

# Tennessee Code Annotated

## TITLE EIGHT, CHAPTER 47 – REMOVAL OF OFFICERS

### **8-47-101. Officers subject to removal — Grounds**

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.

[Acts 1915, ch. 11, § 1; Shan., § 1135a1; Code 1932, § 1877; T.C.A. (orig. ed.), § 8-2701; Acts 2004, ch. 621, § 1.]

### **8-47-102. Institution by prosecuting attorneys on own initiative.**

The attorney general and reporter has the power, on the attorney general and reporter's own initiative, and without any complaint having been made to the attorney general and reporter or request made of the attorney general and reporter, to institute proceedings in ouster against any and all state, county, and municipal officers, under the provisions of this chapter, and the district attorneys general, county attorneys, and city attorneys, within their respective jurisdictions, may institute such actions, without complaint being made to them or request made of them, as they are authorized to institute upon request made of them or complaint made to them.

[Acts 1915, ch. 11, § 14; Shan., § 1135a25; Code 1932, § 1901; T.C.A. (orig. ed.), § 8-2702.]

### **8-47-103. Investigation and institution of proceedings**

It is the duty of the attorney general and reporter, the district attorneys general, county attorneys, and city attorneys, within their respective jurisdictions, upon notice being received by them in writing that any officer herein mentioned has been guilty of any of the acts, omissions, or offenses set out in § 8-47-101, forthwith to investigate such complaint; and, if upon investigation such person finds that there is reasonable cause for such complaint, such person shall forthwith institute proceedings in the circuit, chancery, or criminal court of the proper county, to oust such officer from office.

[Acts 1915, ch. 11, § 2; Shan., § 1135a2; Code 1932, § 1878; T.C.A. (orig. ed.), § 8-2703.]

#### **8-47-104. Subpoena to appear before prosecuting attorney.**

The attorney general and reporter, the district attorneys general, county attorneys, and city attorneys have the power and they are hereby directed, whenever complaint has been made, and the names of the witnesses furnished them, or whenever they deem necessary, to issue subpoenas for such witnesses so furnished them and for such persons as they shall have reason to believe have any knowledge of the complaint made, to appear before the attorney general and reporter, district attorney general, county attorney, or city attorney, at a time and place to be designated in the subpoena then and there to testify concerning the subject matter set out in the complaint.

[Acts 1915, ch. 11, § 11; Shan., § 1135a19; Code 1932, § 1895; T.C.A. (orig. ed.), § 8-2704.]

#### **8-47-105. Testimony before prosecuting attorneys.**

Each witness shall be sworn true answers to make to all questions propounded to the witness, touching the matter under investigation, and the testimony of each witness shall be reduced to writing and be signed by the witness. The attorney general and reporter, the district attorneys general, county attorneys, and city attorneys are hereby authorized and empowered to administer the necessary oaths and affirmations to such witnesses.

[Acts 1915, ch. 11, § 11; Shan., § 1135a20; Code 1932, § 1896; T.C.A. (orig. ed.), § 8-2705.]

#### **8-47-106. Disobedience to attorney's subpoena**

Any disobedience to such subpoena, or refusal to answer any proper questions propounded by the officers at such inquiry, is a Class C misdemeanor.

[Acts 1915, ch. 11, § 11; Shan., § 1135a21; Code 1932, § 1897; T.C.A. (orig. ed.), § 8-2706; Acts 1989, ch. 591, § 113.]

#### **8-47-107. Self-incrimination privilege unavailable — Immunity from prosecution**

No person shall be excused from testifying before the attorney general and reporter, district attorney general, county attorney, or city attorney, at such investigation, or in any investigation, or be excused from testifying in any proceeding brought in any court of competent jurisdiction, under the provisions of this chapter, on the ground that such person's testimony may incriminate such person; but no person shall be prosecuted or punished on account of any transaction, matter, or thing concerning which such person shall be compelled to testify, nor shall such testimony be used against such person in prosecutions for any crime or misdemeanor under the laws of this state.

