sevierville By-Pass, said point being the northwesternmost corner of the property herein described; thence from said point of beginning, continuing with the easterly edge of the right of way of the Sevierville By-Pass in a southerly to southeasterly direction the following approximate distances: 315 feet to a point in the center of the right of way of Commerce Street at its intersection with the Sevierville By-Pass; thence 280 feet to a point in the center of Bruce Street at its intersection with the Sevierville By-Pass; thence 1340 feet to a point in the center of Prince Street Extended at its intersection with the Sevierville By-Pass and thence 1150 feet to the point of intersection with the easterly edge of the right of way of the Sevierville By-Pass with the northerly edge of the right of way of Tennessee Highway No. 71 (a/k/a the Gatlinburg Highway); thence leaving the easterly edge of the right of way of the Sevierville By-Pass and with the northerly or westerly edge of the right of way of Tennessee Highway No. 71 in a northerly direction the following distances: 200 feet to a point in the center of Court Avenue at its intersection with Tennessee Highway No. 71; thence 1055 feet to a point in the center of Prince Street at its intersection with Tennessee Highway No. 71; thence 230 feet to a point in the center of Church Street at its intersection with Tennessee Highway No. 71; thence 220 feet to a point in the center of Cedar Street at its intersection with Tennessee Highway No. 71; thence 200 feet to a point in the center of Joy Street at its intersection with Tennessee Highway No. 71; thence 270 feet to a point in the center of Bruce Street at its intersection with Tennessee Highway No. 71; thence 575 feet to a point at the intersection of Tennessee Highway No. 71 with the southerly edge of the right of way of Main Street; thence leaving Tennessee Highway No. 71 and continuing with the southerly edge of the right of way of Main Street in a westerly direction the following distances: 640 feet to a point in the center of Court Avenue at its intersection with Main Street; thence 265 feet to a point in the center of County Avenue at its intersection with Main Street; thence 470 feet to the point of beginning. This description being taken from the records contained in the Sevier County, Tennessee, Tax Assessor's Office.