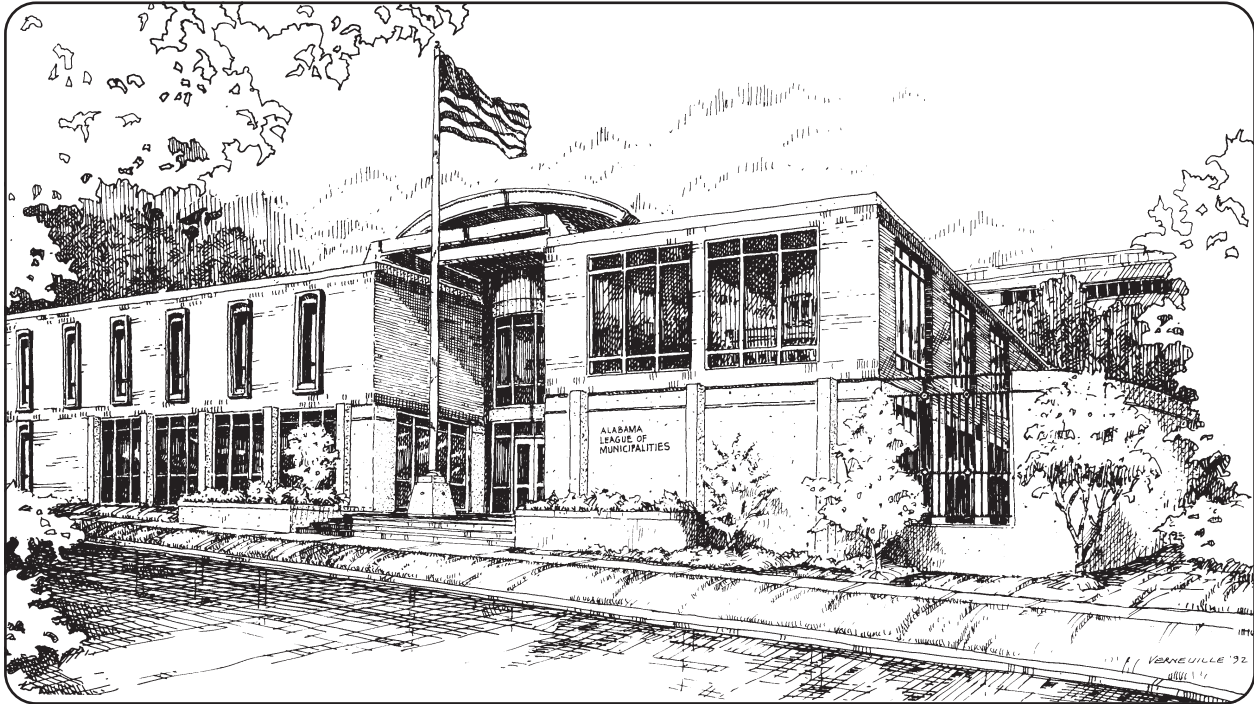


Handbook for Mayors and Councilmembers

2020 Edition



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Preface

The importance of municipal government and locally-elected municipal officials was appropriately and accurately recognized by former Congressman Tom Bevill from Alabama's Fourth Congressional District when he addressed the 1984 Convention of the Alabama League of Municipalities with these words:

“As city officials, you people are on the frontlines of representative government in America, every day. You are directly responsible and responsive to the people you serve. And you serve them well.

“I believe that the strongest part of American government is not in Washington, or Montgomery or any of our capitals, but instead, it is found in the small towns and medium-sized cities of the United States. In these communities lie the heart and soul of America. And your dedication to serving the people of these communities contributes significantly to maintaining our entire system of government.

“Your sacred treatment of your offices and your sacrifices and hard work for your constituents is worthy of the highest praise and I am pleased to salute you on the success of your efforts ...”

This nineteenth revision of the *Handbook for Mayors and Councilmembers* is dedicated to the municipal officials in Alabama who truly serve on the frontlines at the grassroots of our great democracy. We sincerely hope that the *Handbook* will prove as helpful to mayors and councilmembers taking office in November 2008 as previous editions have proved over the past 64 years.

While it would be impossible for us to adequately express our thanks to the many people who have contributed to this manual since its first publication, it is only fitting that sincere thanks are expressed to Ken Smith, former General Counsel and Executive Director of the League for his dedicated contributions to the current revised *Handbook*.

Lorelei Lein
General Counsel

Nineteenth Revision

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Chapter 1

Municipal Government Overview

Sec. 1. Source of Handbook Materials

Materials in this handbook are taken principally from the Alabama Constitution, 1901, the Code of Alabama 1975, acts of the Alabama Legislature, opinions of the courts of Alabama, rulings of the Alabama Ethics Commission and rulings of the Attorney General (referred to as AGO). In addition to these references, comments based upon years of League experience are included when appropriate. Readers must not confuse editorial comment with statute, decision or opinion. Every effort will be made to identify the source of the material. More detailed and comprehensive information, including relevant legal citations, regarding municipal law in Alabama can be found in the *Selected Readings for the Municipal Official* (2020 ed.).

Sec. 2. Scope of Handbook

This handbook is intended to answer basic questions confronting mayors and councilmembers and help them perform their duties with confidence. However, the book is not intended to take the place of actual statutory provisions, court decisions or the advice of the municipal attorney.

Sec. 3. Legal Advice Available

It is expected that municipal officials will confer with and seek the advice of the municipal attorney when a new problem is confronted. Municipal law has become a highly-specialized field of law; and it may be that the official or attorney will want confirmation of their conclusions. At such time, the municipal official may consult either of two other sources for legal assistance.

The Alabama League of Municipalities retains legal counsel for the specific purpose of answering requests from municipal officials. This service is available, without extra cost or charge, through the League. The legal department has several attorneys on staff who are experienced in municipal law and, in addition, maintains files of court decisions, Attorney General's opinions, prior legal department opinions and other legal references.

Occasionally a particular problem may arise where action, based on a municipal official's opinion, might render the official liable for damages in a civil lawsuit. Section 36-15-1(b), Code of Alabama 1975, requires the Attorney General to give an opinion, in writing or otherwise, as to any question of law connected with the duties of the following municipal officers when requested to do so in writing: mayor or chief executive officer of any incorporated municipality; city council or like governing body of any incorporated municipality; or any other officer required to collect, disburse, handle or account for public funds.

If the opinion request is submitted by a board or governing body, a resolution from the board or governing body should also be included setting forth the facts showing the nature and character of the question that makes the advice sought necessary to the present performance of some official act that the officer must immediately perform. If the opinion request is submitted by a board or governing body, a resolution from the board or governing body should also be included setting forth the facts showing the nature and character of the question that makes the advice sought necessary to the present performance of some official act that the officer must immediately perform.

Section 36-15-19 of the Code provides that the written opinion of the Attorney General, secured by any officer entitled to such opinion, shall protect such officer and the members of such board, local governing body or agency to whom it is directed or for whom the same is secured, from liability to either the state, county or other municipal subdivisions of the state because of any official act or acts heretofore or hereafter performed as directed or advised in such opinion. The courts have ruled that such opinions are not controlling or binding on the court, but are merely advisory. *Hill Grocery Co. v. State*, 159 So. 269 (Ala. App. 1935). Such opinions operate only to protect the officer to whom it is directed from liability because of any official act performed by such officer as directed or advised in such opinion. *Holcombe v. Mobile County*, 155 So. 638 (Ala. App. 1934); *Broadfoot v. State*, 182 So. 411 (Ala. App.

1938). Advice from the Attorney General does not protect an officer against claims of individuals which result from erroneous construction of the law affecting his or her duties. *Curry v. Woodstock Slag Corp.*, 6 So.2d 479 (Ala. 1942).

Section 36-15-1 (1)(d) of the Code provides that an officer or governing body shall not submit moot, private or personal questions in which the state, county, or public is not materially or primarily interested or questions that are subject to ongoing litigation to the Attorney General and that any officer shall submit, with the request for an opinion, a certificate setting forth the facts showing the nature and character of the question which makes the advice sought necessary to present performance of some official act that the officer must perform.

The Attorney General does not issue opinions as to whether a certain action constitutes a violation of the criminal law as this may only be determined by a judge and jury. Each District Attorney in the various judicial circuits in the state must review each factual situation on a case-by-case basis and make the decision whether he or she should present the matter to a grand jury. AGO 2005-173.

Section 6-6-227 of the Code provides that in any proceeding which involves the validity of a municipal ordinance, or franchise, such municipality shall be made a party and shall be entitled to be heard; and if the statute, ordinance, or franchise is alleged to be unconstitutional, the Attorney General of the state shall also be served with a copy of the proceeding and be entitled to be heard. Section 36-15-1 (9) of the Code states that the Attorney General “may, when requested to do so by the chief executive authority of any municipality in the State of Alabama, represent the municipality before the appellate courts of this state in any case appealed to such courts involving the constitutionality of a municipal ordinance.”

Section 36-15-1(3) of the Code states that the Attorney General shall post on the Internet searchable, electronic copies of the written official opinions. On a timely basis, he or she shall also send electronic copies of the opinions to any public official who has asked to receive them and who has provided a working e-mail address for that purpose.

Sec. 4. League Website

A great deal of valuable information on the operation of cities and towns, including updated articles on legal subjects, can be found on the League’s website at www.almonline.org. The League website also contains links to sites where complete copies of legislation, court decisions, attorney general opinions and ethics commission opinions may be located.

Sec. 5. Source and Scope of Municipal Authority

Alabama’s Constitution makes no provision for the inherent right of local self-government. The incorporated cities and towns of Alabama derive all of their powers from the state legislature. *Mobile v. Mobile Light & R. Co.*, 38 So. 127 (Ala. 1904). Because their powers are derived from the legislature, municipal governing bodies must look to the statutes of the state to determine the extent of the powers which have been delegated to them.

Rather than providing for home rule, Alabama follows the Dillon Rule, which provides that local governments may exercise three types of powers: 1) expressed powers - those set out specifically; 2) implied powers – those powers that are incidental or implied in expressly granted powers; and 3) powers that are essential to the purposes of the local government – those that are not simply convenient, but are indispensable. *New Decatur v. Berry*, 7 So. 838 (Ala. 1890), and others.

These fundamental principles form a yardstick for determining the extent of municipal authority. They emphasize the need for a close working relationship between the municipal official and his or her state legislative delegation and the necessity for municipal alertness on the state legislative front.

Sec. 6. General Legislation

Section 104 of the Alabama Constitution of 1901 prohibits the legislature from creating or amending by local legislation the charter powers of municipal corporations. The only exceptions to this restriction on the legislature are the powers to change or alter the corporate limits of cities and towns or to regulate alcoholic beverages by local acts. Because of this constitutional provision, the laws governing the incorporation, organization and operation of cities and towns in Alabama are general in nature and either apply to all municipalities in the state or to all municipalities

within a specified population group. The basic statutes providing for the creation, organization and functioning of cities and towns are found in Title 11, Code of Alabama 1975, and amendments thereto.

Prior to 1978, the state legislature adopted numerous statutes to provide powers for municipalities with very narrow population ranges. These laws were known as **general laws of local application**. In 1978, the Alabama Supreme Court, in the case of *Peddycoart v. Birmingham*, 354 So.2d 808 (Ala. 1978), held that the state legislature could no longer adopt general bills of local application. The court held that the legislature could pass only statewide general bills affecting every jurisdiction in the state or local bills affecting single jurisdictions. Since Section 104 of the Alabama Constitution prevents amendment of municipal charters by local acts, another method of enacting such laws was needed.

The League was successful in obtaining passage by the legislature, and ratification by the voters, of Amendment 397 (Section 110) Alabama Constitution, 1901, which authorizes the legislature to establish not more than eight classes of municipalities based on population. The Amendment also allows legislation to be passed which affects one or more of such classes and provides that any such legislation shall be deemed to be general laws rather than local laws. In order to prevent the same problems addressed by the Court in the *Peddycoart* decision, the population based classifications must be fixed at a point in time to prevent municipalities from growing into or out of classification based general bills.

Sections 11-40-12 and 11-40-13, Code of Alabama 1975, established the eight classes of municipalities. These classification never change. The classifications of municipalities are as follows:

Class 1 – Cities of 300,000 inhabitants or more

Class 2 – Cities of not less than 175,000 and not more than 299,999 inhabitants

Class 3 – Cities of not less than 100,000 and not more than 174,999 inhabitants

Class 4 – Cities or not less than 50,000 and not more than 99,999 inhabitants

Class 5 – Cities of not less than 25,000 and not more than 49,999 inhabitants

Class 6 – Cities of not less than 12,000 and not more than 24,999 inhabitants

Class 7 – Cities of not less than 6,000 and not more than 11,999 inhabitants

Class 8 – Cities and towns with a population of 5,999 or less.

The population figures refer to the municipality's population based on the 1970 federal decennial census. Any municipality incorporated after June 28, 1979, shall be placed in one of the above classes according to the population of the municipality at the time of its incorporation. Once a municipality is fixed into a particular classification, it remains in that class regardless of population changes in subsequent censuses.

Amendment 389 (Section 106.01) Alabama Constitution, 1901 validates most general acts of local application, which were enacted prior to January 13, 1978, that were otherwise valid and constitutional, even though they were not advertised as required by Section 106 of the Alabama Constitution. This Amendment provides that the acts shall forever apply only to the county or to the municipality to which they applied on January 13, 1978, despite changes in population. See *Walker v. City of Montgomery*, 833 So.2d 40 (Ala. 2002) (city's population fell into population bracket at the time the General Bill of Local Application was passed but grew out of the population bracket prior to 1978 when Amendment 389 forever locked General Bills of Local Application to municipalities the acts applied to as of January 13, 1978.) In the future, such acts can only be amended by advertised local bills.

Sec. 7. Unfunded Mandates

Amendment 621 (Section 111.05) Alabama Constitution, 1901 provides that “[n]o general law, or state executive order whose purpose or effect is to require a new or increased expenditure of funds held or disbursed by the governing body of a municipality, county or an instrumentality thereof, shall become effective as to any municipality, county or an instrumentality thereof, until approved by an ordinance enacted, or a resolution adopted, by the governing authority

of the affected municipality, county or instrumentality; or until, and only as long as, the Legislature appropriates funds for the purpose to the affected municipality, county or instrumentality and only to the extent and amount that the funds are provided, or until a law provides for a local source of revenue within the municipality, county or instrumentality for the stated purpose and the affected municipality, county or instrumentality is authorized by ordinance or resolution to levy and collect the revenue and only to the extent and amount of the revenue.”

This amendment does not apply to:

- a local law as defined in Article IV, Section 110, Alabama Constitution, 1901;
- an act, state executive order requiring expenditures by a school board;
- an act defining a new crime or amending the definition of an existing crime;
- an act, statute, executive order enacted, promulgated, or adopted and effective prior to the ratification of this amendment which by its provisions requires expenditures by the county or municipality at any time after the effective date of this amendment;
- an act enacted, or state executive order promulgated or adopted to comply with a federal mandate, only to the extent of the federal mandate;
- an act adopted or enacted by two-thirds of those voting in each house of the Legislature and any rule or regulation adopted to implement that act or adopted pursuant thereto;
- an act determined by the Legislative Fiscal Office to have an aggregate insignificant fiscal impact on affected municipalities, counties, or instrumentalities. For purposes of this subsection, the phrase “aggregate insignificant fiscal impact” shall mean any impact less than \$50,000 annually; or to
- an act of general application prescribing the minimum compensation for public officials.

Sec. 8. Joint Powers

Except as otherwise provided in Chapter 102 of Title 11, Code of Alabama 1975, or as otherwise prohibited by law, any county or incorporated municipality of the state of Alabama may enter into a written contract with any one or more counties or incorporated municipalities for the joint exercise of any power or service that state or local law authorizes each of the contracting entities to exercise individually. For purposes of this chapter, it is sufficient if each of the contracting entities has the authority to exercise or perform the power or service which is the subject of the contract regardless of the manner in which the power or service shall be exercised or performed, provided that at least one of the contracting parties has the authority to exercise the power or service in the manner agreed upon by the parties. The joint contract may provide for the power or service to be exercised by one or more entities on behalf of the others or jointly by the entities. Section 11-102-1, Code of Alabama 1975.

Any contract entered into pursuant to this law shall be in writing. The contract shall specify the duration of the contract, which shall not exceed three years. The parties may renew the contract for another term of not more than three years on the same or amended terms by the same method by which the original contract was adopted. Any party to the contract shall have the power to refuse to renew the contract. The refusal shall not affect the authority of the remaining parties to enter into a contract with each other with the same or similar terms of the original contract as provided by this law. The contract shall also specify the purpose of the contract; the method to be used to partially or completely terminate the contract; the method to be used to dispose of any property belonging to the parties as a result of the contract upon termination of the contract; the manner of financing the joint undertaking and of establishing and creating a budget for the undertaking, except that no party to the contract shall have any power to incur any debt which shall become the responsibility of any other contracting party; and any other matter necessary and proper to jointly exercise the contract. Section 11-102-2, Code of Alabama 1975.

No contract entered into pursuant to this law shall take effect until the contract has been approved by the governing body of each of the contracting municipalities or counties. Approval by a county governing body shall be by adoption of a resolution and approval by a municipal governing body shall be by adoption of an ordinance of general and permanent operation. The contracting parties may specify the method or methods which shall be used to implement the contract. Sections 11-102-3 and 11-102-4, Code of Alabama 1975.

Nothing in this law shall be construed to authorize the joint exercise of the power to tax, the power to exercise planning authority or the power to zone real property in the unincorporated areas of a county unless authorized by act of the Legislature. Notwithstanding this prohibition, counties and municipalities may contract with each other to zone flood prone areas as mandated by the federal government pursuant to Title 11, Chapter 19, Code of Alabama 1975. The provisions of this law are not applicable to contracts for the collection, transportation, storage or disposal of solid waste. Sections 11-102-5 and 11-102-8, Code of Alabama 1975.

Nothing in this law shall be construed to affect or alter any other law which authorizes joint cooperative power between any public entities and this law shall be supplemental to these laws. Section 11-102-6, Code of Alabama 1975.

Except as otherwise provided in this law and as limited by the contract between the contracting parties, any entity which contracts to perform or exercise any service or power pursuant to this chapter shall have the full power and authority to act within the jurisdiction of all contracting entities to the extent necessary to carry out the purposes of the contract. Each municipality or county which is a party to the contract shall adopt all ordinances, resolutions, or policies necessary to authorize the other contracting entities to carry out their contractual duties and responsibilities. Section 11-102-7, Code of Alabama 1975.

All public bodies in Alabama may cooperate in the acquisition, construction, and financing of any capital improvement which any one of them might acquire or construct, and to pledge their revenues and taxes to the payment of operation and debt service costs, through a separate public corporation whose directors are elected by the participants. Sections 11-99B-1 through 11-99B-18, Code of Alabama 1975.

Under certain conditions, any Class 8 municipality in Alabama may enter into agreements with other municipalities in other states if the other municipalities are contiguous to the Alabama municipality and share expenses related to operation of public transportation systems, fire- fighting services, law enforcement services, and public works. Sections 11-49C-1 through 11-49C-5, Code of Alabama 1975. Further, a municipality, regardless of class size, may contract with another municipality for the performance of policing duties within its jurisdiction. The contract must comply with the specifications set forth in section 11-102-1, et seq., Code of Alabama. Each municipality must adopt an ordinance approving the contract, and each municipality should adopt all ordinances, resolutions, and policies necessary to authorize law enforcement officers of one municipality to carry out policing duties within the jurisdiction of the other municipality or municipalities. AGO 2013-041. Along these same lines, the county sheriff and his or her deputies may enforce municipal ordinances of the town provided the contract between the town and sheriff provides for such enforcement. AGO 2016-005.

Sec. 9. Character of Incorporated Municipalities

(a) Dual Nature. Section 11-40-1, Code of Alabama 1975, declares incorporated cities and towns to be bodies politic and corporate. As a body politic, a municipality is made, by the state, a local depository of certain limited and prescribed political powers, to be exercised for the good of the public at large. In its corporate capacity, a municipality exercises certain delegated powers for the private advantage of the community which has been incorporated as a distinct legal personality or corporate individual. *State v. Lane*, 62 So. 31 (Ala. 1913). The operation of a police department is an exercise of political powers while the operation of a water works system is a corporate enterprise.

(b) Voluntary Creation. While counties are often referred to as municipal corporations along with cities and towns, counties are provided for in the Alabama Constitution and are created at the state level. Incorporated cities and towns are of voluntary creation established by the citizens of a given area for the purpose of assuming the responsibility of local self-government under the powers delegated to them by the Legislature. Although some of Alabama's oldest municipalities were created by local acts of the Alabama Legislature, this procedure was prohibited by the Alabama Constitution of 1901. Since the effective date of that document, a municipality may not be incorporated in Alabama by a local act of the Legislature. Section 104(5), Alabama Constitution, 1901. The procedures for incorporating a new municipality are codified at Article 1, Chapter 41, Title 11, Code of Alabama 1975.

(c) Perpetual Succession. Cities and towns incorporated under the provisions of Title 11 are declared to have perpetual succession. Section 11-40-1, Code of Alabama 1975. The governing body of a municipality is continuous in nature. While changes may occur in the membership of the governing body, the corporate unit never ceases to exist.

The actions of the governing body during one term or administration, performed within the scope of its powers, carry on and are effective beyond the term of that administration and are binding upon successive administrations until they naturally terminate or are repealed. It is significant to note that the mayor and councilmembers hold office for their terms or until their successors are elected and installed in office. This evidences the legislative intent that there shall be a continuous governing body qualified to determine the policies of the municipality and to adopt ordinances and resolutions necessary for the operation of the city or town.

