

GREENE COUNTY BANCSHARES INC

Form S-8

July 30, 2004

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As Filed With the Securities and Exchange Commission
on July 30, 2004

Registration No. 333-_____

**SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

FORM S-8

**REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933**

GREENE COUNTY BANCSHARES, INC.

(Exact name of registrant as specified in its charter)

Tennessee
(State or other jurisdiction of
incorporation or organization)

62-1222757
(I.R.S. Employer Identification No.)

**100 North Main Street
Greenville, Tennessee 37743-4992**
(Address of Principal Executive Offices)

**GREENE COUNTY BANCSHARES, INC.
401K PROFIT SHARING PLAN**
(Full title of the plan)

R. Stan Puckett
Chairman and Chief Executive Officer
Greene County Bancshares, Inc.
100 North Main Street
Greenville, Tennessee 37743-4992
(423) 639-5111
(Name, Address, and Telephone Number of Registrant's agent for service)

CALCULATION OF REGISTRATION FEE

Title of securities to be registered	Amount to be registered⁽¹⁾	Proposed maximum offering price per share	Proposed maximum aggregate offering price⁽²⁾	Amount of registration fee
	75,000 shares	\$ 23.02	\$1,726,500	\$218.75

Common Stock, \$2.00 par
value

- (1) Pursuant to Rule 416(a) under the Securities Act, includes an indeterminate number of additional shares which may be offered and issued to prevent dilution resulting from stock splits, stock dividends or similar transactions.
 - (2) In addition, pursuant to Rule 416(c) under the Securities Act, this Registration Statement also covers an indeterminate amount of plan interests to be offered or sold pursuant to the employee benefit plan described herein.
 - (3) The offering price is estimated solely for the purpose of determining the amount of the registration fee in accordance with Rule 457(h) under the Securities Act and is based on the average of the bid and asking prices for the Common Stock on July 26, 2004.
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PART I

Information Required in the Section 10(a) Prospectus

Greene County Bancshares, Inc. (the Registrant) will send or give documents containing the information specified by Part I of this Form S-8 Registration Statement (the Registration Statement) to participants in the plan to which this Registration Statement relates, as specified in Rule 428(b)(1) promulgated by the Securities and Exchange Commission (the SEC) under the Securities Act of 1933, as amended (the Securities Act). The Registrant is not filing such documents with the SEC, but these documents constitute (along with the documents incorporated by reference into the Registration Statement pursuant to Item 3 of Part II hereof) a prospectus that meets the requirements of Section 10(a) of the Securities Act.

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PART II

Information Required in the Registration Statement

Item 3. Incorporation of Documents by Reference.

The following documents filed by the Registrant with the SEC, pursuant to the Securities Exchange Act of 1934, as amended (the Exchange Act), are hereby incorporated by reference and shall be deemed to be a part hereof from the date of filing of such document:

- (1) The Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2003; and
- (2) The Registrant's Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2004; and
- (3) The Registrant's Current Reports on Form 8-K filed January 28, 2004, April 20, 2004 and July 20, 2004, and Amendments to Current Report on Form 8-K/A filed on March 15, 2004 and May 25, 2004.
- (4) The description of our common stock contained in that certain Amendment to Current Report on Form 8-K/A filed with the Commission on May 25, 2004, including all amendments and reports filed for the purpose of updating such description prior to the termination of the offering of the common stock offered hereby.

All documents filed by the Registrant pursuant to Section 13(a), 13(c), 14 and 15(d) of the Exchange Act after the date hereof and prior to the filing of a post-effective amendment to this Registration Statement which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part hereof from the date of filing of such documents. Any statements contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or replaced for purposes hereof to the extent that a statement contained herein (or in any other subsequently filed document which also is incorporated or deemed to be incorporated by reference herein) modifies or replaces such statement. Any statement so modified or replaced shall not be deemed, except as so modified or replaced, to constitute a part hereof.

Notwithstanding the foregoing, information furnished under Items 9 and 12 of our Current Reports on Form 8-K, including the related Exhibits, is not incorporated by reference in this registration statement or any prospectus delivered to participants in the plan to which this registration statement relates.

Item 4. Not applicable.

Item 5. Interests of Named Experts and Counsel.

Not applicable.

Item 6. Indemnification of Directors and Officers.