[Acts 1915, ch. 11, § 12; Shan., § 1135a22; Code 1932, § 1898; T.C.A. (orig. ed.), § 8-2707.]

#### **8-47-108. Filing of complaint on direction of governor.**

It is also the duty of the attorney general and reporter, in the case of state officers, and of the district attorney general and the county attorney, if there is one in the county, in the case of county officers, and of the city attorney, or the district attorney general, in case of municipal

officers, to file such petition or complaint, upon being directed or requested in writing so to do by the governor.

[Acts 1915, ch. 11, § 3; Shan., § 1135a4; Code 1932, § 1880; T.C.A. (orig. ed.), § 8-2708.]

#### **8-47-109. Governor's duty to direct prosecution.**

The governor shall have power, and it shall be the governor's duty, whenever the governor has knowledge that reasonable grounds exist for the proceedings authorized by this chapter against any state, county, or municipal officer, to direct the attorney general and reporter, or district attorney general, or county attorney, or city attorney, as the case may be, to institute and prosecute the same against the offending officer.

[Acts 1915, ch. 11, § 4; Shan., § 1135a7; Code 1932, § 1883; T.C.A. (orig. ed.), § 8-2709.]

#### **8-47-110. Petition in name of state — Filing by relators.**

The petition or complaint shall be in the name of the state and may be filed upon the relation of the attorney general and reporter, or the district attorney general for the state, or the county attorney in the case of county officers, and of the city attorney, or the district attorney general, in the case of municipal officers; and in all cases it may be filed, without the concurrence of any of such officers, upon the relation of ten (10) or more citizens and freeholders of the state, county, or city, as the case may be, upon their giving the usual security for costs.

[Acts 1915, ch. 11, § 3; Shan., § 1135a3; Code 1932, § 1879; T.C.A. (orig. ed.), § 8-2710.]

#### **8-47-111. Assistance to prosecution by relators.**

It is the duty of the attorney general and reporter, upon request of relator citizens and freeholders, to aid and assist in the prosecution of such proceedings against state officers, and of district attorneys general and county attorneys, upon like request, to aid and assist in the prosecution of such proceedings against county officers, and of city attorneys or the district attorneys general for the state, upon like request, to aid and assist in the prosecution of such proceedings against municipal officers other than themselves.

[Acts 1915, ch. 11, § 3; Shan., § 1135a6; Code 1932, § 1882; T.C.A. (orig. ed.), § 8-2711.]

#### **8-47-112. Additional counsel for prosecution**

The governor may in all cases, by and with the concurrence of the attorney general and reporter, employ on behalf of the state additional counsel to aid in the prosecution of such proceedings whenever the default charged involves the failure or neglect of the accused to perform the accused's duty under any law or laws of the state.

[Acts 1915, ch. 11, § 4; Shan., § 1135a8; Code 1932, § 1884; T.C.A. (orig. ed.), § 8-2712.]

### **8-47-113. Form and contents of petition.**

The accused shall be named as defendant, and the petition or complaint, except when filed upon the relation of the law officers of the state, district, county, or municipality, shall be verified by oath or affidavit, shall state the charges against defendant, with reasonable certainty, and be subject to amendment as in other actions.

[Acts 1915, ch. 11, § 5; Shan., § 1135a9; Code 1932, § 1885; T.C.A. (orig. ed.), § 8-2713.]

### **8-47-114. Summons — Time to answer.**

Upon the filing of the complaint or petition for the writ of ouster, a summons shall issue for the defendant, and there shall accompany the summons and be served upon the defendant a copy of the complaint or petition filed against the defendant, and the defendant shall have the right to answer within twenty (20) days from such service.

[Acts 1915, ch. 11, § 6; Shan., § 1135a10; Acts 1919, ch. 161, § 1; Code 1932, § 1886; T.C.A. (orig. ed.), § 8-2714.]