(d) Dormant Municipal Corporations. Towns or cities that have permitted their organization to become dormant and inefficient may petition the probate court for an order to reinstate the municipality pursuant to Section 11-41-7, Code of Alabama 1975. Once a municipality has been dissolved, the town or city may not be reinstated under Section 11-41-7, but may be able to incorporate pursuant to Sections 11-41-1 through 11-41-6, Code of Alabama 1975, if the population requirements are satisfied. A community with a population of less than 300 may not be incorporated pursuant to Section 11-41-1, Code of Alabama 1975. AGO 2008-039.

(e) Seal, Name and General Powers. A municipality shall have a common seal, which may be changed at any time, and its official acts are done in the name of the “City of _____” or the “Town of _____,” as the case may be. *See*, Section 11-40-2, Code of Alabama 1975.

A city or town may sue and be sued; may contract and be contracted with; and may acquire property by purchase, gift, devise or appropriation for any municipal purpose authorized in Title 11 of the Code of Alabama 1975, which it shall hold and manage under the provisions of Title 11 and such rules and regulations, resolutions and ordinances that may be required by statute. Section 11-40-1, Code of Alabama 1975.

(f) Corporate Limits. The boundaries of the territorial area incorporated by a municipality are known as the corporate limits. Within this area, the municipal governing body exercises full taxing, licensing and police powers delegated to it by the Legislature. Several statutes require residence within the municipality, meaning residence within the incorporated area. Furthermore, it is often necessary to inspect a statute carefully to determine if a given power may be exercised only within the municipality or inside and outside the municipality.

(g) Police Jurisdiction. The Legislature has provided regulatory powers for Alabama cities and towns in the fringe area outside the corporate limits. This area bordering the municipality is known as the police jurisdiction.

Section 11-40-10, Code of Alabama 1975, provides for the extraterritorial police jurisdiction of cities and towns. The police jurisdiction of cities having 6,000 population or more inhabitants extends for a distance of 3 miles beyond the corporate limits. In cities of less than 6,000, and in towns, the police jurisdiction extends for a distance of 1.5 miles beyond the corporate limits. The police jurisdiction of any municipality which pursuant to this section extends to include part of any island which has water immediately offshore adjacent to the boundary of the state of Florida, upon approval of the council of the municipality, shall extend to include the entire island including the water adjacent to the island extending to the existing police jurisdiction of the municipality and extending to the Florida state boundary where applicable. In construing this section, the Supreme Court of Alabama has held that county lines are no barrier to the exercise of the police jurisdiction powers granted. In *Birmingham v. Lake*, the court ruled that the city’s police power extended over a water reservoir belonging to the city and located in another county. 10 So.2d 24 (Ala. 1942). Several counties, however, have local laws prohibiting municipalities from exercising police jurisdiction powers across county lines.

A municipality may only extend its police jurisdiction as a result of an annexation once a year, on January 1, and only for those annexations finalized on or before October 1 of the previous year. Further, municipalities must, on or before January 1, submit a map showing the boundaries of the municipal limits and the police jurisdiction to the Atlas Alabama website at no cost to the municipality. Submissions should be made to the Alabama Department of Revenue Sales and Use Tax Division at localtaxunit@revenue.alabama.gov. For questions on submission, call 334-353-8044.

The Attorney General has ruled that the distance of the police jurisdiction boundary is computed on a straight line from the corporate limits marking a curvilinear police jurisdiction boundary opposite the corporate limits. AGO to Z. B. Skinner, July 9, 1962. A police jurisdiction is measured by drawing a straight line perpendicular from the municipal limits following standard land surveying practices. AGO 96-00218.

While the Attorney General has previously opined that a municipality cannot reduce the size of its police

jurisdiction to an area less than that set by Section 11-40-10, AGO 87-00305 (to the Hon. Mac H. Langley, September 2, 1987), Section 11-40-10 was amended by Act 2015-361 to provide that a municipality may choose whether or not to exercise authority or levy taxes in the police jurisdiction surrounding non-contiguous territory regardless of the fact that the municipality exercises authority in the police jurisdiction of contiguous property. A police jurisdiction can only be changed by legislative act. AGO 93-00069. For example, Chapter 44B of Title 11 of the Code of Alabama 1975, establishes the procedures for Class 4 municipalities, organized under Chapter 44B of Title 11, to delete non-urban territory from its police jurisdiction or planning jurisdiction. A local act limiting the extent of the police jurisdiction supersedes the general law. AGO 98-00114.

Within the police jurisdiction, the ordinances of a city or town enforcing police or sanitary regulations and prescribing fines and penalties for violations, have full force and effect. Section 11-40-10 also provides that such ordinances may be enforced on any property or rights-of-way belonging to the city or town. Although a municipality has the authority to maintain health and cleanliness within its police jurisdiction, the authority to regulate solid waste extends only to the corporate limits and does not extend into the municipal police jurisdiction. *Disposal Solutions-Landfill v. Lowndesboro*, 837 So.2d 292 (Ala. Civ. App. 2002). Municipalities must file a 30-day notice before enforcing ordinances within the police jurisdiction. The notice is to be submitted to Atlas Alabama at no cost to the municipality. As noted earlier, notifications should be submitted to the Department's Sales and Use Tax Division at localtaxunit@revenue.alabama.gov. For questions on submission, call 334-353-8044.

Section 32-5A-171, Code of Alabama 1975, provides an exception to the rule that a municipality may enforce ordinances in the police jurisdiction. This statute prohibits law enforcement officers of municipalities of less than 19,000 in population from enforcing speed limits on interstate highways. The law also prohibits municipal law enforcement officers in every municipality from enforcing speed limits on highways outside the corporate limits and in the police jurisdiction, unless the speed limit was set pursuant to Sections 32-5A-172 or 32-5A-173. AGO 96-00247. Municipal law enforcement officers may cite drivers in a municipal police jurisdiction for violating Section 32-5A-170, Code of Alabama 1975 ("Reasonable and Prudent Speed"), but they must specify the hazardous conditions present in the "Facts Relating to the Offense" box on the Uniform Traffic Ticket and Complaint (UTTC) to distinguish the charge from the provisions specified in Section 32-5A-171 of the Code of Alabama 1975. AGO 2004-061.

To finance the costs of regulatory measures and protective services rendered in the police jurisdiction, a municipality is authorized to levy license taxes not to exceed one-half the amount of similar licenses levied in the corporate limits. Section 11-51-91, Code of Alabama 1975. The total amount of licenses collected in the police jurisdiction cannot exceed the total cost of services the municipality provides in the police jurisdiction. Where the police jurisdictions of two municipalities overlap, only the municipality whose corporate limits are closest to the business location may levy a "police jurisdiction" license upon such business. AGO 2007-23 and AGO to Hon. Claud Smithson, December 17, 1964. The statutory provision limiting license-taxing authority to the municipality whose corporate limits are nearest to the subject business logically applies, by its plain language, only when two or more municipalities actually attempt to levy a license tax on the same business within the overlapping police jurisdictions. A municipality could require a business license from a gas station which is closer to another municipality where the two municipalities had entered into an agreement in which one had waived its right to impose or collect any fees or taxes in its portion of the overlapping police jurisdiction. *Killen v. Clemmons*, 963 So.2d 670 (Ala. Civ. App. 2007). For a complete review of police jurisdiction licensing powers, see *Hueytown v. Burge*, 342 So.2d 339 (Ala. 1977). A municipality cannot set speed limits in its police jurisdiction. AGO 1981-351 (to Hon. Frank R. Houston, April 29, 1981).

State law provides procedures that authorize Class 4 cities governed by Chapter 44B of Title 11, Code of Alabama 1975, to delete non-urban territory from its police jurisdiction or planning jurisdiction. Section 11-44B-25, Code of Alabama 1975.

For more detailed information on the Municipal Police Jurisdiction, see the article titled "The Municipal Police Jurisdiction" in the *Selected Readings for the Municipal Official* (2020 ed.).

Sec. 10. Classification and Form of Government

The Legislature is forbidden to create or amend the charter powers of cities and towns of the state by local act, except as allowed by Amendment 389 (Section 106.01) Alabama Constitution, 1901. Nevertheless, the Legislature may legally classify cities according to population groups and make different provisions relating to their powers and

organization. *See*, Section 2 of this chapter. Some of the general laws contained in Title 11 of the Code do make certain classifications according to population.

(a) Cities and Towns. Municipal corporations containing 2,000 or more inhabitants are designated as **cities**, and all incorporated municipalities containing less than 2,000 inhabitants are designated as **towns**. Section 11-40-6, Code of Alabama 1975. Although an increase in population to above 2,000 inhabitants does not involve a change in the organization of a city or town, there are numerous statutory references to “city” and “town” regarding the performance of specific powers or requirements. That distinction should be kept in mind.

(b) Form of Government. The manner in which a municipal governing body is organized determines its form of government. General laws provide for two distinct forms of municipal government: mayor-council and council-manager. The League’s membership is composed of approximately 450 incorporated cities and towns, and of this number, the vast majority of members are organized under the mayor-council form of government. This handbook is prepared for use by officials operating under the mayor-council form of government.

It is important that particular attention be given to the change which takes place in the organization of mayor-council municipalities, by operation of law, when the city’s population reaches 12,000 inhabitants. As will be noted in this book, the mayor sits with and presides over the council in cities and towns of less than 12,000 population. In most cities of 12,000 and over, operating under general law, the mayor is not a part of the council but exercises veto power over certain actions of the council. This is only one of several important differences in the organization of mayor-council municipalities above and below 12,000 population which will be noted in this handbook. For information as to the effective date of such changes, see subsection (d), below.

(c) Types of Censuses. In addition to the regular federal census, Alabama municipalities are authorized to conduct a special census to enumerate their populations. Sections 11-47-90 through 11-47-95 of the Code of Alabama 1975, provide a procedure to be followed by a municipality in conducting its own census, and such censuses are regarded as official for all purposes. Enumerations under these provisions cannot be made more often than once every five years.

Also, a city or town may request a special census to be taken by the Census Bureau of the U.S. Department of Commerce. This enumeration shall be used only as the basis for any law which provides for the levy, collection or distribution of license taxes, where such levy, collection or distribution is based upon population. Sections 11-47-92 and 11-47-93, Code of Alabama 1975. This type of census may be used as the basis for distribution of ABC Board profits, for example. *See*, AGO to Gen. Walter E. Todd, April 8, 1968. It should be noted that at certain times the Census Bureau will not perform special censuses due to involvement with the decennial census.

A census taken under authority of this Act cannot bring about a change in the form of government of the municipality, nor can it be used for any other purpose than that specifically provided. Censuses conducted under this authority cannot be made more often than once each five years.

(d) Effective Date of Census. The last census, whether federal or that taken as authorized by Sections 11-47-90 through 11-47-95 of the Code of Alabama 1975, shall be used to determine the population of a city or town. At the next election, more than four months after the 120th day after the first day of the first regular business session of the legislature held next after the publication, by the federal government, of the regular decennial population census for Alabama, if the municipality shows a population which authorizes a change in its government, under this Title [Title 11 of the Code of Alabama], the proper officers for such a city shall be elected and perform the duties prescribed in Title 11 of the Code of Alabama. Sections 11-40-6 and 1-3-5, Code of Alabama 1975. The Attorney General has ruled that a census, special or otherwise, cannot bring about a change in the form of government of a mayor-council municipality until the next election held after the time prescribed above. For example, in those municipalities whose form of government had to change due to the municipality’s population determined by the 2010 Federal decennial census, the change in government form took place on November 5, 2012, when newly-elected officials assumed office. For all practical purposes, this limits changes in form or organization of mayor-council cities to enumerations established by the regular federal decennial census.

Chapter 2

The Office of Mayor

Sec. 11. The Office of Mayor – Generally

(a) Historical Note. Prior to 1907, mayors in Alabama were commonly referred to as “intendents.” They presided over council meetings, acted as ceremonial heads of their municipalities and served as justices of the peace. Generally, mayors possessed no recognized executive authority. The council not only determined policies but also endeavored to supervise and administer the affairs of the municipality. Since there was no coordination of activity, obvious inefficiencies resulted from the conflicts and confusion produced by this system.

The Legislature recognized these problems and adopted the comprehensive Municipal Code of 1907, which has been handed down to us, with amendments and additions, as Title 11 of the Code of Alabama 1975. In Title 11, the Legislature recognizes the distinction between legislative and executive functions and designates the mayor as the “chief executive officer” of the municipality. The success achieved by this division of the legislative and executive functions is demonstrated by the vast predominance of the mayor-council form of government in Alabama.

(b) The Mayor as Political Leader. Today, the mayor in Alabama is recognized by the public as the chief executive of the municipality. That the mayor has been elected from the municipality at large demonstrates the confidence of the electors. The mayor is the political head of the municipality. The mayor, more than any other person, is in constant close contact with the programs and problems of the city or town and is looked to for guidance in all civic and municipal affairs. The office carries with it a trust, respect and prestige which gives the mayor considerable influence over public opinion.

This influence over public opinion is probably the most effective power a mayor possesses to help accomplish the goals of his or her administration. It is the duty of the mayor to lead and the public expects leadership. Usually the success or failure of a municipal administration is regarded as the mayor’s responsibility. For this reason, if for no other, it is the mayor’s right and duty to exercise influence over public opinion to secure the support of the council and the public for the objectives of his or her administration.

(c) Mayor and Council are a Team. The working relationship between the mayor and the council usually determines the success of a mayor-council administration. The Legislature has given the council, in mayor-council municipalities, important powers essential to the government of the municipality. Mayors and councilmembers must recognize the fact that each is dedicated, for the next four years, to a common goal – providing the city or town with the best possible municipal government. Therefore, it is imperative that a harmonious working relationship develops between the mayor and the council. The ultimate goal is to produce a team on which every member is recognized as a necessary part.

The mayor must take the initiative to establish a working relationship between the council and the office of the mayor. Open communication, within the bounds of the Open Meetings Act, will be key but the mayor need not compromise honest viewpoints or surrender leadership.

At times, the council will express divergent views. As the old saying goes, “If two people think alike all the time, one is unnecessary.” In most cases, common ground can be found to develop workable programs. The mayor should not hesitate to indicate a willingness to seek this common ground.

Sec. 12. Qualifications and Eligibility – Mayor

“Every mayor ... shall be a resident and qualified elector of the city or town in which he shall have been elected and shall reside within the limits of the city or town during his term of office.” Section 11-43-1, Code of Alabama 1975. Note the following:

(a) Elector Requirement. The mayor must **remain** a qualified elector during his or her term of office. *State v.*

Harrison, 114 So. 905 (Ala. 1927). To be a qualified elector of the municipality, a person must have resided within the municipality for at least 30 days prior to the election and be qualified to vote in the county precinct which embraces and covers that part of the corporate limits of the city (or town) in which the elector resides. Section 11-46-22, Code of Alabama 1975.

(b) Residence Requirement. If the mayor of a municipality establishes a permanent residence outside of the municipality, he vacates his office. AGO to H. A. Kelley, February 14, 1958. Neither residence in the police jurisdiction nor ownership of property within the corporate limits makes a person a qualified elector of the municipality. AGO to Hon. Chalmers Bryant, February 9, 1972.

(c) General Disqualifications. In addition to the foregoing, the following residents are disqualified and ineligible to hold office under the laws of Alabama: (1) Those who are not qualified electors, except as otherwise expressly provided; (2) Those who have not been inhabitants of the state, county, district or circuit for the period required by the constitution and laws of the state; (3) Those who shall have been convicted of treason, embezzlement of public funds, malfeasance in office, larceny, bribery or any other crime punishable by imprisonment in the state or federal penitentiary and those who are idiots or insane; (4) Those against whom there is a judgment unpaid for any moneys received by them in any official capacity due to the United States, this state or any county or municipality thereof; and (5) Soldiers, seamen or marines in the regular Army or Navy of the United States. Further, no person holding an office of profit under the United States shall, during his continuance in such office, hold any office of profit under this state, nor shall any person hold two offices of profit at one and the same time under this state, except constables, notaries public and commissioners of deeds. Section 36-2-1, Code of Alabama 1975. Remedy of quo warranto action, pursuant to Section 6-6-591, Code of Alabama 1975, lies to challenge a person's right to hold office based on grounds of ineligibility. The office holder's obtaining a pardon, while in office, for prior conviction does not cure his or her ineligibility for public office. *Reed v. State ex rel. Davis*, 961 So.2d 89 (Ala. 2006).

The Legislature's use of the term "punishable" directs the court's inquiry to the maximum punishment which the public officer could have received upon his or her conviction for violation of Section 36-25-5(a), Code of Alabama 1975, rather than the actual punishment meted out to him or her. *State ex rel. Graddick v. Rampey*, 407 So.2d 823 (Ala. 1981).

(d) Mayor Holds Office of Profit. The office of mayor is an office of profit. AGO to K. L. McRae, July 8, 1957. The acceptance of a second office of profit operates as an automatic vacation of the first office. *Smith v. State*, 162 So.2d 473 (Ala. 1964); AGO to W. H. Olvey, July 23, 1959, citing *Camp v. Herzberg*, 141 So. 553 (Ala. 1932). See, Section 36(j) in this handbook relating to offices of profit and prohibitions.

(e) Council Judges Qualifications. "The council shall judge of the qualifications and election of the mayor ... and the resolutions and ordinances that may be adopted by the council under this section shall not be subject to the approval or disapproval of the mayor." Section 11-43-58, Code of Alabama 1975.

Sec. 13. Candidacy for Election

Any person who is a qualified elector of a municipality on the date they file a statement of candidacy, and who will have on the day of the election resided within the municipality for at least 90 days prior to the general municipal election, may become a candidate for the office of mayor by filing a statement of candidacy in the office of the mayor of the city or town pursuant to Sections 11-46-1 through 11-46-74, Code of Alabama 1975. Section 11-46-25, Code of Alabama 1975. In most municipalities, the general municipal election is held on the fourth Tuesday in August of each presidential election year with a runoff, if necessary, held six weeks later.

Sec. 14. Term of Office

"Term of office" refers to the period of time as fixed by the constitution or statutes creating the office. In most municipalities, the term of the office of the mayor commences on the first Monday in November following the general municipal election and lasts until the first Monday in November four years later. The city council does not have the authority to adopt an ordinance limiting the number of consecutive terms a mayor may serve. Amendment 282 of the Alabama Constitution, does not limit the number of consecutive terms a mayor may serve. AGO 2001-077. Unless there is clear authority stating otherwise, statutory and appointive officers may hold over in a position until a successor is legally elected or appointed and qualified. AGO 2010-043.

Sec. 15. Mayor's Oath of Office

Before entering upon the duties of the office, the mayor is required to take the following oath, found in Section 279, Alabama Constitution, 1901, to which his or her signature shall be ascribed before a person authorized to administer oaths:

“I, _____, solemnly swear [or affirm, as the case may be] that I will support the Constitution of the United States and the Constitution of the State of Alabama, so long as I continue a citizen thereof; and that I will faithfully and honestly discharge the duties of the office upon which I am about to enter, to the best of my ability, so help me God.”

Section 36-4-6, Code of Alabama 1975.

(a) Record of Oath. After completing the oath and signing it in writing, a copy thereof must be filed with the judge of probate of the county in which the municipality is located. Section 36-4-4, Code of Alabama 1975.

(b) Administering Oath. Unless otherwise provided by law, the oath of office may be administered by any officer authorized to administer an oath such as a notary public or a judge. It must be written out and subscribed by the person taking the oath and must be accompanied by the certificate of the officer administering such oaths, specifying the day and year on which the same was taken. Section 36-4-1, Code of Alabama 1975.

Sec. 16. De Facto Officers

The occasion might arise when there is doubt concerning the lawful right of an officer to hold office. Attention is called to the following provision:

“The official acts of any person in possession of a public office, and exercising the functions thereof, shall be valid and binding as official acts, in regard to all persons interested or affected thereby, whether such person be lawfully entitled to hold office or not, and whether such person be lawfully qualified or not; but such person shall be liable to all penalties imposed by law for usurping or unlawfully holding office, or for exercising the functions thereof without lawful right, or without being qualified according to law.”

Section 36-1-2, Code of Alabama 1975.

Sec. 17. Absence of Mayor

(a) Cities and Towns under 12,000 in Population. In cities and towns under 12,000 in population, the council shall appoint a temporary chairman (mayor pro tempore) from its membership who shall act as mayor during the mayor's absence and whose appointment shall be entered of record. Section 11-43-49, Code of Alabama 1975. An absence occurs when the mayor is unable to perform the functions of the position and action needs to be taken. AGO 2011-055.

(b) Cities Over 12,000 in Population. When the mayor of a city over 12,000 in population is absent from the city or is unable to fulfill the duties of the office because of sickness or some other good reason, the president of the council shall act as mayor pro tempore with the power and authority of the mayor during such time. In case of the absence or disability of the council president, then the president pro tempore of the council assumes the power and authority of the mayor when the mayor is absent or unable to carry out his or her duties. Section 11-43-42, Code of Alabama 1975. The “absence” pursuant to which a mayor pro tempore assumes the duties of mayor must be an absence on an occasion demanding the immediate exercise of the powers of the mayor. AGO to Hon. Lester L. McIntyre, March 17, 1975.

Nothing in Alabama law prohibits a council from removing its president or president pro tempore at any time and electing another councilmember to fill this office. AGO 1992-145.

