



Municipal Technical Advisory Service  
INSTITUTE *for* PUBLIC SERVICE

06/01/2025

**Published on MTAS – Serving Tennessee City Officials (<https://www.mtas.tennessee.edu>)**

---

## Crimes and Removal from Office

---

Dear Reader:

The following document was created from the Municipal Technical Advisory Services website ([mtas.tennessee.edu](https://www.mtas.tennessee.edu)). This website shares information relative to Tennessee municipal government. We hope this information will be useful to you and that it will assist you with questions that arise in your tenure in 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.

The Municipal Technical Advisory Service (MTAS) was created in 1949 to provide technical assistance to elected and appointed municipal officials in Tennessee. We are a resource for Tennessee municipal officials in areas of municipal government, human resources, finance, fire, legal, police, public works, water, and wastewater. We provide personal and professional knowledge growth opportunities on current issues within municipal government.

The University of Tennessee  
Municipal Technical Advisory Service  
1610 University Avenue  
Knoxville, TN 37921-6741  
[www.mtas.tennessee.edu](https://www.mtas.tennessee.edu)

Table of Contents

<b>Crimes and Removal from Office .....</b>	<b>3</b>
---	----------

# Crimes and Removal from Office

Reference Number: MTAS-177

Reviewed Date: 07/08/2024

Below are summaries of the requirements for removal from office or ouster as well as the statutes adopted by the General Assembly prohibiting and criminalizing certain actions by public officials.

## **Removal from Office and Judicial Ouster**

Some Tennessee city charters include ouster provisions, but the only general law procedure for removing elected officials from office is judicial ouster. Cities may opt to remove elected officials under charter or state law provisions.

T.C.A. § 8-47-101 provides statutory grounds for removal from office:

Every person holding any office of trust or profit, under and by virtue of any of the laws of the state, either state, county, or municipal, except such officers as are by the constitution removable only and exclusively by methods other than those provided in this chapter, who shall knowingly or willfully commit misconduct 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, shall forfeit such office and shall be ousted from such office in the manner hereinafter provided.)

In *State ex rel. Wilson v. Bush*, 208 S.W. 607, 609 (1919), the Tennessee Supreme Court cited *State Ex Rel. Citizens of Lawrenceburg v. Perkinson*, 19 S.W.2d 254 (Tenn. 1929), which held:

Proceedings under the Ouster Act should never be brought unless there is a clear case of official dereliction. This is a very drastic statute and should not be invoked except in plain cases that can be certainly proved. There is no excuse for instituting an ouster suit for purposes of inquisition and as a fishing expedition, and it is only cases brought under such auspices that the relators will be at much difficulty in developing.

T.C.A. § 8-47-102 authorizes the attorney general, district attorney general, and city attorney to institute proceedings for ouster. The attorney general, district attorney general, and city attorney have a statutory duty to investigate complaints made pursuant to T.C.A. § 8-47-101, and a finding that there is reasonable cause for such complaint requires such investigator to initiate proceedings. However, proceedings may be instituted with or without a request being made to initiate proceedings.

T.C.A. § 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. T.C.A. § 8-47-121. However, if an officer is found guilty at the end of the ouster suit, the officer must be removed from office. T.C.A. § 8-47-121.

## **Bribery**

T.C.A. § 39-16-101, et seq., prohibits the offer of a bribe by any person or acceptance of bribes by public officials. T.C.A. § 39-16-103 also prohibits anyone convicted of bribery from holding public office in Tennessee in the future.

T.C.A. § 39-16-102 defines the offense of bribery:

(a) A person commits an offense who:

- (1) Offers, confers, or agrees to confer any pecuniary benefit upon a public servant with the intent to influence the public servant's vote, opinion, judgment, exercise of discretion or other action in the public servant's official capacity; or
- (2) While a public servant, solicits, accepts, or agrees to accept any pecuniary benefit upon an agreement or understanding that the public servant's vote, opinion, judgment, exercise of discretion or other action as a public servant will thereby be influenced.

Bribery of a public servant and the acceptance of a bribe by a public servant are Class B felonies. A municipal official convicted of bribery may be punished by imprisonment of not less than eight (8) years nor more than thirty (30) years. Additionally, fines may be assessed in an amount not to exceed twenty-five thousand dollars (\$25,000). T.C.A. § 40-35-111.