### **8-47-115. Pleadings.**

The petition and answer shall constitute the only pleadings allowed, and all allegations in the answer shall be deemed controverted, and any and all questions as to the sufficiency of the petition or complaint shall be raised and determined upon the trial of the case, and if such petition or complaint is held to be insufficient in form, the same shall be amended at once, and such amendment shall not delay the trial of the case.

[Acts 1915, ch. 11, § 6; Shan., § 1135a11; Code 1932, § 1887; T.C.A. (orig. ed.), § 8-2715.]

### **8-47-116. Suspension pending hearing — Filling of vacancy**

Upon petition or complaint being filed, praying for a writ of ouster against any of the officers herein named, and whether such action is brought by the attorney general and reporter, district attorney general, county attorney, city attorney, or by relator citizens and freeholders, the court, judge, or chancellor may, on application of the attorney general and reporter, the district attorney general for the state, the county attorney, city attorney, or relator citizens and freeholders bringing such action, suspend such officer or officers so accused from performing any of the duties of their office, pending a final hearing and determination of the matter; and, thereupon, the vacancy shall be filled as the law provides for the filling of vacancies in such office, and such person or persons so filling such vacancy shall carry on the duties of the office until such hearing shall be finally determined or until the successor of the officer so suspended shall be elected or appointed as provided by law, and shall have qualified.

[Acts 1915, ch. 11, § 10; Shan., § 1135a16; Code 1932, § 1892; T.C.A. (orig. ed.), § 8-2716.]

### **8-47-117. Hearing on suspension.**

No person shall be suspended under the provisions of this chapter until at least five (5) days' notice of the application for the order of suspension shall be served upon such person, which notice shall set forth the time and place of the hearing of the application, and the officer shall

have the right to appear and make any defense that the officer may have, and shall be entitled to a full hearing upon the charges contained in the complaint and upon the application for the order of suspension; and no order of suspension shall be made, except upon finding of good cause therefor.

[Acts 1915, ch. 11, § 10; Shan., § 1135a17; Code 1932, § 1893; T.C.A. (orig. ed.), § 8-2717.]

#### **8-47-118. Application of chancery procedure**

The proceedings under this chapter, whether in the circuit, chancery, or criminal courts, shall be conducted in accordance with the procedure of courts of chancery, where not otherwise expressly provided herein. All of such courts having cognizance of such proceedings are hereby given the full jurisdiction and powers of courts of equity with respect to such proceedings.

[Acts 1915, ch. 11, § 6; Shan., § 1135a12; Code 1932, § 1888; T.C.A. (orig. ed.), § 8-2718.]

#### **8-47-119. Trial — Continuance — Right to jury.**

(a) Such proceedings in ouster shall be summary and triable as equitable actions, shall have precedence over civil and criminal actions, and shall be tried at the first term after the filing of the complaint or petition herein named; provided, that the answer herein named shall have been on file at least ten (10) days before the day of trial.

(b) A continuance may be granted either side for good cause shown, but no continuance shall be granted by an agreement of the parties.

(c) Both upon hearing of preliminary motion to suspend and also upon any final hearing of such proceedings, any defendant shall be entitled to demand and have a trial by jury as to any issue of fact.

[Acts 1915, ch. 11, § 7; Shan., § 1135a13; Code 1932, § 1889; Acts 1933, ch. 94, § 1; 1937 (3rd E. S.), ch. 3, § 1; 1939, ch. 10, § 1; C. Supp. 1950, § 1889; T.C.A. (orig. ed.), § 8-2719.]

#### **8-47-120. Judgment of ouster**

If the defendant is found guilty, judgment of ouster shall be rendered against the defendant, and the defendant shall be ousted from office.

[Acts 1915, ch. 11, § 8; Shan., § 1135a14; Code 1932, § 1890; T.C.A. (orig. ed.), § 8-2720.]