Sec. 18. Vacancy in the Office of Mayor

(a) Cities and Towns under 12,000 in Population. In the event of a vacancy, for any cause, in the office of mayor of a municipality of less than 12,000 in population, the council shall fill the vacancy either from its own membership or from outside the membership of the council. While the Attorney General has opined that a councilmember may vote for himself or herself in an election to fill a vacancy in the office of mayor, AGO 2001-048, the League recommends contacting the Alabama Ethics Commission before doing so. A councilmember so appointed need not go through the formalities of resigning his or her seat on the council. His or her office is vacated by operation of law when he or she assumes the duties of mayor. AGO to Miss Thornburg, September 14, 1966. Any person appointed by the council to fill such a vacancy must meet all of the qualifications prescribed for the office of mayor. The council may not evade its responsibility for making such an appointment by calling a special election. 74 Q. Rep. Att. Gen. 8.

In the event a vacancy in the office of mayor is not filled within 60 days after it occurs in a Class 7 or Class 8 municipality, each existing council member may submit a name to the governor for appointment. If the governor fails to make an appointment from any submitted names within 90 days after the vacancy occurs, the judge of probate shall call a special election to fill the vacancy. Section 11-44G-2, Code of Alabama 1975. If the council does not fill the vacancy within 60 days after it occurs, the council, by default, loses its right to thereafter fill the vacancy. AGO 1999-168. [Note: Some cities are required by state law to hold elections to fill vacancies in the office of mayor.]

(b) Cities of 12,000 Population and Over. In the event of a vacancy, from any cause, in the office of mayor, the president of the council shall immediately vacate his or her council seat and succeed to the office of mayor for the unexpired term. Section 11-43-42, Code of Alabama 1975. Special procedures are set out for Class 3 municipalities (Section 11-43-87, Code of Alabama 1975).

(c) Salary of Temporary Mayor. In an opinion to the town clerk of Camp Hill, dated March 17, 1950, the League's attorney held that during the mayor's absence, the chairman pro tempore cannot receive the mayor's salary even though he or she is acting as such. Counsel's opinion concluded that as long as the mayor remained in office, he or she was entitled to receive compensation as mayor – even though unable to perform the duties of the office.

(d) Resignation of Mayors or other Public Officials.

A mayor or any other public official can submit his or her resignation at any time during his or her term of office. The resignation should be in writing and submitted to the municipal clerk for presentation at the next council meeting. A contingent resignation (or one effective on a given date) can be withdrawn at any time prior to the effective date or its acceptance by the council, whichever comes first. When a public official transmits a resignation without an effective date and without a condition, the resignation is effective at the point he or she transmits the resignation, and the resignation does not need to be accepted. AGO 2003-065.

(e) Municipal officers removed by operation of law. Section 11-40-25, Code of Alabama 1975, provides that any mayor, council member, or commission member elected or appointed to municipal office whose presence at council or commission meetings is counted towards establishing a quorum who misses all regular and special called council or commission meetings for 90 consecutive days, beginning on the date of any absence, shall be removed from office by operation of law. For the purpose of applying this law, on the date and time of any regular or special called council or commission meeting of a municipality, the clerk shall make a record of all elected municipal officials present or absent regardless of whether or not a quorum is present.

At the next council or commission meeting following the date an elected municipal official has been removed from office pursuant to this section, the council or commission may vote to reinstate the elected municipal official removed from office as provided herein for any mitigating or extenuating circumstances as determined by a majority vote of the remaining voting members of the council or commission, including the mayor if the mayor is a voting member of the council as provided by law. If the council or commission does not reinstate the removed elected municipal official pursuant to this section, the council or commission shall fill the vacancy as provided by law. This section shall not apply to any elected municipal official whose absence from any council or commission meeting is a result of military service.

(f) Replacement of Public Officials Called to Military Service. With regard to vacancies in any municipal office or board, the governing body of the municipality or other appointing authority, upon being advised in writing by an

elected or appointed official that the official has or will enter the active military of the United States and desires to avail himself or herself of the privileges and immunity granted by this chapter or upon failure of the official to so advise, the municipal governing body or other appointing authority within a period of 30 days after his or her entry into the service, may appoint a temporary acting official who shall be clothed with all the powers, privileges and duties regularly exercised by the official in whose place he or she is acting. The temporary acting official shall receive the same compensation payable in the same manner and from the same source as the official in whose place he or she is serving.

Should any temporary acting official appointed under this chapter be called into or enter the service of the United States, then the appointing authority, as defined above in this section, upon being informed in writing that the temporary acting official has or will enter the service, or upon failure of the temporary acting official to so advise the appointing authority within a period of 30 days after his or her entry into the service, may appoint another temporary acting official who shall have the same powers, privileges, and duties and shall receive the same compensation, payable in the same manner and from the same source as the official in whose place he or she is serving. Any person vacating an office pursuant to this chapter may recommend to the appropriate appointing authority the name of a person to fill his or her vacancy. The tenure of any temporary acting official appointed under this chapter shall be during the absence of the regularly elected or appointed official while in service and until the expiration of 30 days from the date that notice in writing is given to the appointing power by the regularly elected or appointed official of his or her intention to return and resume the duties of his or her office, at which time the powers, privileges and duties of the temporary acting official shall automatically end. Upon receipt of notice from the regular official of his or her intent to return, the appointing authority shall notify the temporary official that his or her service will automatically terminate on the date of the return to office of the regular official. Sections 36-8-1 thru 36-8-4, Code of Alabama 1975.

Sec. 19. Location of Mayor's Office

The mayor shall keep an office in the city or town. Section 11-43-80, Code of Alabama 1975. Since many provisions in Title 11 require the filing of statements, petitions and the like at the office of the mayor, it is necessary that the mayor have a definitely established office within the city or town.

Sec. 20. Mayor's Salary

(a) Salary Set by Council. Section 11-43-80, Code of Alabama 1975, stipulates that the mayor shall receive a salary, payable in equal monthly installments, as the council prescribes. That salary must be fixed by the council not less than six months prior to each general municipal election. Such an ordinance is of permanent operation and is subject to the voting requirements for ordinances of this type. AGO to Hon. Norman K. Brown, January 29, 1968.

A **cost-of-living raise** is part of a person's salary or compensation and is not a benefit and therefore, a mayor may not receive cost-of-living raises during his or her present term of office. AGO 2003-112. **NOTE:** Cost-of-living raises may be included in the mayor's compensation for the next term of office if adopted six months prior to the next election as provided in Section 11-43-80 of the Code of Alabama 1975.

If the council fails to take action within the time allowed or takes no action at all, the officers of the succeeding administration receive the same salaries paid to the mayor and council of the last term. AGO to Hon. R. E. Pate, October 19, 1964.

Sections 68 and 281 of the Alabama Constitution of 1901 prohibit payments to the mayor and members of the council for time lost from employment due to attending court hearings relating to municipal business. AGO 1980-318 (to Hon. Clarence Rhea, April 8, 1980).

(b) No Increase during Term. Section 11-43-9, Code of Alabama 1975, states:

"The fees, salary, compensation, or emoluments of any officer whose election or appointment is required or authorized by this title shall not be increased nor diminished during the term for which he shall have been elected or appointed, and no gratuitous appropriation in any case shall be made to or for the benefit of any officer or employee in addition to salary." Similar restrictions are also found in Sections 68 and 281 of the Alabama Constitution of 1901.

Neither the provisions of Sections 68 or 281 of the Constitution, nor Section 11-43-9 of the Code, prohibit the

automatic increase of an officer's salary during his term where the increase was fixed by law six months prior to his or her term. AGO to Hon. Q. P. Flournoy, September 29, 1953. Mayors and councilmembers can receive a cost-of-living raise during their term of office pursuant to provisions in an ordinance providing for cost-of-living raises for municipal employees if the ordinance was adopted six months prior to the last general municipal election and before their present term of office. AGO 2005-071.

In cases where the governing body is elected on a staggered basis, the salary of all members of the governing body shall be increased upon the expiration of the term of the first member of the body, provided the increase was approved as required by law. AGO 1984-012 (to Hon. Roy Owens, October 17, 1983).

(c) No Waiver of Salary. The agreement of an officer to accept less than the sum prescribed for his or her compensation by law is void, as against public policy. *Hamilton v. Edmundson*, 177 So. 743 (Ala. 1937); *Baumbauer v. State*, 198 So. 275 (Ala. App. 1940). However, a public officer may voluntarily diminish his or her salary. Section 36-6-10, Code of Alabama 1975. A state, county or municipal official who has voluntarily diminished the official's compensation under Section 36-6-10, may not direct the spending of the unused funds. The governing body may amend the budget to divert the funds to other purposes. AGO 2008-065.

(d) Group Insurance. The officers of a municipality may be included in group insurance benefits provided by the municipality under the authority of Sections 11-91-1 through 11-91-6, Code of Alabama 1975; 149 Q. Rep. Att. Gen. 10. An *Opinion by the Justices*, 30 So.2d 14 (Ala. 1947) must be noted as follows:

“As to the Act in question, we are inclined to the conclusion that the benefits received from group insurance therein provided may be considered as some increase in compensation. So considered, officers who have a fixed and unexpired term would not, during such term, be treated as within the group entitled to its benefits; but as to all others whose compensation may be increased, we are of the opinion that the Act looking, as it does, to the future, is not violative of either Sections 68, 94 or 281 of the Constitution.”

An elected municipal official may not receive group insurance benefits paid for by the municipality unless such benefits were approved at least six months prior to the election. AGO 1981-013 (to Hon. Maurice C. West, October 7, 1980) and AGO 2008-040.

(e) Retirement.

(1) Participation in State Retirement System.

A municipality may not provide by ordinance for the mayor to participate in the State Employees Retirement System. AGO 1993-285. On October 1, 1985, Montgomery County Circuit Judge William R. Gordon signed a consent decree in the case of *Braswell v. Dr. David Bronner*, as secretary-treasurer of the Employees' Retirement System of Alabama. Under the terms of the consent decree, elected officers covered and contributing to the Employees' Retirement System of Alabama on October 1, 1985, could continue participating in the system. A change from one elected office to another shall not stop the participation of such an officer so long as there is not an interruption in service. Should any person covered by the system on October 1, 1985, leave office, he or she will not again be allowed to participate as an elected officer if later elected to office following an interruption of service as an elected officer.

The consent decree enjoined the secretary-treasurer of the Employees' Retirement System from accepting any elected officer, except those mentioned above, for membership in the system, unless such coverage or participation is specifically authorized by amendment to the Alabama Constitution and the law.

(2) Retirees Serving as Elected Officials – Effect on Retirement Benefits.

Section 36-27-8.2(b), Code of Alabama 1975, provides that any person serving as an elected official who has retired from the Employees' Retirement System may serve for compensation in an elected public office with the state, a county or an incorporated municipality without suspension of retirement benefits; provided that under no circumstances shall such a person participate in or accrue additional benefits under the Teachers' Retirement System or the Employees' Retirement System, and provided that under no circumstances shall a person whose retirement is based upon service as an elected official continue in or return to such office and receive both pension benefits and salary; provided further, that this subsection shall apply to elected officials whose participation in the Teachers'

Retirement System or the Employees' Retirement System is constitutionally required to be upon the same terms and conditions as specified by law for other employees in the retirement system if such elected official's compensation does not exceed the annual earnings limits provided in Section 36-27-8.2(a), Code of Alabama 1975. Section 16-25-26(b), Code of Alabama 1975, provides similar protection for retirees of the Teachers' Retirement System. The responsibility for compliance with these sections is placed upon the employing authority, and each person employed under this section shall certify to the employer any information required in order to carry out this section.

(3) Retirees working part-time with Municipality – Limitations.

Questions are often raised as to the legality of retirees of the two state retirement systems going to work for state and local governments. Sections 36-27-8.2 and 16-25-26, Code of Alabama 1975, contain provisions to allow retirees of the State's employees' and teachers' retirement systems to be employed on a part-time basis by state and local entities under certain conditions without having to give up their retirement benefits.

Section 36-27-8.2(a), Code of Alabama 1975, provides that any person who is retired under the Employees' Retirement System may perform duties in any capacity with any employer participating in the Employees' Retirement System or the Teachers' Retirement System "without suspension of his or her retirement allowance provided that (1) the person is not employed in a permanent full-time capacity and (2) the person's compensation from the employer in calendar year 2016 does not exceed \$30,000. Beginning in calendar year 2017, and each calendar year thereafter, the annual earning limit shall be increased by the same percentage increase as the increase in the Consumer Price Index for all urban consumers as published by the U.S. Department of Labor, Bureau of Labor Statistics." Any increase in the annual earning limit shall be rounded to the next lowest multiple of \$1,000 with any amount in excess of the \$1,000 multiple considered in determining the increase for the following year. Each adjustment shall be based on the increase in the index for the preceding 12-month period ending on September 30 and the increase shall be effective for the following calendar year. The annual earning limit for Calendar Year 2020 is \$31,000. Section 16-25-26(a), Code of Alabama 1975, provides similar protection for retirees of the Teachers' Retirement System. The responsibility for compliance with these sections is placed upon the employing authority, and each person employed under this section shall certify to the employer any information required in order to carry out this section.

(4) Forfeiture of Retirement Benefits. Section 36-27D-1, Code of Alabama 1975, provides that retirees shall forfeit the employer-paid portion and the interest or gains on the employer-paid portion of his or her retirement benefits upon a guilty plea, a plea of no contest, or a final conviction of a felony offense related to the performance of his or her duties of office in Alabama.

Sec. 21. Mayor's Expenses

"Usually the municipal corporation is liable to officers for legitimate expenses made in connection with their official duties and such sums may be recovered of the city ... The true test in all cases is, did the act done by the officer relate to a matter in which the local corporation had an interest, or affect municipal rights or property of citizens which the officer was charged with an official obligation to protect and defend. No expenditure can be allowed legally except in a clear case where it appears that the welfare of the community and its inhabitants is involved and direct benefit results to the public." McQuillin, *Municipal Corporations*, 3rd Edition, Section 12.190.

It is not recommended that a municipality provide a flat expense account for municipal officials without accounting for expenses incurred. Such payments would be considered unauthorized salary payments. *State v. Stone*, 173 So. 871 (Ala. 1937); *Garner v. State*, 158 So. 546 (Ala. 1934). *But see*, AGO to Hon. W. W. Malone, October 20, 1965, and to Hon. Irvine Porter, December 29, 1972. It is recommended that municipalities adopt the practice of reimbursement or paying the actual expenses incurred by its officers in the performance of their official duties upon affidavit of the officer who incurred the expense. This method generates a record for the disbursing officer and evidences the fact that the payments are not made in such a manner that they might be regarded as unauthorized salary increases. *See also*, Sections 36-7-1 through 36-7-5, Code of Alabama 1975.

Sec. 22. Mayor's Working Hours

The council may not, by ordinance or otherwise, require the mayor to give full time to his or her duties as mayor and forbid his or her pursuit of another occupation. Local or class legislation is required to make the position of mayor a full-time position. AGO 2005-076. The only exception to this lies in the authority of the council in municipalities to

require the mayor to act as superintendent of the municipal utilities system or systems, where such system or systems are unincorporated, and to give as much of his or her time thereto as the council may direct. AGO to Hon. William Willis, January 21, 1960, citing what is now Section 11-43-80, Code of Alabama 1975.

Sec. 23. Mayor as Superintendent of Utilities

Municipalities which own electric, water, sewer or gas systems, one or any of them, may adopt a resolution **requiring** the mayor, in addition to the mayoral duties, to act as superintendent of such system or systems and to give as much of his or her time thereto as the governing body directs. In a municipality in which an incorporated municipal utility board owns and operates such system or systems, such board, by resolution, **may employ** the mayor to act as superintendent of the system or systems and to give as much of his or her time thereto as the board may direct.

For services as superintendent of such system or systems, the mayor shall be paid, in addition to the salary as mayor, such sum as the governing body or the board shall deem reasonable. The governing body of the municipality or the board may, at any time it deems best, dispense with the mayor's services as superintendent of utilities. Section 11-43-80, Code of Alabama 1975.

A mayor who serves as superintendent of utilities for an incorporated utility board may receive the benefit of contributions to the State Employees' Retirement System. The mayor can receive vacation allowance, sick leave, or bereavement leave. AGO 1980-430 (to Hon. Maurice C. West, June 30, 1980). A mayor cannot serve as superintendent of utilities and as a member of the incorporated utility board at one and the same time. AGO 1983-232 (to Hon. Curtis Parks Jr., March 14, 1983).

A retired teacher serving as mayor who is also employed as superintendent of an independently incorporated waterworks board which participates in the Employees' Retirement System may not exceed the statutorily prescribed earnings limitation for employment with the waterworks board. AGO 2001-275.

Sec. 24. Mayor as Chief Executive

(a) Power to Direct and Supervise. "The mayor shall be the chief executive officer, and shall have general supervision and control over all other officers and affairs of the city or town, except as otherwise provided in this title ..." Section 11-43-81, Code of Alabama 1975.

The municipal council may not enact an ordinance authorizing standing committees of the council to direct and supervise the work of departments assigned to their study and observation. The mayor has exclusive authority to supervise and control the administrative personnel of the municipality. AGO to Hon. Gilbert Watson, October 8, 1957.

The council may not adopt any ordinance or resolution requiring the mayor to give written instructions and orders to employees and officers of the municipality, nor may the council require employees and department heads of the municipality to answer directly to the council for their actions and to receive their instructions, in whole or in part, directly from the council. The council may not assume direct control over the police department, the maintenance department or the building inspection department. AGO to Hon. Charles E. McConnell, November 5, 1957.

The Attorney General has ruled that the mayor of a municipality does not have the authority to supervise and direct the officers and employees of an incorporated municipal utility board, unless the mayor has been appointed superintendent of such utility board. AGO to Hon. N. L. Plunkett, September 28, 1977.

Pursuant to Section 12-14-50, Code of Alabama 1975, a municipal judge has the authority to supervise all court employees generally and pursuant to Rule 18 of the Alabama Rules of Judicial Administration, the municipal court clerk, not the city clerk, has the authority to supervise all court magistrates and other court personnel regarding administrative matters. AGO 2005-098.

(b) Power of Appointment. The mayor has the power to appoint all officers, whose appointment is not otherwise provided for by law. Section 11-43-81, Code of Alabama 1975. In *Scott v. Coachman*, 73 So.3d 607 (Ala. 2011), the Supreme Court of Alabama held that the mayor has the authority to hire most municipal employees. This overturned a long-standing interpretation that allowed the council to remove the mayor's power by ordinance. *Coachman* interpreted Section 11-43-81 of the Code, which provides that the mayor has the "power to appoint all officers whose

appointment is not otherwise provided for by (state) law.” Since at least 1957, the Attorney General had interpreted this phrase to mean that the council could pass an ordinance - a law - to assume the power to appoint employees and officers. *Coachman* overturned this interpretation and stated that unless a state statute authorized a different appointment method, the mayor had the power to appoint all officers and, presumably, employees.

In cities having a population of more than 6,000, there shall be elected by the council, at its first regular meeting or as soon thereafter as practicable, a city treasurer and a city clerk, who shall hold office until the next general election and until their successors are elected and qualified, and such council may elect an auditor, **and any officers whose election is required by ordinance**, and, except as otherwise provided, the council shall have authority to fix the terms of office, prescribe their duties and fix the salaries of the officers. Section 11-43-3, Code of Alabama 1975. This section specifically gives the council the authority in municipalities of over 6,000, to identify “officers” of the city by ordinance and provide for their election by ordinance.

In cities having a population of less than 6,000 and in towns, the council shall elect a clerk and fix the salary and term of office, **and may determine by ordinance the other officers of the city or town, their salary, the manner of their election and the terms of office**. The clerk and such other officers elected by the council shall serve until their successor or successors are elected and qualified. Section 11-43-4, Code of Alabama 1975. While worded differently than Section 11-43-3, this section also gives the council, in municipalities of under 6,000 population, the authority to identify officers of the city by ordinance and to elect those officers or provide for another “manner of appointment” by ordinance. The council may provide for a tax assessor, tax collector, chief of police, and chief of the fire department and shall specifically prescribe their duties. The council shall designate the persons who shall administer oaths and issue warrants of arrest for violations of law and the ordinances of the city or town and the persons authorized to approve appearance bonds of persons arrested. This section identifies specific officers of a municipality and gives the council the authority to provide for these officers should it choose to.

In combination with Section 11-43-3 and Section 11-43-4 of the Code of Alabama 1975, the council, in providing for these “officers” could, by ordinance, provide for their manner of appointment, including appointment by the council rather than the mayor. According to the Attorney General, an “officer” is limited to a person exercising some level of authority, presumably over employees, and performs some discretionary, policy making functions. AGO 2012-039 (see discussion below). In addition to the above listed code sections, Section 12-14-30 of the Code of Alabama 1975, specifically gives the council the authority to appoint, by vote of a majority of its members, the judges of the municipal court. Also, Section 11-43-20, Code of Alabama 1975, authorizes the city council to provide for, by ordinance, a city manager. The council is authorized to establish a police force under the general supervision of a police chief. Section 11-43-55, Code of Alabama 1975.

Where the Code of Alabama specifies that the council has exclusive appointing power, the council must make such appointments. The council may, by properly drafted ordinance, delegate its appointing power where appointments are left to its discretion. AGO to Hon. Joseph Hocklander, April 3, 1957. For example, a council has authority to provide by ordinance for the appointment of the police chief (Section 11-43-55, above) and the fire chief (Section 11-43-140, Code of Alabama 1975). If the ordinance is silent regarding appointment, the mayor makes this appointment. AGO to James E. Hart, March 29, 1973.

Where a municipality has created, *by ordinance*, the office of city attorney and the ordinance fails to designate the appointing authority, the Mayor is the appointing authority for the city attorney. AGO 2009-054. **NOTE:** Where a municipality contracts with an attorney to provide legal services for the municipality, the council must approve the contract and its terms.