Two of the most well know bribery investigations in Tennessee are Operation Rocky Top and Operation Tennessee Waltz. You can find more information about Operation Rocky Top here. (Chas Sisk, January 12, 2017, 90.3 WPLN News "Bingo, Bribes and a Wire: Tennessee Senate's New Leader Recalls the Episode That Defined His Career.") Nearly 20 years after Operation Rocky Top, state and local officials were being convicted or pleading guilty to bribery charges as part of Operation Tennessee Waltz, which you can find out more about here. It was because of Operation Tennessee Waltz that the General Assembly passed the Comprehensive Governmental Ethics Reform Act of 2006.

### ***Unlawful Compensation***

T.C.A. § 39-16-104, provides that a public servant commits an offense who requests a pecuniary benefit for the performance of an official action knowing that the public servant was required to perform that action without compensation or at a level of compensation lower than that requested.

Several cases and AG opinions address the ability of an official to receive compensation for an act that the official was required to perform. See *State v. Dixie Portland Cement Co.*, 267 S.W. 595 (Tenn. 1925) (public officers can receive no fees or costs, except as expressly authorized by law) and *Bayless v. Knox County*, 286 S.W.2d 579 (1955). See also T.C.A. § 8-21-101.

### ***Honoraria***

Local, elected officials acting in their official capacity may not accept honoraria, which is defined as a "payment of money or anything of value for an appearance, speech or article, but does not include actual and necessary travel expenses, meals and lodging associated with such appearance, speech or article." T.C.A. § 2-10-116. Additionally, T.C.A. § 36-3-301 makes it a Class C misdemeanor for a municipal mayor to knowingly charge a fee or demand compensation of any kind for the solemnization of marriage. A violation of this law also creates a rebuttable presumption that there is an actionable legal basis for ouster.

### ***Official Misconduct***

T.C.A. § 39-16-402, provides that a public servant commits an offense who, with intent to obtain a benefit or to harm another, intentionally or knowingly:

1. Commits an act relating to the servant's office or employment that constitutes an unauthorized exercise of official power;

2. Commits an act under color of office or employment that exceeds the servant's official power;
3. Refrains from performing a duty that is imposed by law or that is clearly inherent in the nature of the public servant's office or employment;
4. Violates a law relating to the public servant's office or employment; or
5. Receives any benefit not otherwise authorized by law.

The statute includes the following as examples of an official receiving a benefit not otherwise authorized by law:

- (A) Purchases real property or otherwise obtains an option to purchase real property with intent to make a profit if the public servant knows that such real property may be purchased by a governmental entity and such information is not public knowledge; or
- (B) Acquires nonpublic information derived from such person's position as a public servant or gained from the performance of such person's official duties as a public servant and knowingly acts on such nonpublic information to acquire, or obtain an option to acquire, or liquidate, tangible or intangible personal property with intent to make a profit.

Both of these offenses are Class A misdemeanors for which restitution to the governmental entity must be paid. Otherwise, the offense of official misconduct is a Class E felony. See State v. Keck, No. 01C01-9401-CC-00017, 1997 WL 254228 (Tenn. Crim. App. May 16, 1997) and State v. Redden, No. E2016-00998-CCA-R3-CD, 2017 WL 1019511 (Tenn. Crim. App. March 15, 2017).

### **Official Oppression**

A public official commits official oppression when, acting under the color of law, the official:

1. Intentionally subjects another to mistreatment or to arrest, detention, stop, frisk, halt, search, seizure, dispossession, assessment, or lien when the public servant knows the conduct is unlawful; or
2. Intentionally denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity, when the public servant knows the conduct is unlawful.

T.C.A. § 39-16-403. Official oppression is a Class E felony.

### **Insider Information**

Municipal employees and officials who use information that is not yet public and obtained due to the individual's position to either obtain a personal benefit or a benefit for another, commits the offense of insider information. T.C.A. § 39-16-404, states:

A public servant commits an offense who, by reason of information to which the public servant has access in the public servant's official capacity and that has not been made public, attains or aids another to attain a benefit.

This offense is a Class B misdemeanor. Employees and officials should be especially mindful of this offense when receiving information related to prospective development projects that is not yet public.

### **Audit Offenses**

Pursuant to T.C.A. § 39-16-407, a public servant commits an offense who, with intent to deceive, knowingly misrepresents material information related to an audit conducted by an auditor in the department of audit. As such, municipal officials and employees must be honest in ever

communication with an auditor, whether the auditor is internal to the municipality or external.

This offense is a Class C misdemeanor.

---

**Source URL:** <https://www.mtas.tennessee.edu/reference/crimes-and-removal-office>