The Registrant's bylaws provide that the Registrant shall indemnify each present and future director and officer of the Registrant, or any person who may have served at its request as a director or officer of another company (and, in either case, his heirs, executors and administrators) to the full extent allowed by the laws of the State of Tennessee,

both as now in effect and as hereafter adopted unless otherwise prohibited by federal law or regulations.

The Registrant's amended and restated charter provides that each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a director or officer of the Registrant or is or was serving at the request of the Registrant as a director or officer of another corporation or of a partnership,

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joint venture, trust or other enterprise, including service with respect to an employee benefit plan, whether the basis of such proceeding is alleged action in an official capacity as a director or officer or in any other capacity while serving as a director or officer, shall be indemnified and held harmless by the Registrant to the fullest extent authorized by Tennessee law against all expense, liability and loss reasonably incurred or suffered by such indemnitee in connection therewith. The right to indemnification conferred by the Registrant's amended and restated charter continues as to an indemnitee who has ceased to be a director or officer and inures to the benefit of the indemnitee's heirs, executors and administrators. However, the right to indemnification conferred by the Registrant's amended and restated charter does not extend to any proceeding (or part thereof) initiated by such indemnitee unless the proceeding (or part thereof) was authorized by the board of directors of the Registrant. The right to indemnification conferred in the Registrant's amended and restated charter includes the right to be paid by the Registrant the expenses incurred in defending any such proceeding in advance of its final disposition if the following conditions are satisfied:

(i) an undertaking is delivered to the Registrant, by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal, that such indemnitee is not entitled to be indemnified for such expenses;

(ii) delivery to the Registrant by the indemnitee of a written affirmation by the indemnitee (a) of his good faith belief that he has conducted himself in good faith, (b) that he reasonably believed, in the case of his official capacity with the Registrant, that his conduct was in the Registrant's best interest, (c) that he reasonably believed, in all other cases, that his conduct was at least not opposed to the Registrant's best interest, and (d) that, in the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful; and

(iii) a determination is made that the facts then known to those making the determination would not preclude indemnification under Tennessee law.

The Registrant's amended and restated charter also provides that the Registrant may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification, and to the advancement of expenses to any employee or agent of the Registrant to the fullest extent of the provisions of the Registrant's amended and restated charter with respect to the indemnification and advancement of expenses of directors and officers of the Registrant.

The Registrant's amended and restated charter eliminates, with exceptions, the potential personal liability of a director for monetary damages to the Registrant and its shareholders for breach of a duty as a director. There is, however, no elimination of liability for:

- a breach of the director's duty of loyalty to the Registrant or its shareholders;
- an act or omission not in good faith or which involves intentional misconduct or a knowing violation of law; or
- any payment of a dividend or approval of a stock repurchase that is illegal under the Tennessee Business Corporation Act.

The TBCA provides that a corporation may indemnify any of its directors and officers against liability incurred in connection with a proceeding if (i) the director or officer acted in good faith, (ii) in the case of conduct in his or her official capacity with the corporation, the director or officer reasonably believed such conduct was in the corporation's best interests, (iii) in all other cases, the director or officer reasonably believed that his or her conduct was not opposed to the best interest of the corporation, and (iv) in connection with any criminal proceeding, the director or officer had no reasonable cause to believe that his or her conduct was unlawful. In actions brought by or in the right of the corporation, however, the TBCA provides that no indemnification may be made if the director or officer was adjudged to be liable to the corporation. In cases where the director or officer is wholly successful, on the merits or otherwise, in the defense of any proceeding instigated because of his or her status as an officer or director of a

corporation, the TBCA mandates that the corporation indemnify the director or officer against reasonable expenses incurred in the proceeding. The TBCA also provides that in connection with any proceeding

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charging improper personal benefit to an officer or director, no indemnification may be made if such officer or director is adjudged liable on the basis that personal benefit was improperly received. Notwithstanding the foregoing, the TBCA provides that a court of competent jurisdiction, upon application, may order that an officer or director be indemnified for reasonable expenses if, in consideration of all relevant circumstances, the court determines that such individual is fairly and reasonably entitled to indemnification, whether or not the standard of conduct set forth above was met.

Item 7. Exemption from Registration Claimed.

None.

Item 8. Exhibits.

4.1 Amended and Restated Charter, incorporated herein by reference to the Company's Registration Statement on Form S-4 (Registration Statement No. 333-107842) filed with the SEC on August 11, 2003.