The Attorney General, in Opinion 2012-039, held that the specific language of Sections 11-43-3 and 11-43-4 don’t limit the council’s appointment power only to listed “offices.” Instead, the Attorney General noted that “Section 11-43-3 authorizes a city council to elect any officer whose election is required by ordinance, to prescribe the duties, to fix salaries and to set the terms of office for these officers.” Therefore, the Attorney General concluded that the legislature has created a method for the council to appoint other positions than those listed above and designate them as “officers.” The Attorney General, though, stated that there are limitations on the council’s power to designate certain positions as officers. Using the definition in Black’s Law Dictionary, the Attorney General concluded that: “any office created by a city council must be assigned specific duties and hold a position of authority. Paramount to the authority of an officer is the ability to discharge some portion of the sovereign power. The Supreme Court of Alabama, in defining

the term “office” stated the following: “We apprehend that the term “office” implies a delegation of a portion of the sovereign power, and the possession of it by the person filling the office; and the exercise of such power, within legal limits, constitutes the correct discharge of the duties of such office. The power thus delegated and possessed may be a portion belonging sometimes to one of the three great departments, and sometimes to another; still, it is a legal power, which may be rightfully exercised, and, in its effects, will bind the rights of others, and be subject to revision and correction only according to the standing laws of the state. An employment, merely, has none of these distinguishing features.” *State v. Stone*, 240 Ala. 677,680, 200 So. 756, 758 (1941). An employee, instead, is someone who “works within the service of another person (the employer) under an express or implied contract for hire (A)n officer must have responsibilities and hold a position that is superior to that of an employee ... Accordingly, an officer is limited to a person that exercises some level of authority, presumably over employees, and performs some discretionary, policy-making functions.”

In summary, according to *Coachman*, the mayor has the power to appoint anyone whose appointment “is not otherwise provided for by (state) law.” State law clearly provides that the council shall appoint certain positions, such as clerk and treasurer. State law also allows the council to create “offices” by ordinance and, therefore, fill those positions. However, not every position within the municipality can be designated as an office. In order to hold an office, a person must exercise some “level of authority, presumably over employees” and perform discretionary, policy-making functions. If so, the council may pass an ordinance making these positions officers of the municipality.

Of course, it is important to recognize drawbacks before designating a position as an “office.” Section 11-43-46, Code of Alabama 1975, provides that the term of service for any officer cannot exceed that of the mayor. So, at the end of the term of office of the mayor, a vacancy exists in all municipal offices and the incoming council would be required to fill those vacancies. Further in *Stone*, quoted above, the Alabama Supreme Court stated that a position must exercise “a portion of the sovereign power.” In *Tyson v. Jones*, 60 So.3d 831 (Ala. 2010) the Alabama Supreme Court stated that “Constitutionally, the term ‘public office’ implies an authority to exercise some portion of the sovereign power, either by enacting, executing or administering the laws.” Generally, “sovereign power” recognizes the delegation of authority to act from the state legislature. Although the phrase is not clearly defined by courts or state law, it implies at least some measure of ability to act independently and without direct control. Employees, by contrast, are subject to control and authority from a superior. Thus, those who exercise sovereign power generally act without a great degree of supervision and with fairly wide latitude.

The Court of Civil Appeals discussed the distinction between employees and officers in *Burdette v. State Dept. of Revenue*, 487 So.2d 944 (Ala. Civ. App. 1986), stating that “An individual, to be an officer, must exercise his duties in his own right and not by permission and under the supervision and control of another.” According to this ruling, then, those who exercise only administrative duties under the control and supervision of a supervisor may not be classified as officers. They would be considered employees, even if the council wanted to designate these positions as “officers.”

Of course, it isn’t clear which positions are officers and which are employees. Further, one municipality may provide duties and responsibilities to a particular position that make that position an office, while another limits someone with the same title to ministerial functions. In the end, what *Coachman* and Opinion 2012-039 make clear is that municipal officials must find ways to work together to solve the problems they face. Cooperation and open dialogue between the mayor, the council and among councilmembers themselves is crucial to the successful operation of any municipal government in Alabama.

(c) Mayor’s Power of Dismissal. Section 11-43-160, Code of Alabama 1975, states that any person appointed to office in any city or town may, for cause, after a hearing, be removed by the officer making the appointment. The Attorney General has determined that Section 11-43-160, Code of Alabama 1975, gives the city council the authority to remove any officer in the several departments, but not employees. The term “officer” includes all those positions specifically set forth in the Code of Alabama as “officers,” as well as any position created by the city council pursuant to ordinance. An officer is limited to a person that exercises some level of authority, presumably over employees, and performs some discretionary, policy-making functions. A city council is not authorized to fire an “employee” pursuant to section 11-43-160, Code of Alabama 1975. AGO 2012-039.

The mayor of a city of 12,000 or more in population does not sit as a member of the council and, therefore, has no vote on questions of appointment or dismissal of officers or employees which come before the council. The mayor of a city of 12,000 or more in population does not have the power of veto over appointments made by the council.

The fact that a mayor, who voted and participated in a personnel hearing before the council concerning an officer's dismissal, may have had prior and independent knowledge of the dispute would not, standing alone, be sufficient to support a finding that the officer was deprived of an opportunity for an impartial hearing. However, the Alabama Supreme Court has held that, if before the hearing, the mayor and a councilmember had decided to uphold the discharge of the officer before evidence was presented, participation of the mayor and councilmember in the council hearing denied the officer due process. *Chandler v. Lanett*, 424 So.2d 1307 (Ala. 1982). *See also, Guinn v. Eufaula*, 437 So.2d 516 (Ala. 1983), and *Stallworth v. Evergreen*, 680 So.2d 229 (Ala. 1996).

Additional due process requirements are set out in state law for the suspension or termination of law enforcement officers. *See*, Sections 11-43-230 through 11-43-232, Code of Alabama 1975.

Sec. 25. Mayor Presides Over Council—Municipalities Under 12,000

(a) Mayor's Voting Power. In all cities and towns having a population of less than 12,000 inhabitants, according to the last or any subsequent federal census, the legislative functions shall be exercised by the council, which is composed of the mayor and five to seven councilmembers. The mayor shall preside over all deliberations of the council. At his or her discretion, the mayor may vote as a member of the council on any question coming to a vote. The only time a mayor is **required** to vote on a question is when the initial vote ends in a tie and his or her vote is needed to break the tie. Section 11-43-2, Code of Alabama 1975. **However, in no case does the mayor have more than one vote on any question before the council.** If the mayor voted on the initial vote and the vote ended in a tie, the mayor cannot vote again to break the tie. *Jones v. Coosada*, 356 So.2d 168 (Ala. 1978). The mayor of a municipality of less than 12,000 is a member of the legislative council. 58 Q. Rep. Att. Gen. 101.

(b) Mayor Sitting Apart from Council. Under general law, the mayor of cities of 12,000 and above in population is specifically prohibited from sitting as a member of the council and, in such cities, the mayor may not participate in council proceedings by voting on measures coming before it. (**Note:** Certain classification laws applying to a single municipality may authorize the mayor in such cities to sit with the council.) The council may not adopt an ordinance which would permit the mayor of cities of 12,000 or more in population to sit with the council, as a member, with authority to vote on measures coming before it. AGO to Mayor Charles McConnell, January 5, 1956. As will be explained in Section 38(b) of this handbook, the mayor of cities of 12,000 and above has certain veto powers not possessed by mayors of cities under 12,000 in population.

(c) Changes in Form of Government – When Effective. Each decade the federal government conducts a federal decennial census throughout the country. Any city of less than 12,000 inhabitants whose population, according to the Federal decennial census, has increased to 12,000 or more inhabitants must change its form of government to the form used by cities of 12,000 or more inhabitants. Any city of 12,000 or more population whose population has decreased below 12,000 inhabitants likewise must change its form of government to the form used by cities of less than 12,000 inhabitants. The change will take effect when those officials elected at the first election held after the federal decennial census becomes official take office. *See*, Section 6(d) of this handbook for further information.

(d) Council Organization Reference. Mayors of cities and towns under 12,000 in population should pay particular attention to Section 54 of this handbook relating to the organization of the city council.

Sec. 26. Mayor's Report to Council

As chief executive, the mayor must present a written statement to the council at least once every six months to show the financial condition of the city or town – particularly the temporary floating indebtedness of the municipality and the purpose for which this temporary debt was incurred and proposals to protect the credit of the city or town.

The same law which requires the mayor to make these periodic financial reports – Section 11-43-84, Code of Alabama 1975 – further provides that “The mayor shall require reports to be made to him by any officer of the city or town at such times as he may direct or as may be prescribed by the council ...” This authority is intended to facilitate supervision of the activities of the various departments and officials of the municipality and to assist the mayor in making reports to the council.

Sec. 27. Mayor Responsible for Municipal Audit

At least once a year, the mayor shall appoint an accountant to make a detailed examination of all books and accounts of the city or town to cover the period since the preceding examination and make a full report thereof, in writing, under oath to be submitted to the council at its first meeting after the completion of the report. The audit report shall be spread upon the minutes of the council. The mayor is required to employ either an independent public accountant or the Department of Examiners of Public Accounts to conduct this annual audit. There is no prohibition against employing the same accountant for successive years. For services rendered, the accountant shall be paid such sum as may be agreed upon. Section 11-43-85, Code of Alabama 1975.

Upon request by the mayor, the Department of Examiners of Public Accounts is required to perform an audit of a city or town pursuant to section 11-43-85 of the Code of Alabama. A town cannot waive the requirement of a yearly audit and at least once a year the town must secure an audit and pay an agreed upon sum for the services rendered by either the Department of Examiners of Public Accounts or an independent auditor. AGO 2010-068.

The mayor **must** secure an audit at least once a year. The council **may not** appoint the accountant. Section 11-43-85 authorizes the mayor to enter into a contract fixing the accountant's fee at a reasonable amount without the approval of the council. The council is legally obligated to pay a reasonable fee for such services, although it did not authorize or take part in the agreement. AGO to the League of Municipalities, November 4, 1959. However, if annual audits have been made for previous years and were accepted by the council, the mayor may not employ, without the consent of the council, an auditor to re-audit the books of the city for such years. AGO to Hon. E. R. Caldwell, June 15, 1965. If the council is not satisfied with the audit provided by the mayor's auditor, the council may order an additional audit to be made by the auditor of its choice.

Section 36-25-4(a)(7), Code of Alabama 1975, authorizes the Ethics Commission to direct the state director of the Examiners of Public Accounts to audit a municipality. Also, Act 2019-449, known as the Municipal Audit Accountability Act, gives the Department of Examiners of Public Accounts authority to perform an audit of a municipality when fraud or mismanagement of funds is suspected. The Act also gives the Department authority to access financial penalties up to \$250 per week against municipal officials or municipal councils for failure or refusal to perform audits or submit audits requested by the Department. Section 11-43-85 authorizes the mayor to request the Examiners of Public Accounts to audit the municipality. AGO 1992-322.

Sec. 28. Fiscal Year – Formulating the Municipal Budget

(a) Fiscal Year. No statutory provision exists which expressly requires the municipalities of the state to establish any particular period for the fiscal year. It should be noted, however, that Section 1-3-4, Code of Alabama 1975, does state that “the fiscal year of the government shall commence on the first day of October and end on the thirtieth day of September. This fiscal year shall be used for purposes of making appropriations and of financial reporting and shall be uniformly adopted by all departments, institutions, bureaus, boards, commissions and other state agencies.” The Attorney General has ruled that the term “government” is a very comprehensive term and “includes the affairs of a state, community, or society. It is all-inclusive.” AGO to Hon. H. K. Hawthorne, March 12, 1968.

(b) Formulating the Municipal Budget. The council is required to appropriate the sums necessary for the expenditures of the several city departments, for interest on the bonded and other indebtedness, not exceeding in the aggregate within 10 percent of its estimated receipts (essentially creating a reserve account of at least 10 percent of anticipated revenues) and the council shall not appropriate, in the aggregate, an amount in excess of its annual legally-authorized revenue. But nothing in this section shall prevent such cities from anticipating their revenues for the year for which such appropriation was made, or from contracting for temporary loans as provided in the applicable provisions of this title, or from bonding or refunding their outstanding indebtedness or from appropriating anticipated revenue at any time for the current expenses of the city and interest on the bonded and other indebtedness of the city. Section 11-43-57, Code of Alabama 1975.

Most Alabama municipalities adopt budgets to ensure that maximum service is obtained for each tax dollar. As chief executive and supervisor of municipal departments, the mayor is in the very best position to determine the requirements of the various departments. It is the usual procedure for the mayor to serve as the principal budget officer. While he or she does not draft a final budget, the mayor compiles estimates of revenues and expenses and

presents them to the council with recommendations for appropriations and necessary revenue-raising measures.

In formulating the budget, it is customary for the mayor as budget officer to start compiling budget suggestions at least three months prior to the beginning of the fiscal year. In so doing, the various department heads are required to submit their estimates by a deadline meeting date, at which time their estimates and recommendations are discussed. It is important for the budget officer to include in the recommendations a summary of anticipated revenues from each source, separating those which are earmarked for particular purposes and those which may be expended for general revenue purposes.

Sec. 29. The Mayor's Role in Disbursing Funds

(a) Generally. The mayor plays an important role in disbursing municipal funds. Warrants must be drawn by the clerk, approved by the mayor or such other person as the council may designate for that purpose and the warrants must be presented to the treasurer for payment. In cities over 6,000 in population, the mayor does not have to approve the actual warrant if the council has authorized the clerk to draw warrants without the mayor's approval. But in such cases, the mayor still must approve the voucher for payment for which the warrant was drawn; therefore, the result is the same. All expenditures of municipal funds must be specifically approved by the mayor or by some other person designated in his or her stead by the council. Designation of some other person to approve disbursements ensures that someone is able to do so when the mayor is absent. Section 11-43-120, Code of Alabama 1975. A municipal council may, by ordinance, designate the person who has the power to sign checks for the municipality. AGO 2001-260.

Going further, Section 11-43-120, Code of Alabama 1975, states that no warrant shall be drawn except by authority of law or ordinance and the treasurer shall allow no expenditure unless it is authorized by ordinance or unless it has been approved by the mayor. The mayor should be extremely careful in approving any warrant or voucher, for he or she may be held responsible for unauthorized expenditures made on the basis of that approval. Normally, no question of legality will arise, but there may be times when the mayor feels the legality of an expenditure is doubtful. In such cases, the clerk and treasurer should be consulted for any advice they might have and, if necessary, the mayor should contact the city or town attorney for legal advice on the matter.

The council may, by ordinance, remove the mayor's authority to sign checks. *See, Edwards v. 1st National Bank of Brewton*, 377 So.2d 966 (Ala. 1979). Section 1-3-3, Code of Alabama 1975, provides that where any bond, warrant, note or certificate is issued by a municipality and is required or permitted to be executed by more than one person, a facsimile of the signature of any one or more persons may be used as long as at least one signature required is manually subscribed.

(b) Validation of Disbursements – Council Approved Claims. The council need not validate each disbursement individually, but it is required that all claims, requisitions and demands against a municipality for goods purchased or debts incurred be submitted to the council for approval, unless already provided by ordinance or resolution. Section 11-43-120, Code of Alabama 1975.

(c) Clerk-Treasurer. The offices of clerk and treasurer may be combined. In cities of 6,000 or more in population, the council may combine the offices by a two-thirds vote of the members elected, by and with the consent of the mayor. Section 11-43-3, Code of Alabama 1975. In cities and towns of less than 6,000 in population, a two-thirds vote of the council is not necessary to combine the offices. As a member of the council in these municipalities, the mayor takes part in the establishment and filling of these offices. The Attorney General has ruled that once the offices of clerk and treasurer have been consolidated, a two-thirds vote of the council is necessary to separate them. AGO 1993-126.

Sec. 30. Legality of Expenditures

(a) Generally. Before any appropriated money can be expended, municipalities must relate their expenditures to the tests which govern the exercise of their powers. This requires determining that the purpose for which the municipal money may be expended is within its corporate powers, is not limited by the Alabama Constitution, and, therefore, can be authorized by the Legislature and is at all times a public purpose. Rhyne, *Municipal Law*, Section 15-2.

(b) Constitutional Limitations. Section 94 of the Alabama Constitution of 1901 provides: "The Legislature shall not have power to authorize any county, city, town, or other subdivision of this state to lend its credit, or to grant public money or thing of value in aid of, or to any individual, association, or corporation whatsoever, or to become a

stockholder in any such corporation, association, or company, by issuing bonds or otherwise.”

Section 93.12, Alabama Constitution 1901, provides that, despite Section 94, the Legislature may authorize municipalities to appropriate funds and may designate or create an agency or agencies to accept and administer funds appropriated or donated for acquiring, building, establishing, owning, operating and maintaining hospitals, health centers, sanatoria and other health facilities. This amendment is not self-executing. The authority must be granted by the legislature.

(c) Guiding Questions. A municipal official has no difficulty in determining if an expenditure of municipal funds is lawful where the Legislature has given express power to the municipality to perform a particular service, to make particular improvements or to exercise particular powers. In such instances, the official may generally rely upon the legality of the express grant. Problems arise most frequently where a cause or purpose is civic in nature but is not controlled or operated under the guidance of a clearly-defined public agency and where there is not an express grant of authority to the city or town but a possible implied grant for a particular purpose. Where no express grant exists, the municipal official should consider:

- Is there a public purpose?
- Is the municipality receiving adequate consideration for the expenditure?
- Would the appropriation involve placing public funds with a private person or agency for expenditure at its discretion?

The expenditure must be for a public purpose – it must benefit the citizens of the municipality. To determine whether a public purpose is served, the governing body must look to the statutes setting forth the powers of the governmental entity. If within such powers there exists the authority to promote the action at issue, then the governing body need only decide whether the appropriation will help accomplish that purpose. AGO 2012-002. Where a contract is involved, adequate, not merely nominal, consideration must be given to the municipality. And the expenditure must not be an outright appropriation to a private person, firm, corporation or association for expenditure at its discretion, whether the purpose is highly civic or not.

(d) Further Information. For more detailed guidance and information on the expenditure of public funds, please see the article titled “The Public Purpose Doctrine” in the *Selected Readings for the Municipal Official* (2020 ed.)

Sec. 31. Investment of Municipal Funds

(a) Legal Investments. Any municipal funds or county funds not presently needed for other purposes may be invested in any obligations in which sinking funds are now authorized to be invested, pursuant to Section 11-81-19, Code of Alabama 1975; that is, bonds of the United States, bonds of the state of Alabama, bonds of any county in Alabama, bonds of any municipal corporation of the state of Alabama or deposited in banks on interest. Section 11-81-20, Code of Alabama 1975, provides, in addition to the foregoing list of authorized investments, public improvement bonds issued by any municipality in Alabama, which are general obligations of such municipality. The Attorney General has ruled that the investment of surplus municipal funds in municipal bonds is restricted to **general obligation bonds** of the municipality, and that revenue bonds would not be lawful investments. 87 Q. Rep. Att. Gen. 30.

Section 11-81-21, Code of Alabama 1975 provides that municipalities may also invest in any of the following:

(1) Direct obligations of (including obligations issued or held in book entry form on the books of) the Department of the Treasury of the United States of America.

(2) Obligations of any of the following federal agencies, which obligations represent the full faith and credit of the United States of America:

- a. Farmers Home Administration
- b. General Services Administration
- c. U. S. Maritime Administration

- d. Small Business Administration
- e. Government National Mortgage Association (GNMA)
- f. U. S. Department of Housing and Urban Development (HUD)
- g. Federal Housing Administration (FHA)

(3) U. S. dollar denominated deposit accounts and certificates of deposit with banks or savings associations which are qualified public depositories under Chapter 14A of Title 41.

(4) Pre-refunded public obligations, defined as follows: “Any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state (i) which are not callable at the option of the obligor prior to maturity or as to which irrevocable notice has been given by the obligor to call on the date specified in the notice and (ii) which are fully secured as to principal and interest and redemption premium, if any, by a fund consisting only of cash or obligations described in subdivision (1) above, which fund may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, and (iii) which fund is sufficient, as verified by an independent certified public accountant, to pay principal of and interest and redemption, if any, on the bonds or other obligations described in this paragraph on the maturity date or dates thereof or on the redemption date or dates specified in the irrevocable instructions referred to in sub-clause (i) of this paragraph, as appropriate, and (iv) which are rated, based on the escrow, in the highest rating category of Standard & Poor’s Corporation and Moody’s Investors Service, Inc. or any successors thereto.

(5) Interests, however evidenced, in any common trust fund or other collective investment fund maintained by any national or state chartered bank, trust company or savings and loan association having trust powers or securities of or other interests in any open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940, as from time to time amended, so long as all of the following requirements are met at the time of purchase and during the term of investment: (i) at least 65% of the portfolio of such common trust fund, collective investment fund or investment company or investment trust must consist of investments authorized in subdivisions (1), (2), (3), or (4) above, and (ii) the remainder of the portfolio (if any, but not more than 35 percent) may consist only of the following investments: (x) obligations issued or guaranteed by the following agencies: Federal National Mortgage Association (FNMA), Federal Home Loan Mortgage Corporation (FHLMC), including FNMA, and FHLMC participation certificates, Federal Land Banks, Central Bank for Cooperatives, Federal Intermediate Credit Banks, Student Loan Marketing Association, and Federal Home Loan Banks, (y) mortgage related securities (as that term is defined in Section 3(a) (41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a) (41) or (z) repurchase agreements fully collateralized by obligations, securities or investments otherwise authorized under subdivisions 5(i)-(ii), so long as the common trust fund, collective investment fund, investment company or investment trust takes possession and delivery of the collateral for any repurchase agreement either directly or through an authorized custodian. The fact that any financial institution making such investment on behalf of the municipality or county, or any affiliate of such financial institution, is providing services to the investment company or investment trust as an investment advisor, sponsor, distributor, custodian, transfer agent, registrar, or otherwise, and is receiving reasonable remuneration for such services, shall not preclude such institution from making the investment in the securities of such investment company or investment trust; provided, however, that with respect to any account for municipal funds or county funds to which fees are charged for such services, the said financial institution shall disclose (by prospectus, account statement or otherwise) to the beneficiary of such account or to any third party directing investments the basis (expressed as a percentage of asset value or otherwise) upon which the fee is calculated.

