



## Lawful Inquiries: Sex, Race, Residence, Birthplace

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Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](https://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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**Reference Number:** MTAS-1557

Employers may make inquiries into the following areas:

### **Sex**

- Inquiry or restriction in employment is permissible only where a bona fide occupational qualification (BFOQ [1]) exists. The bona fide exception is interpreted very narrowly by the courts and the EEOC and is defined as being based on the need for the individual to be a particular sex.
- The burden of proof rests on the employer to prove that a bona fide occupational qualification does exist and that all members of the affected class are incapable of performing the job.

### **Applicant's Race**

- **NONE** but may ask about:
- General distinguishing physical characteristics such as scars, etc.

### **Address or Duration of Residence**

- Applicant's address.
- Inquiry into place and length of previous address.
- Length of time a resident of this state or city.

### **Birthplace**

- Are you either a U.S. citizen or an alien authorized to work in the United States?
- "Can you, after employment, submit a birth certificate, other proof of U.S. citizenship or authorization to work documents?"

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### **Links:**

[1] [https://www.eeoc.gov/laws/practices/inquiries\\_gender.cfm](https://www.eeoc.gov/laws/practices/inquiries_gender.cfm)

*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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