#### **8-47-121. Restoration to office — Salary during suspension — Attorney fees.**

If, on the final hearing of the complaint or petition herein provided, the officer is not removed from office, the officer shall, if the officer has been suspended, be immediately restored to office, and be allowed the officer's full costs and the salary and fees of the officer's office during the time of the officer's suspension, as the case may be, against the state, county, or municipality, to be taxed and paid as in other cases. Such officer so temporarily filling the

office shall receive the same salary and fees as is provided by law to be paid to the officer so suspended. After final hearing on the complaint or petition, any public officer not removed from office, or if the officer has been suspended, any officer immediately restored to office, may be reimbursed reasonable attorney fees by the appropriate state, county, municipality, or other political subdivision. If either party appeals pursuant to § 8-47-123, no such reimbursement shall be made until a final judgment is rendered.

[Acts 1915, ch. 11, § 10; Shan., § 1135a18; Code 1932, § 1894; T.C.A. (orig. ed.), § 8-2721; Acts 1997, ch. 262, § 1.]

#### **8-47-122. Liability for costs.**

**(a)** Such proceedings against state officers, when brought by or upon relation of the attorney general and reporter, shall be at the expense of the state; when brought against county officers by or upon the relation of any of the officers above named, they shall be at the expense of the county; when brought against municipal officers by or upon the relation of the city attorney, or the district attorney general, they shall be at the expense of the municipality; and when brought by or upon the relation of citizens and freeholders, they shall be at the expense of relators; provided, that in all cases, where such proceedings are successful, full costs shall be adjudged against the defendant.

**(b)** Notwithstanding the provisions of subsection (a) or any other provision of law to the contrary, the complainant may be taxed for costs and attorney fees pursuant to Rule 11 of the Tennessee Rules of Civil Procedure, if the complaint or petition is withdrawn or if the court finds the charges alleged to be without merit.

[Acts 1915, ch. 11, § 3; Shan., § 1135a5; Code 1932, § 1881; T.C.A. (orig. ed.), § 8-2722; Acts 1997, ch. 231, § 1.]

#### **8-47-123. Appeal.**

Either party may appeal from the final judgment or decree, but such appeal shall not operate to suspend or vacate the judgment or decree, but the same shall remain in full force until vacated, reversed, or modified.

[Acts 1915, ch. 11, § 9; Shan., § 1135a15; Code 1932, § 1891; T.C.A. (orig. ed.), § 8-2723; Acts 1981, ch. 449, § 2; 1992, ch. 952, § 3.]

#### **8-47-124. Procedure.**

In all appeals, the procedure shall be governed by the Tennessee Rules of Appellate Procedure.

[Acts 1915, ch. 11, § 13; Shan., § 1135a23; Code 1932, § 1899; T.C.A. (orig. ed.), § 8-2724; Acts 1981, ch. 449, § 2; 1992, ch. 952, § 4.]

### **8-47-125. Priority on appeal**

On appeal, such cause shall stand for trial at the first term after such appeal is perfected and filed, and shall have precedence over all civil and criminal cases.

[Acts 1915, ch. 11, § 13; Shan., § 1135a24; Code 1932, § 1900; T.C.A. (orig. ed.), § 8-2725.]

### **8-47-126. Criminal liability unaffected.**

**(a)** Nothing in this chapter shall be construed as repealing any law now in force making it a crime or misdemeanor for such public officers to violate certain statutes of this state and providing a punishment for the violation.

**(b)** Proceedings under this chapter shall not be a bar to proceedings under any criminal statute now in force or which may be in force.

[Acts 1915, ch. 11, § 15; Shan., § 1135a26; Code 1932, § 1902; T.C.A. (orig. ed.), § 8-2726.]

### **8-47-127. Lottery construed.**

Participation in any activity which is conducted pursuant to law and authorized by the provisions of the Constitution of Tennessee, article XI, § 5 shall not be construed as gambling for the purposes of § 8-47-101.

[Acts 2003, ch. 297, § 11.]