The terms “municipal funds” and “county funds” as used in this section shall include all general, special, permanent, trust and other funds, regardless of source or purpose, held or administered by any county, city or town – or by any officer or agency thereof – in the state of Alabama.

Investments of municipal funds or county funds shall be made by the officer or agency controlling their disposition. Such county, city, town, official or agency thereof, may at any time sell such obligations purchased pursuant to this section and the money received from such sale and the interest and profits on such investment shall be credited to the

fund from which the investment was made. Any such obligation may be deposited for safekeeping with any bank, trust company or savings and loan association organized either under the laws of the state of Alabama or of the United States.

Municipal funds may be placed on time deposit at interest in a regular banking institution or placed on interest in such banks by certificate of deposit. *See*, Section 5-5A-28, Code of Alabama 1975.

In order to hedge against investment risks, governmental entities may enter into one or more interest swap agreements which the governmental entity determines to be necessary or desirable in connection with, or incidental to, the conduct of its proper activities, including in connection with its acquisition or carrying of investments or the issuance, acquisition, carrying or securing of its authorized debt instruments, bonds, notes, agreements, or indebtedness. Sections 41-1-40 through 41-1-44, Code of Alabama 1975. Municipal officials should contact their bond attorney for further information.

(b) Collateralization of Invested Funds. The Security for Alabama Funds Enhancement Act provides that the state treasurer shall have the authority and responsibility to administer the SAFE Program governing the pledging of collateral to secure public deposits by qualified public depositories. Sections 41-14A-1 through 41-14A-14, Code of Alabama 1975. Although money market demand deposits are covered by the SAFE program, money market mutual funds are not. Section 41-14A-2(17), Code of Alabama 1975.

(c) CDARS. In addition to any other authorization for the investment or deposit of funds by a public depositor, Section 41-14A-3(c), Code of Alabama 1975 provides that a public depositor may deposit funds in banks and savings associations that are not qualified public depositories provided that all of the following are satisfied:

(1) The public depositor enters into one or more agreements with a qualified public depository designated by the public depositor pursuant to which the qualified public depository agrees to arrange for the placement of funds of the public depositor in interest bearing deposits of other banks or savings associations in amounts not exceeding applicable Federal Deposit Insurance Corporation deposit insurance limits.

(2) To prevent deposits from exceeding the insurance coverage provided by the Federal Deposit Insurance Corporation, the public depositor provides the qualified public depository with a notification that identifies all banks and savings associations that are holding deposits on behalf of the public depositor and on behalf of any department, agency, or other instrumentality whose deposits would be aggregated with those of the public depositor in determining the maximum available Federal Deposit Insurance Corporation insurance coverage.

(3) The qualified public depository arranges for the deposit of the funds in one or more federally insured banks or savings associations, wherever located, for the account of the public depositor, provided, that the qualified public depository shall not arrange for the deposit of the funds with any bank or savings association identified in the notification provided by the public depositor pursuant to subdivision (2).

(4) Each deposit is entered in the records of the qualified public depository and the other banks and savings associations that receive or are credited with the deposit in such manner that the full amount of principal and accrued interest of the deposit is insured by the Federal Deposit Insurance Corporation.

(5) The deposits are held by the qualified public depository for the public depositor under a custodial arrangement.

(6) At the time the funds are deposited through the qualified public depository, the qualified public depository receives or is credited with an amount of deposits from customers of other federally insured banks or savings associations equal to or greater than the amount of funds deposited by the public depositor in other banks and savings associations through the qualified public depository.

(7) The public depositor receives confirmation of the deposits and periodic statements that reflect the ownership of the deposits by the public depositor, the names of the banks and savings associations that hold the deposits, and the interest rate or rates on the deposits.

The qualified public depository agrees to provide to the Department of Examiners of Public Accounts, upon

request, information necessary to permit the department to verify the deposits of the public depositor that are held by the banks and savings associations named on the confirmation of deposits and periodic statements and were placed through the qualified public depository. Notwithstanding any other provision of law, any qualified public depository may release records and other documentation and information to the department for the purposes of this subdivision. No funds placed pursuant to Section 41-14A-3(c) shall be protected by the SAFE Program or eligible to participate in the SAFE collateral pool or the Loss Payment Fund.

Sec. 32. Municipal Contracts

(a) Generally. Contracts entered into by a municipality shall be in writing, signed and executed in the **name of the city or town**, by the officers authorized to make same and by the party contracting. In cases not otherwise directed by law or ordinance, such contracts shall be entered into and executed by the mayor in the name of the city or town and all obligations for the payment of money by the municipality, except for bonds, and interest coupons, shall be attested by the clerk. This section shall not be construed to cover purchases for the ordinary needs of the municipality. Section 11-47-5, Code of Alabama 1975. *See, Prichard v. George Moulton*, 168 So.2d 602 (Ala. 1964) and *Alford v. Gadsden*, 349 So.2d 1132 (Ala. 1977).

The Alabama Supreme Court held that, absent authorization from the council, the mayor does not have the authority to enter into and execute a contract on behalf of the municipality. While the Court recognized that the mayor is authorized to enter into and to execute contracts, it determined that the authority cannot be exercised without the direction and authorization of the council. *Town of Boligee v. Greene County Water & Sewer Auth.*, 77 So.3d 1166 (Ala. 2011). Accordingly, the general rule is that the only method by which an employee or official may expend funds or be given authority to bind the municipality to a contract is by an affirmative vote of the council reflected in the minutes. An exception is the mayor's authority to contract for an annual municipal audit pursuant to Section 11-43-85, Code of Alabama 1975.

The mayor cannot change the price fixed by the council without authority from the council to do so. *Albany v. Spragins*, 93 So. 803 (Ala. 1922). Provisions relating to the execution of contracts entered into by a municipality are mandatory. *Council v. Dothan*, 181 So. 293 (Ala. 1938). Generally speaking, contracts amounting to an exercise of governmental powers should not extend beyond the term of office of the incumbent administration. 110 Q. Rep. Att. Gen. 42. Contracts in the exercise of corporate powers are binding on successive administrations.

(b) Parol (Unwritten) Contracts. Purchases that are necessary and proper to carry out the implied and incidental powers pertaining to the purposes for which the municipality was created fall within the class of purchases for which no written contract is required. In this respect, courts have ruled that the purchase of bound printed volumes of the ordinances of the municipality comes within this exception from written contracts. *Reid v. Mobile*, 104 So. 787 (Ala. 1925).

(c) Competitive Bids. With the exception of contracts for public works, all expenditure of funds of whatever nature for labor, services, work or for the purchase of materials, equipment, supplies or other personal property involving \$15,000 or more and the lease of materials, equipment, supplies or other personal property where the lessee is, or becomes legally and contractually, bound under the terms of the lease, to pay a total amount of \$15,000 or more, made by or on behalf of any municipality or municipal entity, must be made under contractual agreements entered into by free and open competitive bidding on sealed bids to the lowest responsible bidder. Sections 41-16-50 through 41-16-63, Code of Alabama 1975.

(d) Reverse Auctions. Municipalities may make purchases or contracts involving an amount of fifteen thousand dollars (\$15,000) or more through a reverse auction procedure; provided, however, that a reverse auction shall only be allowed where the item to be purchased at a reverse auction is either not at the time available on the state purchasing program under the same terms and conditions or, if available, the lowest price offered in the reverse auction is equal to or less than the price for which the item is available on the state purchasing program under the same terms and conditions. All of the purchases shall be subject to audit by the Examiners of Public Accounts. For purposes of this article, a reverse auction procedure includes either of the following:

(1) A real-time bidding process usually lasting less than one hour and taking place at a previously scheduled time and Internet location, in which multiple anonymous suppliers submit bids to provide the designated goods or services.

(2) a. A bidding process usually lasting less than two weeks and taking place during a previously scheduled period and at a previously scheduled Internet location, in which multiple anonymous suppliers submit bids to provide the designated goods or services.

The Department of Examiners of Public Accounts is required to establish procedures for the use of reverse auction, which shall be distributed to all contracting agencies and shall be used in conducting any audits of the purchasing agency. Section 41-16-54(d), Code of Alabama 1975.

Contracts for public works involving an amount in excess of \$50,000 are subject to the competitive bid requirements found in Title 39, Code of Alabama 1975.

The bid law does not apply to contracts between governmental entities, including municipalities and counties. AGO 1996-271 and AGO 2008-093.

We should note that these laws have been the subject of much interpretation by the Attorney General and that there are a number of municipal agencies and types of municipal contracts which are exempt from the provisions of the bid laws. Detailed information on the bid laws may be found in the League publication entitled *Selected Readings for the Municipal Official* (2020 ed.).

Sec. 33. Execution of Deeds and Conveyances

The mayor is required to see that all contracts with the town or city are faithfully kept or performed. The mayor is required to execute all deeds and contracts, and bonds required in judicial proceedings for and on behalf of the city or town, and no sureties shall be required on such bond. Section 11-43-83, Code of Alabama 1975.

(a) Sale of Municipal Property. The governing body of any city or town in this state may, by ordinance to be entered on its minutes, direct the disposal of any real property not needed for public or municipal purposes and direct the mayor to make title thereto. A conveyance made by the mayor in accordance with such ordinance invests the grantee with the title of the municipality. Section 11-47-20, Code of Alabama 1975. There is no requirement that such an ordinance be adopted to authorize the sale of a municipality's personal property. Section 11-43-56, Code of Alabama 1975, authorizes a municipality to sell its personal property. It is suggested that the municipality set up procedures to ensure the city gets a fair price when it sells its personal property. A municipal governing body may file a writ of mandamus against the mayor if the mayor refuses to execute a deed as required. AGO 1995-113.

(b) Lease of Municipal Property. The governing body of any city or town in this state may, by ordinance to be entered on its minutes, lease any of its real property not needed for public or municipal purposes. A lease made by the mayor in accordance with such an ordinance shall be binding for the term specified in the lease, not to exceed a period of 99 years. Section 11-47-21, Code of Alabama 1975.

For more detailed information on the sale or lease of municipal property, including sample resolutions and ordinances, please see *The Selected Readings for the Municipal Official* (2020 ed.).

(c) Public Parks, Playgrounds, Recreational Facilities, and Housing Projects. On September 7, 1956, the Alabama Constitution of 1901 was amended as follows:

“... that the Legislature may enact general, special, or local laws authorizing political subdivisions and public bodies to alienate, with or without a valuable consideration, public parks and playgrounds, or other public recreational facilities and public housing projects, conditional upon the approval of a majority of the duly qualified electors of the county, city, town, or other subdivision affected thereby, voting at an election held for such purpose.” Amendment 112 (amendment to Section 94), Alabama Constitution 1901. The legislature has adopted the necessary enabling statute to implement the provisions of this amendment. That legislation is found in Section 35-4-410 through 35-4-412, Code of Alabama 1975.

(d) Mortgages of Public Property for Debt Payment. Any county or municipality of this state may mortgage any public property for the payment of any debt contracted in connection with such mortgaged property either originally or as a renewal, and such mortgage shall be admitted to record in the office of the probate judge of any county of this state without the payment of any tax upon the debt secured thereby or any other fee or charge except the costs of

recording the instrument at the rate fixed by law. Section 11-81-27, Code of Alabama 1975.

Sec. 34. Election Duties of Mayor

- In connection with the holding of general municipal elections, the following duties rest with the mayor:
- To publish notice of the election. Section 11-46-22.
- To prepare lists of qualified voters (unless the mayor is a candidate). Sections 11-46-36; 11-46-37.
- To provide election supplies. Section 11-46-32.
- To prepare and provide ballots. Section 11-46-25.
- To provide absentee voting materials and ballots. Sections 11-46-25, and 11-46-31.
- To notify election officials. Section 11-46-27.

The Alabama League of Municipalities publishes a municipal election guide entitled *Procedures for Holding Elections in Mayor-Council Municipalities* for mayor-council cities and towns to use in general municipal election years. Mayoral municipal election duties are mentioned in this handbook to acquaint the mayor with these duties generally. If a mayor is a candidate for re-election, the council must appoint a disinterested person to act in the mayor's stead to prepare the lists of registered voters to be used at the election. Section 11-46-37, Code of Alabama 1975. Often the clerk is appointed, and the Attorney General has ruled that a clerk is not disqualified simply because of his or her office. AGO to Hon. J. Leon Tucker, February 23, 1968.

Sec. 35. Emergency Powers of the Mayor

In the event of a mob, riot or tumult threatening the peace and safety of a municipality, the mayor is authorized to issue a proclamation closing all stores and establishments where arms, ammunition, dynamite or other explosives are sold, forbidding the sale, lending, bartering or giving of any such articles until such times as the mayor deems these activities may be renewed without endangering the public safety. Section 11-43-82, Code of Alabama 1975.

Sec. 36. Conflicts of Interest

Among the statutes relating to the organization and administration of cities and towns in Alabama, the Legislature has included several express prohibitions against the mayor and other officers and employees of a municipality. It is very important the mayor be as familiar with those provisions as with those granting express powers.

(a) Employment with Public Service Corporation. No officer (mayor included) of a municipality may be an officer or an employee employed in a managerial capacity, either professionally or otherwise, of any corporation **holding or operating a franchise granted by the city or state involving the use of the streets of the municipality.** This does not apply to municipal attorneys or municipal physicians. Section 11-43-11, Code of Alabama 1975. This section would not prevent a person covered by this provision from being a candidate for municipal office. However, if such a person won the election, he or she would be required to resign that employment upon entering municipal office. Violation of this section constitutes grounds for impeachment. Section 11-43-161, Code of Alabama 1975.

Section 11-43-11 of the Code of Alabama 1975, does not prohibit an "outside director," who does not otherwise serve as a corporate officer or in a managerial capacity with a company that holds a franchise for the use of the city streets, from serving on the city council of that city. AGO 2001-144.

Officers of municipal utility boards come within the scope of this prohibition. *State ex rel Richardson v. Morrow*, 162 So.2d 480 (Ala. 1964).

(b) No Business, Work or Contract with Municipality. No councilmember, officer (mayor included) or employee of a municipality may be **directly or indirectly** interested in any work, business or contract, the expense, price or consideration of which is paid from the municipal treasury. Section 11-43-12, Code of Alabama 1975. Any mayor or councilmember who shall have any private or personal financial dealings with or for or on account of the municipality, except as imposed by this official position or who shall render a service to do any work or supply any commodity, for financial compensation payable from municipal funds, shall be guilty of a misdemeanor and shall constitute grounds for impeachment. Section 11-43-161, Code of Alabama 1975.

(1) Elected Officials and Employees Can't Have Any Other Salaried Job With Municipality. These provisions positively prevent an **officer** from holding any other salaried position in the municipality (53 Q. Rep. Att. Gen. 67) even though he or she receives no pay for such office. AGO to Hon. Cecil White, February 7, 1966. A councilmember may not serve as a police officer for the municipality even if there is no compensation for acting as a police officer. AGO 1997-115. A municipal employee may not hold two separate municipal jobs, but he or she may serve in a position that requires the performance of more than one job or function. AGO 1998-029.

(2) Elected Officials as Volunteers. A councilmember may serve as a volunteer firefighter and receive an expense allowance for that service. AGO 1985-236 (to Hon. Emmett O'Neal Griswold, Jr., March 1, 1985). This opinion would probably permit a councilmember to serve as a reserve police officer and receive an expense allowance as well. However, an officer of a municipality may not serve in the capacity of a paid police officer even when he or she takes no pay except reimbursement of expenses. AGO to Hon. H. B. Wilson, December 14, 1964.

(3) Doing Business with the Municipality or Municipal Board. The mayor has an indirect interest in the contracts of his or her spouse who does business in his or her individual capacity and the municipality is therefore prohibited from contracting with him or her by Section 11-43-12. AGO to Hon. Josh Mullins, May 4, 1965.

These sections also prohibit a mayor from selling insurance to the municipality, if he is an agent for the insurance company. AGO to mayor of Florence, March 14, 1952.

A municipal officer may not subcontract to perform part of a contract between a municipality and its prime contractor without violating Section 11-43-12. AGO to Hon. Carlton Mayhall, October 6, 1964.

A municipality may not purchase land from a councilmember. The councilmember may, however, donate the land to the city or town, the municipality may condemn the land or the land may be purchased by a separately incorporated board if the purchase furthers the purposes of the board. AGO 1996-231, AGO 1998-133 and AGO 1999-215.

A councilmember may be employed by a separately incorporated utility board if he or she does not hold a managerial position with the board. AGO 2004-213.

A municipality may purchase property owned by the mayor's mother when the mother is not a member of the mayor's household, not financially dependent on the mayor and the mayor does not participate in either the discussion or the vote. AGO 1997-140.

A city may make deposits in, and use the services of, a local bank when said bank also employs the spouse of the Mayor as a teller if a factual determination is made by the council that there is no conflict of interest. AGO 2007-071.

A city may enter into an agreement, which involves the mayor's son as a real estate broker, provided the mayor does not reside in the same household as his son, is not financially dependent on his son, and does not participate in the discussion or vote on whether or not to enter into the agreement. AGO 2005-181.

Neither may an officer lease a water supply to the waterworks system, since he or she would be directly interested in a contract, the consideration for which would be paid from the municipal treasury. AGO to Hon. E. C. Morrison, September 2, 1964.

Section 11-43-12 does not prevent a corporation, of which an elected municipal official is a stockholder, from doing business within the municipality. 128 Q. Rep. Att. Gen. 30; AGO to Hon. George Morris, September 22, 1958 and to Mrs. Kenneth Roy, June 21, 1965. However, a municipality may not deal with an incorporated firm in which a member of the governing body owns a controlling interest. AGO to Hon. Wayne Harrison, December 6, 1973 and to Hon. Frankie J. Kucera, April 6, 1976. A municipality may not do business with a corporation which is owned by the family of a member of the governing body. AGO to Hon. Andrew J. Gentry, Jr., March 8, 1974.

A councilmember may conduct business, either by bid or otherwise, with a separately incorporated municipal board. However, he or she may not vote as a councilmember on any matters affecting his or her relationship with the board. AGO 1997-213.

Absent local civil service prohibitions, a council member's spouse may be employed by the city as long as the council member does not participate in the employment decision or any other issue specifically concerning the

spouse's employment. AGO 2000-181.

The Attorney General has ruled that a mayor may also serve as superintendent of municipal utilities systems when he or she is appointed pursuant to Section 11-43-80, Code of Alabama 1975. Note also that the Supreme Court of Alabama has held that Section 11-43-12 does not prevent a member of a waterworks board, who is also an agent of an insurance company, from selling insurance to the municipality. *Mobile v. Cochran*, 165 So.2d 81 (Ala. 1964). The court held that members of separately incorporated boards are not municipal officers and, therefore, are not governed by Section 11-43-12.

In several instances, a councilmember or the mayor is, by statute, expressly made eligible to serve on incorporated municipal boards. This service is entirely dependent upon the statute allowing the incorporation.

(4) Special Rules – Class 7 or 8 Municipalities. Class 7 and Class 8 municipalities should pay particular attention to Section 11-43-12.1, Code of Alabama 1975. This section allows any such municipality (under 12,000 in population according to the 1970 federal decennial census) to legally purchase from any of its elected officials, employees or board members any personal service or personal property, provided the elected official, employee or board member is the only domiciled vendor of the personal service or personal property within the municipality. The cost of the property or service shall not exceed \$3,000. The elected official, employee or board member, if he or she proposes to sell to the municipality, shall not participate in the decision-making process determining the purchase but shall make any disclosure required by the State Ethics Commission. The governing body shall make a finding that the elected official, employee or board member is the sole vendor domiciled in the municipality and that the selling price is lower than that which could be obtained from a vendor domiciled outside the municipality. *See*, AGO 2003-014. The law also allows Class 7 or 8 municipalities to accept bids from its elected officials, employees or board members for personal services or personal property provided he or she takes no part in the decision to ask for or accept bids. No negotiation of the price is allowed. For more information on this subject, *see* AGO 2003-014 and 2003-216.

(5) Special Benefits as Officials or Employees of the Municipality. A municipality may allow employees, as part of their compensation package, to use the municipal golf course. Municipal elected officials may use the course without paying only if this was adopted as part of their compensation six months prior to the election. The municipality may allow public schools to use the course without paying if residents of the municipality attend the school. Private schools and other private groups may only use the course without paying only pursuant to a valid contract for services. AGO 1997-283. A similar ruling has been given relating to use of a city civic center at a discounted rate. AGO 2004-188.

(c) Cannot Be Surety. No officer (mayor included) of the municipality may be surety for any person having a contract, work or business with the municipality, for the performance of which a surety may be required. Section 11-43-12, Code of Alabama 1975.