4.2 Amended and Restated Bylaws (Restated for SEC electronic filing purposes only).

5.1 Opinion of Bass, Berry & Sims PLC.

23.1 Consent of Crowe Chizek and Company LLC.

23.2 Consent of Bass, Berry & Sims PLC (included in Exhibit 5.1).

24.1 Power of Attorney (included on the signature page to the Registration Statement).

Item 9. Undertakings.

A. The Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) To reflect in the prospectus any facts or events arising after the effective date of this Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this Registration Statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement;

provided, however, that clauses (a)(1)(i) and (a)(1)(ii) shall not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the

Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference into this Registration Statement.

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(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

B. The Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (and where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in this Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

C. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

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Pursuant to the requirements of the Securities Act, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8, and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Greeneville, State of Tennessee, on this 30th day of July 2004.

GREENE COUNTY BANCSHARES, INC.

By: /s/ R. Stan Puckett
 R. Stan Puckett
 Chairman and Chief Executive Officer

KNOW ALL MEN BY THESE PRESENTS, each person whose signature appears below hereby constitutes and appoints R. Stan Puckett and William F. Richmond and each of them, his or her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him or her and in his or her name, place, and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement, and to file the same, with the SEC, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated below.

SIGNATURE	TITLE	DATE
<u>/s/ R. Stan Puckett</u> R. Stan Puckett	Chairman of the Board, Chief Executive Officer and Director (Principal Executive Officer)	July 30, 2004
<u>/s/ William F. Richmond</u> William F. Richmond	Senior Vice President, Chief Financial Officer and Assistant Secretary (Principal Accounting and Financial Officer)	July 30, 2004
<u>/s/ Phil M. Bachman</u> Phil M. Bachman	Director	July 30, 2004
<u>/s/ Charles S. Brooks</u> Charles S. Brooks	Director	July 30, 2004
<u>/s/ Bruce Campbell</u> Bruce Campbell	Director	July 30, 2004
<u>/s/ W.T. Daniels</u> W.T. Daniels	Director	July 30, 2004
<u>/s/ Jerald K. Jaynes</u> Jerald K. Jaynes	Director	July 30,

Jerald K. Jaynes
/s/ Terry Leonard

Director

Terry Leonard

2004

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2004

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<u>/s/ Ronald E. Mayberry</u>	Director	July 30, 2004
Ronald E. Mayberry <u>/s/ Kenneth R. Vaught</u>	Director	July 30, 2004
Kenneth R. Vaught <u>/s/ Charles H. Whitfield, Jr.</u>	Director	July 30, 2004
Charles H. Whitfield, Jr. <u>/s/ John Tolsma</u>	Director	July 30, 2004
John Tolsma <u>/s/ Robin R. Haynes</u>	Director	July 30, 2004
Robin R. Haynes		

The Plan

Pursuant to the requirements of the Securities Act, the Plan Committee of the Greene County Bancshares, Inc. 401(k) Profit Sharing Plan has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Greeneville, State of Tennessee, on this 30th day of July, 2004.

GREENE COUNTY BANCSHARES,
INC.
401(K) PROFIT SHARING PLAN
By: Plan Committee for the Greene County
Bancshares, Inc. 401(K) Profit Sharing
Plan

/s/ R. Stan Puckett
R. Stan Puckett

/s/ William F. Richmond
William F. Richmond

/s/ Carolyn Broyles
Carolyn Broyles

/s/ Steve D. Ottinger
Steve D. Ottinger

/s/ Phil M. Bachman
Phil M. Bachman

/s/ DeeDee Horton
DeeDee Horton

/s/ Jeannie Vanderwielen

Jeannie Vanderwielen

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EXHIBIT INDEX

- Exhibit 4.1 Amended and Restated Charter, incorporated herein by reference to the Company's Registration Statement on Form S-4 (Registration Statement No. 333-107842) filed with the SEC on August 11, 2003.
- Exhibit 4.2 Amended and Restated Bylaws (Restated for SEC electronic filing purposes only)
- Exhibit 5.1 Opinion of Bass, Berry & Sims PLC.
- Exhibit 23.1 Consent of Crowe Chizek and Company LLC.
- Exhibit 23.2 Consent of Bass, Berry & Sims PLC (included in Exhibit 5.1).
- Exhibit 24.1 Power of Attorney (included on the signature page to the Registration Statement)