(d) Cannot Traffic in Warrants, Claims or Liabilities. No officer (mayor included) or employee of the municipality, personally or through any person, shall deal or traffic in any manner whatsoever in any warrant, claim or liability against the municipality. Violation constitutes a misdemeanor and grounds for impeaching the officer of the municipality. Section 11-43-14, Code of Alabama 1975. This does not prevent an officer or employee from selling a claim acquired directly from the municipality in payment of a debt due him or her or from purchasing in good faith so much of claims as may be needed to pay his or her taxes and licenses for the current year.

(e) May Not Approve Diversion of Pledged Funds. The mayor, as a member of the council of a municipality of less than 12,000, may not vote in favor of or approve any resolution or ordinance to apply municipal revenues or funds which have been pledged to the payment of a particular debt under the provisions of Section 11-81-15 for any purpose other than that to which they have been pledged. Such action would constitute a misdemeanor and would be grounds for impeachment. Section 11-43-162, Code of Alabama 1975.

(f) Restriction of Mayor's Voting Power. In cities and towns of less than 12,000 in population, the mayor and all other councilmembers are prohibited from voting on questions which come before the council in which the municipal official or his or her employer or employee has a special financial interest, either at the time of voting or at the time of his election. Section 11-43-54, Code of Alabama 1975. A mayor may vote on a motion that would have a positive effect on property owned by his or her daughter and son-in-law; provided the daughter and son-in-law do not receive

a benefit different than that received by other property owners in the affected area. AO 2001-13.

(g) Restriction of Interest in Contracts. In cities and towns of less than 12,000 in population, as a member of the council the mayor may not be appointed to any municipal office which has been created or the emoluments of which have been increased during the term for which the mayor shall have been elected. He or she may not be interested directly or indirectly in any contract or job or work or material or the proceeds thereof or services to be performed for the municipality, except as provided in the Code of Alabama. Section 11-43-54, Code of Alabama 1975. This provision would not prohibit the extension of water mains into a subdivision owned by an officer of the municipality. AGO to Hon. A. J. Honeycutt, September 28, 1964 and AGO 2002-201.

(h) Honorariums. Neither a mayor nor his wife's business may be compensated for his participating as guest speaker or special guest at various events, as his attendance is directly related to his service as mayor. AO 2001-09.

(i) General Restrictions. Chapter 10 of Title 13A, Code of Alabama 1975, sets out a number of offenses against public administration such as obstruction of governmental operations, refusal to permit inspection, failure to file a required report, tampering with governmental records, bribery of public officials, failure to disclose conflict of interest, trading in public office, misuse of confidential information and perjury. Municipal officials should become acquainted with these statutes.

(j) May Not Hold Two Offices of Profit. As was pointed out under the section discussing the qualifications for the office of mayor, Section 280 of the Alabama Constitution of 1901 and Section 36-2-1, Code of Alabama 1975, prohibit any person from holding two offices of profit at one and the same time. The office of mayor is an office of profit. In determining if an office is one of profit, the Attorney General has ruled as follows:

“In order for one to hold ‘an office of profit under this State’ within the meaning of the above quoted constitutional provision, the following three elements must co-exist: (1) He or she must exercise some part of the sovereign power of the state; (2) He or she must have a fixed tenure of office; (3) He or she must receive compensation for the performance of his duties.” 46 Q. Rep. Att. Gen. 82 and 18 Q. Rep. Att. Gen. 316.

Examples of Offices of Profit. The following have been held to be offices of profit either by the courts or by the Attorney General: **Mayor**, 1 Q. Rep. Att. Gen. 85, 88 Q. Rep. Att. Gen. 8, and AGO to Hon. Bentley Hill, July 21, 1972; **members of county board of registrars**, AGO to Hon. W. H. Olvey, July 23, 1959; **municipal judge** (see exception below), AGO to Hon. Arnold Teks, July 13, 1960, and Hon. P. M. Johnston, September 11, 1964; **county solicitor**, 64 Q. Rep. Att. Gen. 108, and AGO to Hon. P. M. Johnston, September 11, 1964; **member of county board of education**, 77 Q. Rep. Att. Gen. 77 and AGO 1988-114; **chief deputy sheriff**, 64 Q. Rep. Att. Gen. 58; **supernumerary probate judge** (AGO 1980-518 to Hon. Don Siegelman, August 19, 1980); **register of circuit court**, 52 Q. Rep. Att. Gen. 238 and 103 Q. Rep. Att. Gen. 8; **circuit solicitor**, AGO to Hon. Glenn Manning, August 23, 1956; **state docks director**, 88 Q. Rep. Att. Gen. 8, and AGO to Hon. K. L. McRae, July 8, 1957; **member of board of equalization**, 82 Q. Rep. Att. Gen. 20; **member of state legislature**, *Smith v. State*, 162 So.2d 473 (Ala. 1964), and Biennial Reports of the Attorney General, 1928-30, page 636; **councilmembers where their salary has been established by ordinance or resolution**, 103 Q. Rep. Att. Gen. 8 and AGO 1988-114; **holder of any elective office of the county**, 77 Q. Rep. Att. Gen. 47 and AGO to Mayor of Cherokee, August 2, 1956; **police chief**, *Alexander v. State*, 150 So. 2d 204 (1963) and AGO to Hon. Larry Moody, November 18, 1975; **county license inspector**, Opinion to Mr. T. C. Almon, April 17, 1964; **coroner**, AGO to Hon. Moran Baxter, February 21, 1975; **county commissioner**, AGO to Hon. Charles R. Adair, Jr., January 27, 1975; **district attorney**, AGO to Hon. John Starnes, September 26, 1973; **deputy district attorney**, AGO to Hon. John T. Reid, April 9, 1974; **deputy coroner**, AGO to Hon. William J. Murray, June 11, 1979; **member of water improvement commission**, AGO to Hon. Robert Gullledge, April 26, 1979; **supernumerary probate judge**, AGO to Hon. Don Siegelman, August 19, 1980; **fire chief**, AGO to Hon. Charles A. Nix, February 10, 1981; **postmaster** (AGO to Hon. Berniece T. Clark, July 14, 1972); **city school superintendent**, AGO 1981-235 to Hon. Bob M. English, November 6, 1981; **supernumerary district attorney**, AGO to Hon. Joseph M. Carlton, April 29, 1982; **clerk of the State Supreme Court**, AGO to Hon. John F. Tanner, January 27, 1984; **member of the board of Alabama Board of Funeral Services**, AGO 1993-212; **member of State Board of Education**, AGO 2003-065; **member of Macon County Racing Commission**, AGO 2004-199; **member of the State Oil and Gas Board**, AGO 1994-132.

Although a **municipal judge** holds an office of profit, the Attorney General has ruled that neither Section 145, 147

or 280, Alabama Constitution 1901, prohibit a municipal judge from also serving as a city council member in another city. AGO 2006-060.

Section 280 of the Alabama Constitution of 1901 does cover a municipal councilmember who is entitled to receive a salary. If the councilmember is not entitled to receive a salary, then he or she does not hold an office of profit. The Attorney General has ruled that a councilmember entitled to receive compensation cannot waive that compensation in order to make the position one that is not an office of profit. AGO to Hon. John A. Denton, March 8, 1974; AGO 2000-064.

Examples of Public Offices Which Are NOT Offices of Profit. On numerous occasions the courts or the Attorney General have ruled that certain public positions are not offices of profit. Caution must be used in this aspect of the discussion of offices of profit. Simply because a position is not an office of profit does not necessarily mean it may be held simultaneously with an office of profit. Conflict of interest statutes might prevent an officer of a municipality from being employed in a position not deemed an office of profit. Any position with a governmental unit which is a matter of contract is not deemed an office of profit.

The following is a list of positions held **not** to be offices of profit: **councilmembers whose salary or compensation has not been set by ordinance or resolution**, 103 Q. Rep. Att. Gen. 8 and AGO 1992-400; **school principal**, AGO to Hon. William Olvey, August 31, 1956; **delegate to political party convention**, 83 Q. Rep. Att. Gen. 32; **city attorney**, AGO to Hon. Donald Burtkiewicz, September 28, 1964; **vocational teacher**, AGO to Hon. W. W. Weatherford, August 16, 1960; **jury commission clerk**, AGO to Hon. H. F. Koonce, February 9, 1961; **Civil Defense director**, AGO to Hon. W. M. Griffin, October 7, 1964; **assistant city attorney**, *State v. Wilkinson*, 124 So. 211 (Ala. 1929); **assistant director of vocational trade and technical school**, AGO to Hon. Herman Thompson, June 25, 1966; **city clerk**, 15 Q. Rep. Att. Gen. 350; **city treasurer**, 15 Q. Rep. Att. Gen. 350; **member of State Planning Board**, 46 Q. Rep. Att. Gen. 82; **superintendent of school bus transportation**, 52 Q. Rep. Att. Gen. 268; **member of municipal water board**, 81 Q. Rep. Att. Gen. 32; **school teacher**, AGO to W. H. Olvey, August 31, 1956 and to Hon. Fred M. Scoggins, January 4, 1984; **director of municipal utility board**, AGO to Hon. Robert S. Milner, June 5, 1967; **county attorney**, AGO to Hon. L. H. Boden, November 5, 1970; **president of a state university**, AGO to Hon. Robert Guillot, March 13, 1972; **rural mail carrier**, AGO to Ms. Martha Lawrence, June 29, 1972; **deputy sheriff**, AGO 1984-00468 to Frank “Butch” Ellis, Jr. and AGO 2009-48; **bailiff**, AGO to Hon. Curtis Wright, February 6, 1976; **unpaid member of city board of education**, AGO to Mr. Clifford S. Smith, August 1, 1977; **special assistant attorney general**, AGO to Hon. James D. Evans, December 20, 1977, and February 2, 1978; **county RSVP director**, AGO 1982-166 to Hon. William B. Duncan, February 5, 1982; **assistant district attorney**, AGO 1985-084 to Hon. John C. Jay, Jr., November 20, 1984; **members of utility board, housing authority and industrial development board**, AGO 1985-137 to Hon. R. C. Hagood, December 27, 1984; **classified employees elected to county office**, AGO 1986-010 to William G. Hause, October 8, 1985; **County Clerk**, AGO 1986-384; **employees of separately incorporated electric corporations**, AGO 1992-309; **members of the board of commissioners of an emergency management communications district**, AGO 1992-375; **retired probate judge receiving retirement pay**, AGO 1992-497; **distribution clerk with U. S. Postal Service** (AGO 1980-586 to Hon. Thomas E. Manning, September 15, 1980); **Water Authority board member**, AGO 2004-193; **county legislative coordinator**, AGO 2004-224; **uncompensated member of local volunteer fire department**, AGO 2006-138; and an **uncompensated volunteer fire chief**, AGO 1993-012.

(k) Ethics Law. Sections 36-25-1 through 36-25-30, Code of Alabama 1975, provide for a state Ethics Commission to govern the ethical conduct of state, county and municipal officials and certain employees.

The ethics law affects municipal officials and employees in two ways. **First**, certain employees and officials are required to file annually a statement of economic interests with the Ethics Commission. **Second**, the ethics law contains numerous conflict of interest provisions by which all persons covered under the law must abide. The law covers all elected officials of municipalities or their instrumentalities and all appointed officials and employees of municipalities or their instrumentalities that are paid in whole or in part from state, county or municipal funds. Municipal officials and employees should become familiar with the provisions of the ethics law governing their behavior.

All mayors, councilmembers, and commissioners shall receive training within 120 days of being sworn into office. Training shall be available online and may be conducted either online or in person. Public employees required to file a statement of economic interests must also obtain the ethics training. Section 36-25-4.2 (4).

For more information, see the article titled “Alabama Ethics Law” in the *Selected Readings for the Municipal Official* (2020 ed.). The Ethics Commission has the authority to issue advisory opinions based upon either real or hypothetical questions. Such an opinion will protect the person to whom it is directed from liability.

(l) Nepotism. The question often arises as to whether employees of cities and towns may be related to officers of the municipality by blood or marriage. In an opinion to Hon. L. C. Grigsby, dated December 21, 1959, the Attorney General ruled that his office could find no general laws which prohibit a relative of a member of the municipal governing body from holding a position with the municipality. It should be pointed out, however, that several municipalities have local civil service statutes which prescribe conditions under which relatives may not be employed. The state nepotism statute applies **only** to state officials and employees. AGO to Hon. Elizabeth O. Thomas, January 12, 1976; AGO 2002-168 and AGO 2004-149.

Each public official and the spouse of each public official, as well as each candidate and the spouse of each candidate, who is employed by the state or the federal government or who has a contract with the state or the federal government, or who works for a company that receives 50% or more of its revenue from the state, shall notify the Alabama Ethics Commission of such employment or contract within 30 days of beginning employment or within 30 days of the beginning of the contract. Section 36-25-5.2 (b), Code of Alabama 1975.

Sec. 37. Mayor’s Approval or Disapproval of Ordinances

(a) Generally. As previously noted, the mayor of a municipality of less than 12,000 in population sits with, presides over, is considered a member of the municipal council and may vote on questions before the council. As a member of the council, the mayor is entitled to cast a vote for or against the adoption of ordinances which are presented for consideration. Where the statutory requirements are fully observed in adopting an ordinance, it is unnecessary for an ordinance to be approved by the mayor or authenticated by his or her signature. In municipalities of less than 12,000, the approval of the mayor is not required. *Beasley v. McCorkle*, 184 So. 904 (Ala. 1938).

(b) Cities of 12,000 or More Inhabitants – Approval Required. In cities having a population of 12,000 or more inhabitants, all ordinances and resolutions intended to be of a permanent nature must be transmitted to the mayor by the clerk within 48 hours after passage by the council. If the mayor approves, signs and returns the measure to the clerk, the latter will then publish it as required by law. Section 11-45-3, Code of Alabama 1975.

Recall of Ordinance or Resolution. Before the mayor has acted upon an ordinance or resolution transmitted to him or her, the council may recall it from the mayor by resolution adopted by a majority of its members. Section 11-45-3, Code of Alabama 1975.

Veto and Disapproval by Mayor. If the mayor disapproves of an ordinance or resolution transmitted by the clerk, he or she must, within 10 days of the time of its passage by the council, return it to the clerk with his or her written objections. The clerk shall report the objections to the council at its next regular meeting. Should the mayor fail to return the ordinance to the clerk with his or her veto **within 10 days after its passage by the council**, the ordinance shall become effective without the mayor’s approval, and the clerk shall publish it as if the mayor had signed his or her approval. Section 11-45-4, Code of Alabama 1975.

Passage over Veto. Ordinances or resolutions vetoed by the mayor and returned to the council may be passed over the veto by the council, notwithstanding the mayor’s objections, by a two-thirds vote of the members elected to the council, by yea and nay vote which must be spread upon the minutes. Section 11-45-5, Code of Alabama 1975.

Veto or Approval in Part – Salary Ordinances and Resolutions. Ordinances and resolutions fixing the salaries of officers and employees must be submitted to the mayor as ordinances and resolutions of a permanent nature. The mayor may approve such ordinances and resolutions as submitted, may veto them in the whole or may approve in part and veto as to specific terms, which shall be mentioned in the veto message. At its next regular meeting, the council first votes upon whether it shall override the mayor’s veto, in whole or in part, which takes a two-thirds vote of the members elected to the council. If the council fails to override the veto in part, it then votes upon the approval of the ordinance as approved by the mayor. Section 11-45-5, Code of Alabama 1975.

(c) Ordinances and Resolutions of a Permanent Nature. In construing the veto power of the mayor of a city of 12,000 or more inhabitants, we note that the mayor definitely has veto power over ordinances and resolutions fixing

the salaries of officers and employees. A question arises regarding other ordinances and resolutions – what is an ordinance or resolution of permanent nature?

Ordinances constituting municipal legislative acts are considered to be ordinances of a general and permanent nature and of permanent operation. The term “permanent operation,” as used in Section 11-45-3, Code of Alabama 1975, is synonymous with the term “general and permanent nature,” and applies to ordinances constituting legislative acts as distinguished from an act of a temporary nature for the disposition of the administrative business of a municipality.

If an ordinance constitutes a municipal legislative act which is continuing in nature and general in its application, such an ordinance is of “permanent operation” even though an expiration date has been inserted in said ordinance by the municipal council. AGO to Hon. Charles E. McConnell, February 6, 1957; to Hon. Carl H. Kilgore, July 8, 1975; to Hon. Frank B. Parsons, March 25, 1974; to Mr. J. W. Smith, October 11, 1977. In so ruling, the Attorney General held that the council could not defeat the veto power of the mayor by providing a relatively short period of operation for its legislative action.

Generally, **ordinances** are used for the adoption of legislative measures of general and permanent effect and **resolutions** are used to exercise the ministerial functions of the council. Nevertheless, the name of the enactment does not determine the formality with which it must be adopted. Whether the action of the council is executed in the form of an ordinance or a resolution, if it involves the exercise of legislative power as distinguished from ministerial function, the mayor’s veto power must be observed.

The appointment of a police chief in a city of 12,000 or more inhabitants is not of permanent operation and is not subject to the veto power of the mayor. AGO 1982-059 (to Hon. Theron O. McDowell, Jr., October 30, 1981).

A municipal budget is not an ordinance of general and permanent operation and is not subject to the mayor’s veto power. AGO 1991-180.

Sec. 38. Mayor’s Judicial Functions

(a) Mayor’s Power to Remit Fines and Costs. As chief executive, the mayor has the power to remit fines and costs imposed by the municipal judge or the court to which an appeal was taken for violation of a municipal ordinance. Section 12-14-15, Code of Alabama 1975. However, a mayor has no authority to dismiss municipal cases pending in municipal court. AGO to the City Council of East Brewton, August 8, 1974. Section 12-14-15 does not give a mayor authority to remit state court costs.

(b) Power to Pardon. As chief executive, a mayor has the power to pardon those convicted and sentenced by the municipal judge for violations of municipal ordinances. Section 12-14-15, Code of Alabama 1975.

(c) Power to Parole. The mayor may appoint a parole board and describe the duties thereof. *See*, Sections 15-22-70 through 15-22-77, Code of Alabama 1975.

(d) May Not Remit Forfeitures Against Sureties. The mayor’s power to grant pardons and paroles and to remit fines and costs does not authorize him or her to remit forfeitures levied against sureties on appearance bonds by the municipal judge. AGO to Hon. Richmond McClintock, July 17, 1957.

(e) Mayor Required to Report to Council. At the first regular meeting of the council each month, the mayor is required to make a written report to the council listing the fines and costs remitted, sentences commuted, and pardons and paroles granted by him or her during the preceding month and stating the reasons therefor. Section 12-14-15, Code of Alabama 1975.

Sec. 39. Mayor’s Relation with Municipal Boards

(a) Generally. The state legislature has authorized Alabama cities and towns to place the administration of certain detailed municipal activities under the supervision and control of appointed boards. Some of these boards are incorporated while others are not. Incorporated boards are entities separate and independent from the municipalities they serve. An incorporated board can exercise only the power conferred upon it by the charter of the corporation and by the statutes under which it is organized. Unincorporated boards are agencies of the municipality and are subject to

the legislative power of the municipality.

Mayors should know the types of boards their municipality has created or has the authority to create. This knowledge will assist in coordinating activities of the boards with those of the municipal departments under their direct control and supervision. However, generally speaking, other than the appointment of board members, a municipality has no control over the activities of a separately incorporated board unless otherwise provided by law. The mayor has varying degrees of control over such boards. He or she may be a member of the board of directors, ex officio chairman or the appointing authority for some or all members of the board. An ex officio officer is a person who has power by virtue of the authority implied by an office. An ex officio officer has the same rights and privileges as other members, including the right to vote, unless otherwise provided by law. AGO 2009-080. For detailed information on municipal boards, please see the articles titled “Working with Municipal Boards” and “Municipal Boards in Alabama” (outlining the various boards provided for by law) in *The Selected Readings for the Municipal Official* (2020 ed.).

(b) Appointment of Board Members. The enabling statute for each board specifies the appointing authority, number of board members and length of terms. While the vast majority of board members are appointed by majority vote of the council, some, such as the planning commission and the housing authority, specifically provide for the appointment of board members by the mayor.

With regard to terms of board members, if an appointment is not made when a term expires, the person holding the position will hold over until such time as he or she is reappointed or their successor is elected and qualified, unless the state enabling statute for the particular board he or she serves on provides otherwise. AGO 2005-070. A successor member of a board or commission who follows a holdover is not allowed to serve a full term of office following his or her appointment but, rather, serves the remainder of the succeeding unexpired term of office. AGO 2008-064.

Keep in mind that some boards specifically allow for municipal officials to serve on the board. It is important to familiarize oneself with the requirements for board appointments, including who is eligible to serve, how long the terms are, whether or not board members may be compensated, and if, and under what circumstances, a board member may be removed. Most of this information can be found in the particular board’s enabling statute.

(c) Status of Board Employees. Notwithstanding any other provision of law, employees of any separately incorporated public corporation authorized to be created by a municipality pursuant to state law are employees of that separately incorporated entity and are not employees of the municipality authorizing the creation of the entity. Section 11-40-24, Code of Alabama 1975.

(d) Compensation for Board Membership. As stated earlier, it is important to be familiar with the enabling statutes for the various boards in your municipality. If compensation is provided for it will be found in the enabling statute, including whether or not elected officials can be compensated for serving on the board.

A board member entitled to a fee for service on a board may waive such fees. See Section 36-6-10, Code of Alabama 1975; AGO 2007-110.

Sec. 40. Suggestions and Observations Relating to Mayor’s Office

(a) Developing Public Support. Many opportunities exist for a mayor to improve public relations and develop support for the administration. A mayor can appear before civic groups, veteran’s organizations, school organizations and church memberships to outline and discuss municipal affairs. On such occasions, public sentiment can be sampled by receiving questions from the floor.

A mayor should develop a good working relationship with local newspapers for proper coverage of municipal news. News releases, advertisements for municipal programs, letters to the editor, guest editorials or a weekly newspaper column can be effective.

Where available, a mayor could use radio and television appearances, as well as social media to discuss municipal programs for the enlightenment of residents.

A municipal website can be established to connect municipal citizens with their city or town hall. Such websites, along with social media websites, can effectively keep citizens up-to-date on the latest municipal events, municipal

government actions, and allow for the payments of certain taxes or fees electronically.

In some instances, a mayor may find it necessary to send letters to all electors of the community explaining certain programs affecting the city or town. Letter writing is particularly effective for public safety programs (fire and traffic control) and for programs involving assessment projects in particular sections of the municipality.

Personal contacts by the mayor must not be overlooked. Mayors take pride in the fact that their doors are always open to all residents. Yet this is one of the most grueling tasks a mayor has in municipalities of appreciable size. The mayor's time, patience, sympathy and physical endurance are often tried to the limit. The office of the mayor is the symbol of municipal government to residents. The mayor must preserve this symbol and in so doing, the mayor can keep a finger on the pulse of public sentiment toward municipal programs.

Many mayors have installed "gripe" boxes at city hall to allow citizens to make written objections about municipal operations. These comments must be carefully considered, and citizens should be informed of actions taken to remedy problems.

Periodic reports are used to advantage by many mayors. These reports outline municipal progress as well as plans for future improvements. Citizens are vitally interested in the returns on each tax dollar.

(b) Mayor as Ceremonial Head. A mayor is regarded as the official representative of the city or town. He or she is called upon to head delegations to other cities on occasions of importance to the municipality. The mayor is called upon to welcome visiting dignitaries and to address conventions, rallies and civic gatherings. The task demands that the mayor put aside political differences and remember that his or her actions on such occasions are those of the mayor, not those of a private citizen.

(c) Contacts with Other Governmental Units. Public officials representing all other levels of government respect a mayor as the head of government in the community. A mayor's contacts with the governor, the state Department of Transportation, the state Health Department and other state agencies are vitally important to maintaining a working relationship between these other officials and the local government. The city or town will benefit substantially if the mayor sees to it that these contacts are kept alive and working.

A mayor must also maintain good communication with county officials. While counties and municipalities are independent units, both groups have local interests in common and there are times when it is desirable for counties and municipalities to enter into cooperative projects. A county governing body is authorized to expend its state-shared gasoline tax funds for the maintenance and construction of municipal streets. Both cities and counties are interested in attracting new industry to the community. Both are interested in providing airport service to the area; both are interested in proper sanitation and the drainage of surface waters; and, among many other things, both are interested in providing hospitals for local citizens. A mayor is generally in the best position to establish a working relationship with county officials by virtue of his or her close contact with the electors of the municipality.

In addition to contacts with state and county officials, a mayor will find that contacts between the municipality and the federal government are numerous. These contacts are mostly with agencies established by Congress to assist municipal governments. Friendly relations with these agencies should prove helpful to a municipality.

(d) Contacts with the Legislature. As previously noted, a municipality is dependent upon the Legislature for its existence. Members of the legislature are in a position to help or hinder municipal government by supporting or opposing legislation affecting cities and towns. A mayor, as spokesman for the municipality, must maintain close contact with the state legislative delegation. A mayor should inform legislators about the sentiments of residents on matters pending before the legislature. Legislators usually want to know the facts about municipal problems and mayors must be able to supply those facts.

A mayor may also be asked by the League of Municipalities to help present its legislative program to the Legislature. This assistance may involve appearing before legislative committees, sending letters or making telephone calls or making personal contacts. Legislators generally carefully consider the recommendations and comments of local officials. They know that municipal officials are in close contact with the citizens who are their own constituents.

In addition to purely legislative matters, legislators often assist municipal officials by joining the mayor in seeking

help for local projects from state agencies and state officials.

(e) Working with the League of Municipalities. It is hoped that the mayor and the members of the municipal council will actively participate in the work and the programs of the Alabama League of Municipalities. The League is a service organization which conducts numerous activities designed to assist municipal officials administer local government. By working together through the League, municipalities formulate a coordinated legislative program to benefit all cities and towns of the state. The League aids municipalities in securing the assistance of federal and state agencies. Information from the League's active research program helps mayors and councils present the local government viewpoint to policymaking officials at the state level. The League maintains an extensive ordinance file to provide sample ordinances and detailed information on specific municipal problems. This information is available on request. The League publishes a quarterly magazine, the *Alabama Municipal Journal* as well as uses the internet and social media to deliver news to members who request to receive it. Among the electronic publications are the weekly ALM e-newsletter, *This Week from the League*, and the *Statehouse Advocate*, which is sent weekly during each legislative session. The League's website also serves as a tremendous resource for League members. It can be found at www.almonline.org.

All of these services can be helpful to a mayor. Mayors, along with councilmembers, can assist the League in performing its duties. The following list illustrates some of the ways a mayor can assist the League in its efforts:

- Attend all meetings – statewide and regional – held by the League to consider municipal issues and develop a coordinated effort to address them.
- Regularly check the ALM Website and read all bulletins, information reports, research studies, letters and other information sent out by the League, thereby keeping up-to-date on municipal problems and developments.
- Keep a file of all material sent by the League to the city or town so that the information is readily available, not only to the mayor but to other municipal officials as well.
- Make suggestions to the League regarding subjects on which information is needed, research projects which would be helpful, items to be discussed at meetings, policies that could be instituted by the League to benefit Alabama municipalities and other items which may be appropriate.
- Work with the League to present municipal problems to state government officials and legislators, urging them to adopt the policies and recommendations which are formulated through the League.

Chapter 3

The Municipal Council

Sec. 41. The Office of Councilmember Generally

(a) Legislative Body. Under the mayor-council form of government, the council is the local legislative body upon which rests the responsibility of determining the policies to be followed in the administration of the municipal government. In almost every instance where state law grants authority to cities and towns under the mayor-council form of government, such authority must be exercised through the council. The council is the ultimate source of power in the mayor-council city or town, and in its exercise of this power, the council determines the extent to which the governmental and corporate functions of the municipality are exercised.

From another viewpoint, the council is a body of local representatives brought together to pool their collective wisdom for the guidance of the city or town. Because the council is composed of men and women with a wide variety of knowledge and experience, and because councilmembers are representatives of the people, the mayor-council form of government has proven to be the most popular form of municipal government in Alabama. The success of the council depends, to a large extent, upon the willingness of each individual councilmember to give time, knowledge and experience for the performance of this very important responsibility.

(b) Cooperation with the Mayor. While the council is the ultimate source of authority in the government of the city or town, the success of its efforts also depends upon the officials and employees who will administer its policies and decisions. Foremost among these other officials is the mayor.

As chief executive officer of the municipality, the mayor is charged with the general supervision and control of municipal departments, programs and facilities. Often experienced in municipal government, the mayor is in a position to see the overall implications of a particular policy. Mayoral advice, recommendations and viewpoints are generally worthy of careful consideration by the council. Furthermore, the mayor is elected by the voters of the entire municipality to administer the affairs of the city or town. Quite often the mayor has advocated a particular program in the campaign and his or her election indicates that the voters desire that program to be carried out. To this end, communication between the mayor and the council are vitally important and must be actively maintained at all times. It is not suggested that the council give the mayor a free hand, nor would it be sound administration for the council to invade the executive powers of the mayor. If differences arise, solutions are usually found through conference and compromise.

(c) Suggestions and Observations Relating to the Council. Individually and collectively, councilmembers are in an excellent position to augment the work of the mayor in establishing good public relations for the municipality. Often individual councilmembers may be in a better position to make certain contacts than the mayor, an activity which they will very likely be called upon to perform. Collectively, the council should stand ready to back up the mayor, whenever the need arises, in making contacts with other governmental units. While activity of this nature rests more as a responsibility of the mayor, it is not restricted to that office alone. A mayor needs all of the help and assistance the council and councilmembers can give in these relationships.

Section 41(e) of this handbook, entitled “Working With the League of Municipalities,” is addressed to councilmembers as well as mayors. Councilmembers should feel free to call upon the League at any time and actively participate in League programs and activities.

Sec. 42. Size of Council

(a) Towns and Cities of Less than 12,000 in Population. In cities and towns of less than 12,000 inhabitants, the council is composed of five to seven councilmembers and the mayor. Councilmembers are elected from the municipality at large, unless the council has provided that they shall be elected from wards by action taken at least six months prior to the general election. If the council is elected from wards, the councilmember from each ward is voted

upon by the voters of that ward only. The council may not provide that they qualify from wards to be voted upon by the electors of the municipality at large. AGO to the League of Municipalities, March 2, 1960; Section 11-43-2, Code of Alabama 1975. In cities and towns of this population class, the municipality may not elect part of the council from wards and another part at large. 113 Q. Rep. Att. Gen. 117. **Note:** Some municipalities have different methods of electing councilmembers as established by court decision.

(b) Cities of 12,000 or More. There are several alternatives relating to the size and election of the council in cities of 12,000 or more in population:

In cities having a population of 12,000 or more, the following officers shall be elected at each general municipal election, who shall compose the city council for such cities and who shall hold office for four years and until their successors are elected and qualified and who shall exercise the legislative functions of city government and any other powers and duties which are or may be vested by law in the city council or its members:

(1) In cities having seven wards or less, a president of the city council and two aldermen from each ward, to be elected by the qualified voters of the several wards voting separately in every ward; except, that in such cities having a population of less than 20,000, the two aldermen from each ward shall be elected by the electors of the city at large.

(2) In cities having more than seven wards, one alderman from each ward and a sufficient number of aldermen from the city at large to make the total number of aldermen 14 exclusive of the president of the council; provided, that in cities having a population of 50,000 or more, the city council may create not more than 20 wards.

(3) In cities having a population of more than 30,000 according to the most recent federal decennial census or according to any census of such city made pursuant to Sections 11-47-90 through 11-47-95 of the Code of Alabama 1975, and having only five wards, a president of the council and five aldermen, if the governing body shall so provide by ordinance or resolution adopted by two-thirds vote of the governing body at least six months prior to a general municipal election. If such an ordinance or resolution is adopted, one alderman shall reside in each of the respective wards of the city, the president and all of the aldermen shall be elected by the voters of the city at large and the president shall vote only in case of a tie.

(4) Notwithstanding the provisions of subdivisions (1), (2) and (3) of this section, the governing body of any city having a population of 12,000 or more may by ordinance or resolution, if adopted by two-thirds vote of the governing body more than six months prior to any general municipal election, provide that the city council of said city shall consist of five aldermen to be elected from the city at large.

(5) Notwithstanding the provisions of subdivisions (1), (2), (3) and (4) of this section, the governing body of any city having a population of 12,000 or more which does now elect council members from single-member districts or cities presently operating with five single-member districts as established under a federal court order may, by ordinance or resolution, if adopted by two-thirds vote of the governing body more than six months prior to any general municipal election, provide that the city council of said city shall consist of eight aldermen to be elected from single-member districts (wards) with the president of the city council to be elected by the qualified voters of the several wards voting separately in every ward.

(6) Notwithstanding any conflicting provision of subdivisions (1), (2), (3), (4) and (5), the city council of any Class 6 municipality operating under a mayor-council form of government elected on a citywide basis, by ordinance adopted by a majority vote of the city council more than four months prior to the general municipal election for which the ordinance is to take effect, may provide for staggered terms of office for the city council as follows:

a. Each of the council seats established for the city shall be designated by separate number or place.

b. The initial term of office for persons holding the odd numbered council seats shall be established at two years and the initial terms of office for persons holding the even numbered council seats and that of the mayor of the city shall remain at four years.

c. Upon expiration of the initial two-year terms of office to be served by the council members holding odd numbered seats, each council member elected to the seats shall thereafter hold office for a term of four years so that the mayor and all council members are elected for four-year terms of office with the terms to be staggered as provided.

(7) Notwithstanding any conflicting provision of subdivisions (1), (2), (3), (4), and (5), the city council of any Class 8 municipality having a population of 60,000 or more inhabitants elected by the qualified voters operating under a mayor-council form of government on a citywide basis, by ordinance adopted by a two-thirds vote of the city council more than three months prior to the general municipal election for which the ordinance is to take effect, may provide for the city council to consist of either five or seven aldermen to be elected from the municipality at large.

Unless provided otherwise in this section, the president of the council shall have the right to vote on all questions the same as any other member of the council. Section 11-43-40, Code of Alabama 1975.

(c) Elections by Districts. Mayor-council cities and towns have the option of electing councilmembers at large or from single-member districts. Section 11-43-63, Code of Alabama 1975. Any change from at-large to ward elections must be implemented by an ordinance adopted at least six months prior to the general municipal election. The ordinance may be considered by the council only after giving two weeks public notice, outlining the districts under consideration. The council may divide the municipality into five to seven wards or districts, except in Class 1, 2 and 3 municipalities, where as many as nine wards or districts may be created.

The ordinance establishing the districts must describe the territory composing the district by metes and bounds or census tracts and provide that candidates for election to the council must reside within the boundaries of the district for which they seek election and that they will continue to reside within the district as long as they remain a member of the council.

In addition, the ordinance must state that candidates for office must have resided in the district for which they seek election for at least 90 days prior to the election. Only voters residing within a district are entitled to vote for candidates from that district.

Within five days after the adoption of the ordinance, the municipal clerk must file a certified copy of the ordinance, along with a map or plat showing the district boundaries, with the judge of probate of the county or counties within which the municipality is located.

For all municipalities which elect councilmembers from wards, regardless of the size of the municipality or the system chosen, each ward must be composed of substantially the same population. This is a requirement of the U.S. Constitution and is commonly known as the “one man, one vote rule.” Note that the rule does not require exact equality but substantial equality of population in each ward. *See, Avery v. Midland County, Texas*, 390 U.S. 474 (1968).

Sec. 43. Qualifications and Eligibility of Councilmembers

The same qualifications and eligibility requirements prescribed in Section 13 of this handbook for the mayor are applicable to councilmembers. Councilmembers must be qualified electors of the municipality at the time they file a statement of candidacy and remain qualified electors throughout their terms of office. **They must be residents of the municipality and of the ward from which they are elected, and they must remain residents of the municipality and of the ward from which they were elected throughout their terms of office.**

If the council has adopted an ordinance establishing a salary or remuneration for councilmembers then the councilmember holds an office of profit and is subject to the same prohibitions as the mayor with regard to holding two offices of profit at the same time. Section 11-43-1, Code of Alabama 1975. The council has the responsibility of judging the qualifications of its members. Section 11-43-58, Code of Alabama 1975.

Sec. 44. Candidacy and Election

Any person who is a qualified elector of the municipality on the date they file a statement of candidacy, and who will have on the day of the election resided within the municipality for at least 90 days prior to the general municipal election may become a candidate for the office of councilmember by filing a statement of candidacy in the office of the mayor pursuant to Section 11-46-25, Code of Alabama 1975. The general municipal election for most municipalities is held in each presidential election year. Unless otherwise provided by court order, councilmembers are elected by a majority vote and unless they are elected one from each of several wards they must run for **numbered places** on the council. The numbering of council places is for the purpose of election only and in no way affects the duties or responsibilities of the councilmembers.

Several questions concerning the term “residency” have been answered by the Attorney General. Whether a council member legally resides in the city is a question of fact that may be determined by the city council when considering the circumstances of each case. In determining place of residence, it may be helpful to consult Section 17-3-34, Code of Alabama 1975, which is the liner provision, and says the person may select the district, precinct or county if they are a liner. Also, the Alabama Supreme Court considered the question of residence in *Hobbie v. Vance*, 294 So.2d 747 (Ala. 1974). The court held that a person is a liner if the line in question runs through their dwelling place, and if the line does not run through the dwelling of the individual, then he or she is a resident of the county, precinct or district where the dwelling is located. Additionally, a quo warranto may be filed in with the circuit clerk in the county in which the public official is located. AGO 2001-052. A candidate does not establish a legal residence merely by stating an intention to reside in a particular district. A candidate must have a physical presence in the district, as well as the intention to reside in the district. AGO 2000-146.

Sec. 45. Term of Office

The term of office of councilmembers commences on the first Monday in November following the general municipal election and lasts until the first Monday in November four years later, unless otherwise provided by state law. Section 11-46-21, Code of Alabama 1975.

Sec. 46. Oath of Office

Before entering upon the duties of office, a councilmember is required to take the same oath required of the mayor which is set out in Section 16 of this handbook.

Sec. 47. Bond Not Required

Since a councilmember exercises no authority over property of the municipality, other than in the legislative capacity, a bond under the provisions of Section 11-43-13, Code of Alabama 1975, is not required.

Sec. 48. Vacancy in Office of Councilmember

Vacancies in the office of councilmember shall be filled by the council at the next regular meeting or any subsequent meeting of the council, the person so elected to hold office for the unexpired term. Section 11-43-41, Code of Alabama 1975. When a council vacancy occurs, the council must declare the council seat vacant. Keep in mind, however, that this “declaration” is nothing more than an acknowledgement that the seat is now vacant and there is no formal declaration required. Further, the failure of the council to declare the seat vacant does not toll time for determining when the seat is considered vacant pursuant to Section 11-44G-1, Code of Alabama 1975, discussed below. The council may declare the seat vacant at any regular or special meeting. At the next regular meeting held after the meeting at which the vacancy was declared – or at any meeting held after such regular meeting, whether regular or special – the council may vote to fill the vacancy. The vacancy cannot be filled at the same meeting at which the vacancy is declared. The newly appointed councilmember holds the office for the unexpired term. AGO to Hon. Charles Belew, April 30, 1957.

The position should be filled as soon as possible to prevent the crippling effect of not having a quorum to do business. The council may not avoid its responsibility for electing a person to fill such a vacancy by calling a special election. 74 Q. Rep. Att. Gen. 8.

A majority vote of the present council is required to fill a vacancy on the council. Where the present council consists of the mayor and four councilmembers, a vote of three members would constitute a majority to elect a nominee to fill the vacancy. Section 11-43-4, Code of Alabama 1975; AGO to Hon. E. B. Overton, April 23, 1957 and to Hon. Venia P. Hutchinson, October 15, 1973.

In the event a vacancy in the office of councilmember is not filled within 60 days after it occurs in a Class 7 or Class 8 municipality, each existing council member, including the mayor, may submit a name to the governor for appointment. If the Governor fails to make an appointment from any submitted names within 90 days after the vacancy occurs, the judge of probate shall call a special election to fill the vacancy. Section 11-44G-1, Code of Alabama 1975. If the council does not fill the vacancy within 60 days after it occurs, the council, by default, loses its right to thereafter fill the vacancy. AGO 1999-168.

An alternate method for filling council vacancies that have existed for more than 60 days is provided for Class 5 cities (25,000 to 49,999 in population according to the 1970 Census). Section 11-43-18, Code of Alabama 1975.

Section 11-43-87 establishes an alternative method for filling council vacancies in Class 3 cities (100,000 to 174,999 in population according to the 1970 Census).

Notwithstanding any other provision of law, a vacancy on the city council of a Class 6 city may be filled by either of the following ways: (1) the city council may appoint a person to fill the vacancy for the remainder of the unexpired term or (2) the city council may call a special election to fill the vacancy. A special election called pursuant to this subdivision shall be conducted as provided by the general laws of this state regarding municipal elections. The successor, upon election and certification, shall serve the remainder of the unexpired term. Section 11-43-65, Code of Alabama 1975.

If a person elected to the office of councilmember dies or moves from the municipality before being sworn into office, a vacancy in the office is created. The new council should fill the vacancy in the manner described above.

If there are so many vacancies on the council that a quorum cannot be assembled, then the governor must fill the vacancies by appointment. Section 36-9-17, Code of Alabama 1975. Past precedent has been for the governor to fill only as many of the vacancies as is necessary to make a quorum.

If a councilmember is called to active military duty, state law provides a procedure for replacing the councilmember temporarily while he or she is on active duty. *See*, Section 19(f) of this handbook for further information.

Sec. 49. Presiding Officer

(a) Towns and Cities under 12,000 Inhabitants. The mayor of a municipality of less than 12,000 in population is a member of the council. The mayor sits with the council, presides over its deliberations, and is entitled to vote upon questions coming before the council. Section 11-43-2, Code of Alabama 1975.

(b) Cities of 12,000 Inhabitants or More. In cities of 12,000 or more in population, the president of the council presides over the council. If a municipality of over 12,000 has elected to operate with a five-member council, the council must elect a council president from its members to preside over its meetings. *AGO to Mayor of Atmore*, October 18, 1955. The president of the council is a member of the council and is entitled to vote upon issues coming before the body. In case of a tie vote, the measure fails for lack of the required majority.

(c) Participation in Council Deliberations. A question often asked is whether the mayor or the council president may introduce measures before the council, second motions, debate issues and participate in deliberations in the same manner as other councilmembers. As a member of the council, the mayor or council president, as the case may be, is authorized to do any of these things. However, before exercising any of these prerogatives, good parliamentary procedure dictates that the presiding officer should turn control of the meeting over to the pro tempore, or if the pro tempore is not at the meeting, to another member while introducing or seconding measures before the body.

Sec. 50. Absence of Presiding Officer

In towns and in cities of less than 12,000, the council shall appoint a chairman pro tempore who shall preside over the council during the mayor's absence and perform the duties of the mayor during such time. Section 11-43-42, Code of Alabama 1975.

In cities of 12,000 or more, the council shall elect a president pro tempore who shall perform the duties of the president of the council during his or her absence and who shall succeed to the office of council president in the event it becomes vacant. Section 11-43-42, Code of Alabama 1975.

Sec. 51. Quorum

A majority of the whole number of members to which the municipality is entitled to have on the council, including the mayor in towns and cities under 12,000 in population, shall be necessary to constitute a quorum. Section 11-43-48, Code of Alabama 1975 and *AGO 2004-054*. In the absence of a special vote requirement for the determination of a particular issue – such as for ordinances or resolutions of a general and permanent nature – a majority of the quorum

present and voting is sufficient to adopt a measure before the council.

The number of members required to make a quorum does not change when a council has vacancies. Council members who are present at a council meeting that have a conflict of interest on a particular issue can be counted for purposes of making a quorum even though they cannot vote on a particular issue.

Sec. 52. Journal (Minutes of Proceedings)

The council is required to keep a journal of its proceedings. The journal must be open to the public for inspection and examination at all reasonable times. The council journal has the force and effect of a public record, and a copy of it, certified by the clerk, is prima facie evidence in any court or elsewhere. Section 11-43-52, Code of Alabama 1975. *See also, Hammondville v. Chadwick*, 178 So.2d 646 (Ala. 1965).

(a) Clerk's Attendance Required. The city or town clerk is required to attend all meetings of the council and to keep a record of its proceedings. Section 11-43-100, Code of Alabama 1975.

(b) Amendment of Journal. The council may, at any time, amend the record of its proceedings to make them speak the truth. *Estes v. Gadsden*, 94 So.2d 744 (Ala. 1957).

(c) Absence of Clerk. During the absence of the clerk, the council may appoint one of its members to keep the minutes of its meetings, in which event such member shall not be deprived of the right to participate in the proceedings of the council. That councilmember may vote on issues brought to question while serving as secretary of the meeting. *Clark v. Uniontown*, 58 So. 725 (Ala. 1912). If a councilmember performs the duties of the clerk who is absent, such councilmember would not be entitled to compensation for such services. Section 11-43-12, Code of Alabama 1975.

(d) Permanent Record. The journal of the municipality is a permanent public record of the municipality. The importance of its accuracy, preservation and safekeeping cannot be overemphasized.

Sec. 53. Organizational Meeting

The council is required to meet on the first Monday in November following the general municipal election for its organizational session. Section 11-43-44, Code of Alabama 1975. The business at organizational meetings generally includes the following:

- Appointment of a temporary chairman pending the election of a council president in cities of 12,000 or more in population which operate with a five-member council.
- Election of a council president in cities of 12,000 or more operating with a five-member council.
- Election of a council president pro tempore in all cities of 12,000 or more.
- Election of chairman pro tempore in cities and towns of less than 12,000.
- Establishing the time and place of regular meetings of the council.
- Adopting an ordinance establishing rules of procedure to be observed in the conduct of council meetings. If such an ordinance already exists, the new council might consider whether it desires to operate under the same ordinance, to amend it or to repeal it and adopt a new set of rules.
- Appointment of council committees. These appointments are generally made by the presiding officer of the council.

Sec. 54. Types of Meetings

(a) Regular Meetings. The council shall determine the time and place of holding its meetings, which at all times shall be open to the public. Section 11-43-49, Code of Alabama 1975. The council must hold at least two regular meetings each month. Towns (municipalities of less than 2,000 inhabitants) are only required to meet once per month but the town council can adopt an ordinance to require two meetings per month. Section 11-43-50, Code of Alabama 1975.

(b) Special Meetings. The presiding officer of the council (the mayor in cities of less than 12,000 inhabitants)

shall call special meetings whenever in his or her opinion the public interest requires it. Also, whenever two councilmembers or the mayor request, in writing, a special meeting, the presiding officer has the duty to make the call. If the presiding officer fails or refuses to call such a meeting, when requested, the two councilmembers making the request or the mayor have the right to call such a meeting. Section 11-43-50, Code of Alabama 1975. For a special meeting to be valid, all members of the council must have been duly notified. This requirement is excused where all members are present at the meeting or where it is a practical impossibility to notify a particular member because of absence from the municipality. Subjects not covered by the notice, other than routine business, may not be considered at a special meeting unless the councilmembers unanimously consent thereto. Since the Code of Alabama does not require written notice be given to governing body members, it is presumed that oral notice designating the subject in general terms is sufficient. It is a good practice for the journal of the council to stipulate, in the minutes of the special meeting, the type of notice given to councilmembers. Waivers of notice signed by all councilmembers are generally appended to the minutes of special meetings. Proceedings at a special meeting where all members were not notified may be validated by ratification at a subsequent meeting. Rhyne, *Municipal Law*, Section 5-5. If a notice calling a special meeting states that it is replacing a canceled regular meeting, the council may discuss business it would have discussed at the regular meeting and the introduction of new ordinances for consideration by the council would constitute regular business. AGO 2002-111.

(c) Adjourned Meetings. At its regular meetings, the council may adjourn until a particular time. The adjourned meeting is merely a continuation of the original meeting. Although additional notice is not required, the League recommends that the council provide the public with notice of the time and location of the continuation of the meeting and of the fact that any business may be transacted which could have properly come before the council at the original meeting.

(d) Work Sessions and Committee Meetings. Although municipal councils may hold committee meetings and conduct workshops before or after meetings, it is important to remember that these sessions are open to the public. AGO 1992-267. These informal meetings are held to enable the council to expedite official meetings.

Sec. 55. Laws Governing Open Meetings.

(a) Generally. Meetings of all “governmental bodies” are subject to the Alabama Open Meetings Act (OMA) codified at Sections 36-25A-1 through 36-25A-11, Code of Alabama 1975. Clearly, municipal governing bodies themselves must conduct open meetings pursuant to the requirements of the OMA. The Act defines “governmental bodies” to include: (1) all municipal “boards, bodies, and commissions” which “expend or appropriate public funds”; and (2) all municipal “multimember governing bodies of departments, agencies, institutions, and instrumentalities “including, without limitation, all corporations and other instrumentalities whose governing boards are comprised of a majority of members who are appointed or elected by” the municipality. Thus, any municipal board or agency that has the power to expend or appropriate municipal funds must conduct open meetings pursuant to the requirements of the Act. Additionally, the Act applies to any instrumentality, including separate corporations, whose membership is composed of at least a majority of members who were appointed by the municipality.

The Act makes it clear that there must be a quorum present for the law to apply. A quorum is a majority of the voting members of the council. This would include the mayor in a mayor council municipality of less than 12,000 in population. To be counted towards establishing a quorum, members of a governing body covered by the OMA are required to be physically present. There is no provision for obtaining a quorum by telephone conference. AGO 2006-071. The quorum requirement applies to both the governing body itself and all committees of the governing body. The law applies to prearranged gatherings, which includes regular as well as special meetings. Further, any gathering of a quorum of members where deliberations of actions that are expected to come before the body later are subject to the Act. Fortunately, the Act also makes it clear that certain types of get-togethers are not covered. This allows members to attend social events or conventions, or similar activities together, provided that they do not deliberate matters that are expected to come before the body at a later time.

Certain provisions in this law are discussed in this publication. For a more complete article on the law please refer to an article in the League’s *Selected Readings for the Municipal Official* (2020 ed.) entitled “The Open Meeting Act”.

(b) Serial Meetings. The Open Meetings Act was amended in 2015 and one of the primary motivations for the amendments was to specifically prohibit “serial meetings”. The Act defines a “serial meeting” as “any series of

gatherings of two or more members of a governmental body, at which:

1. Less than a quorum is present at each individual gathering and each individual gathering is attended by at least one member who also attends one or more other gatherings in the series.
2. The total number of members attending two or more of the series of gatherings collectively constitutes a quorum.
3. There is no notice or opportunity to attend provided to the public in accordance with the Alabama Open Meetings Act.
4. The members participating in the gatherings deliberate specific matters that, at the time of the exchange, the participating members expect to come before the subcommittee, committee or full governmental body at a later date.
5. The series of gatherings was held for the purpose of circumventing the provisions of this chapter.
6. At least one of the meetings in the series occurs within seven calendar days of a vote on any of the matters deliberated.”

Four types of gatherings are specifically exempted from the definition of a “serial meeting”. Of interest to municipal government, the following do not constitute a serial meeting:

1. Gatherings, including a gathering of two members of a full governmental body having only three members, at which no deliberations were conducted or the sole purpose was to exchange background and education information with members on specific issues...;
2. A series of gatherings related to a search to fill a position required to file a statement of economic interests with the Alabama Ethics Commission pursuant to Section 36-25-14 until the search has been narrowed to three or fewer persons under consideration.
3. A gathering or series of gatherings involving only a single member of a governmental body.

(c) Meeting Notice Requirements. The OMA requires the body to give notice to the public of meetings which are subject to the Act. Municipal governing bodies provide notice by posting notice on a public bulletin board at city hall. The Attorney General has ruled that at least seven days’ notice is required by the OMA for a regularly scheduled meeting of the council or standing committee of the council when a meeting date and time is established by organizational ordinance or resolution. The posting by a municipal governing body of its organizational ordinance or resolution specifically stating the place, date, and time of regular council meetings and standing committee meetings, and a general description of the nature and purpose of those meetings is sufficient to meet the notice requirements of the OMA. This notice should be posted permanently.

For meetings of the council or of a standing committee that do not have regularly scheduled meetings set by ordinance or resolution, as well as special meetings that are called pursuant to Section 11-43-50, Code of Alabama 1975, notice is to be posted as soon as practicable after the meeting is called, but in no event less than 24 hours before the meeting is scheduled to begin. The notice must include the time, date and place of the meeting. If a preliminary agenda is created, the agenda must be posted as soon as practicable in the same location or manner as the notice. AGO 2006-027. If a preliminary agenda is not available, the posted notice shall include a general description of the nature and purpose of the meeting. Please note that the Act specifically provides that the governing body may still discuss at a meeting additional matters not included in the preliminary agenda. The Alabama Supreme Court held that a governmental body did not violate the Open Meetings Act by considering and voting on, at a special meeting, a resolution that was not on the agenda. *Underwood v. Alabama State University*, 51 So.3d 1010 (Ala. 2010).

If practicable, the governing body must also provide direct notification of a meeting to any member of the public or news media who has registered to receive notification of meetings. The municipality may require the person requesting notice to pay the actual cost of issuing notices, if there is one, in advance. Direct notice to persons who have registered shall, at a minimum, contain the time, date, and place of the meeting. This notice must be given at the same time the

general notice is provided. The governing body may promulgate reasonable rules and regulations necessary for the uniform registration and payment for direct notice and for the distribution of the notices. The governmental body has the authority to choose the method of providing direct notice. This may include using electronic mail, telephone, facsimile, the United States Postal Service, or any other method reasonably likely to provide the requested notice.

The OMA grants citizens the right to be present at public meetings but does not grant them an absolute right to express their views at the meeting. A public body may establish reasonable guidelines governing public participation in the meeting. AGO 1998-134.

(d) Executive Sessions. The OMA specifically states that executive or closed sessions are not required for any reason. However, the OMA does permit the body to enter into an executive session for any of nine specified reasons. The OMA spells out a specific procedure for entering into an executive session. **First**, a quorum of the governmental body must first convene a meeting as defined in the Act. **Second**, a majority of the members of the governmental body present must adopt, by recorded vote, a motion calling for the executive session. If the stated reason requires an oral or written declaration to justify the executive session as required by the OMA, the oral or written declaration must be made prior to the vote. **Third**, the vote of each member, as well as the written or oral declaration, shall be recorded in the minutes. **Fourth**, prior to calling the executive session to order, the presiding officer shall state whether the governmental body will reconvene after the executive session and, if so, the approximate time the body expects to reconvene. *See*, Section 36-25A-7, Code of Alabama 1975, for more details.

(e) Immunity. The OMA specifically states that members of the covered entity and any of its employees participating in a meeting that complies with the Act have an absolute privilege and immunity from suit for any statement made during the meeting which relates to a pending action. Section 36-25A-8, Code of Alabama 1975.

(f) Enforcement. The OMA is enforced as a civil violation. Section 36-25A-9, Code of Alabama 1975.

Sec. 56. Laws Governing Public Records.

Ordinarily, all members of the public have the right to inspect records maintained by municipal governments. Sections 36-12-40 and 36-12-41, Code of Alabama 1975, guarantee every citizen the right to inspect and make copies of all public writings, unless otherwise expressly provided by statute. Generally, the term “record” is given an expansive meaning, such as the definition found in Section 41-13-1, Code of Alabama 1975. There, public records are defined to include all “written, typed or printed books, papers, letters, documents and maps made or received in pursuance of law by the public officers of the state, counties, municipalities and other subdivisions of government in the transactions of public business.” The Alabama Supreme Court has held that the terms “public record” and “public writing” are synonymous. These sections are broad and provide little guidance for city clerks who must determine whether to release a particular record. In addition, this list is not all-inclusive and each record must be examined individually to determine whether the public is entitled to access, looking to case law and Attorney General’s opinions for help.

Generally, municipal officials and employees have no greater rights to inspect records than do members of the public. Only those officials and employees who must view a record that is not public should be allowed access. While the council acting as a whole has the right to request to see certain documents, individual councilmembers must demonstrate their interest in order to review records, just like private citizens. The Attorney General’s office held that the mayor may review all documents of the business of the town necessary for him or her to carry out his duties as mayor and manage the affairs of the town. However, the review of documents must be for a legitimate purpose and the integrity of the record must be maintained. AGO 2000-053.

Section 41-13-23, Code of Alabama 1975, requires that public records should be kept in the office where the records were created or in a depository approved by the Local Government Records Commission. Before transferring public records to a different location, the Local Government Records Commission should be consulted. AGO 2003-064. Records concerning security plans, procedures or other security related information are exempt from the public records laws. Section 36-12-40, Code of Alabama 1975.

For a more complete article on the law please refer to an article in the League’s *Selected Readings for the Municipal Official* (2020 ed.) entitled “Public Records”.

Sec. 57. Subpoenas.

A municipal council or a committee authorized by the council may, by resolution, issue subpoenas pursuant to Section 11-43-163 of the Code. This does not require a permanent resolution. The council or committee may impose punishment pursuant to Section 11-43-163, Code of Alabama 1975, for failure to comply with the subpoena. AGO 1999-076.

Sec. 58. Suggestions for Expediting Meetings

Most councilmembers have busy schedules in their private lives. Meetings of the council must be conducted in an orderly and businesslike manner. Long, drawn-out council meetings which wander from city business discourage attendance by hard-working, civic-minded councilmembers. The following suggestions are offered to assist with this problem:

- Prepare a calendar work sheet for the year, giving the meeting times and outlining the special business to come up at certain times of the year.
- Begin meetings on time and stick to a time schedule as far as possible.
- Follow the same basic order of business prescribed in the rules of procedure adopted by the council.
- Before each meeting the presiding officer should prepare an agenda for the meeting and distribute it to the governing body along with appropriate papers and memoranda.
- Copies of the minutes of the last meeting should be distributed to each councilmember before the meeting.
- Delegate particular investigations to committees or officers for their consideration and recommendation (to prevent wandering discussions on subjects upon which the basic facts have not been established).
- Make it clear to those who appear before the council that they are allowed a definite time for the presentation of their material.
- Give sufficient advance notice to officers of the municipality whose attendance is desired at a meeting to ensure their presence.
- Notify members of the press of any particular business of interest which will be on the council agenda.

Also a municipal council can adopt appropriate rules of procedure to dispense with the reading of proposed ordinances and resolutions at length. AGO 1981-400 (to Hon. Gertrude R. Williams, June 2, 1981).

Sec. 59. Attendance at Council Meetings

The council has the authority to compel the attendance of absent members in such manner and under such penalties as it may prescribe. Section 11-43-51, Code of Alabama 1975. The lack of a quorum due to a refusal of councilmembers to attend meetings could seriously hamper the functioning of the council. When adopting rules of procedure, the council should consider providing authority for less than a quorum in attendance at a regular meeting to compel the attendance of absent members in order to complete a quorum. However, any ordinances, resolutions or official action of the council can only take place if a quorum is present.

Section 11-40-25, Code of Alabama 1975, provides that any mayor, council member, or commission member elected or appointed to municipal office whose presence at council or commission meetings is counted towards establishing a quorum who misses all regular and special called council or commission meetings for 90 consecutive days, beginning on the date of any absence, shall be removed from office by operation of law. For the purpose of applying this law, on the date and time of any regular or special called council or commission meeting of a municipality, the clerk shall make a record of all elected municipal officials present or absent regardless of whether or not a quorum is present. At the next council or commission meeting following the date an elected municipal official has been removed from office pursuant to this section, the council or commission may vote to reinstate the elected municipal official removed from office as provided herein for any mitigating or extenuating circumstances as determined by a majority vote of the remaining voting members of the council or commission, including the mayor if the mayor is a voting member of the council as provided by law. If the council or commission does not reinstate the removed elected

municipal official pursuant to this section, the council or commission shall fill the vacancy as provided by law. This section shall not apply to any elected municipal official whose absence from any council or commission meeting is a result of military service.

The council may not prescribe by ordinance that continued absence of a councilmember automatically vacates the office. AGO to Hon. Lorenzo D. Allred, August 2, 1955. Continued absence of a councilmember would render the official liable to actions of the following nature – impeachment for willful neglect of duty pursuant to Section 36-11-1, Code of Alabama 1975; determination by the courts that the office has been abandoned; and mandatory injunction by a court compelling attendance to make the necessary quorum.

Sec. 60. Voting

(a) Generally. No provision in Alabama statutes compels a councilmember to vote upon every issue called to question by the council. If a quorum is present and the question requires a certain vote total to pass, if one member refuses to vote and the required vote is one shy, the measure fails. *Anniston v. Davis*, 13 So. 331 (Ala. 1893).

Even if a quorum is physically present, additional members of a governmental body that are not present may not participate or vote in meetings through electronic means, except in limited circumstances. Section 36-25A-5.1, Code of Alabama 1975, allows members of governmental bodies with members in two or more counties to participate in meetings and deliberate via electronic communications under certain circumstances. In those instances, members of governmental bodies are not required to be physically present to participate in meetings and deliberation. Members who participate by electronic means, though cannot be counted toward the establishment of a quorum.

Additionally:

- 1) The communications equipment used must allow all persons participating in the meeting to hear each other at the same time;
- 2) only those members who are physically present may participate in an executive session of the governmental body;
- 3) Any vote taken at a meeting using electronic equipment for remote access by members shall be taken as a roll call vote that allows each participant to vote individually in a manner audible to all persons participating or present at the physical location;
- 4) No member utilizing this section shall claim any form of reimbursement for expenses, including mileage and per diem.
- 5) Electronic communications are not allowed to be used by a governmental body conducting a hearing which could result in loss of licensure or professional censure.

A member of the governmental body may, however, listen to a meeting through electronic means. AGO 2010-070.

A councilmember has the right to change his or her vote up to the time the vote is finally announced. After that, the vote can be changed only by permission of the assembly, which may be given by general consent. While it is the duty of every member who has an opinion on a question to express it by a vote, the member cannot be compelled to do so. *Robert's Rules of Order*, Revised 75th Anniversary Edition.

A councilmember is an elected representative of municipal citizens who have placed their trust and confidence in him or her to express their will, in whole or in part, before the assembled council. By refusing to vote upon issues brought to question, the councilmember fails to perform an important responsibility. Of course, in certain cases a councilmember is prohibited from voting by statutory restriction or an existing conflict of interest.

(b) Restriction on Voting Right. No councilmember may vote on any question in which he or she or his or her employer or employee has a special financial interest at the time of voting or was interested in at the time of his or her election. Violation of this restriction may subject the councilmember to removal from office. Section 11-43-54, Code of Alabama 1975. The interest referred to in this provision is a special **financial interest**, not an interest that affects the public generally and incidentally affects the councilmember. For example, the councilmember may vote

upon improvement assessment questions which might involve benefit to property owned by the member along with the property of other citizens. *Hamrick v. Albertville*, 122 So. 448 (Ala. 1929).

However, elected officials should exercise great care before voting on matters which affect them either directly or indirectly. The state Ethics Law also precludes voting on matters which benefit the elected official, a family member or business with which the official is associated. Questions regarding the Ethics Law should be addressed to the Ethics Commission. Their telephone number is (334) 242-2997.

Sec. 61. Election of Officers

(a) Cities of 6,000 or More. At the first regular meeting, or as soon thereafter as practicable, the council in a city of 6,000 or more inhabitants must elect a city clerk and a city treasurer who hold office until the next general election and until their successors are elected and qualified. The council may, by ordinance, require the city treasurer and the city clerk to be residents of the city. The authority to appoint these offices may **not** be delegated by the council to the mayor or to any other body, either with or without the consent of the council, and the council may not alter their terms of office. By two-thirds vote of the council, and with the consent and approval of the mayor, these two offices may be combined. Section 11-43-3, Code of Alabama 1975; *Bradford v. State*, 147 So. 182 (Ala. 1933). No state law requires a municipal clerk to be a resident of Alabama. AGO 1997-057.

The council may elect an auditor and any officer whose election is required by ordinance. Except as otherwise provided, the council is authorized to fix their terms of office, prescribe their duties and fix their salaries. Section 11-43-3, Code of Alabama 1975. Where the council establishes the term of office, such term may not exceed the term of the mayor. Section 11-43-46, Code of Alabama 1975.

(b) Towns and Cities of Less than 6,000. In towns and cities of less than 6,000 in population, the council must elect a clerk and fix the salary and term of office. This section requires the council to elect the clerk. The clerk is not required to be a resident of the city or town. By ordinance, the council may designate the other officers of the city or town, their salary and the manner of their election. The appointment of such other officers may be delegated to the mayor with or without the consent of the council. The clerk and such other officers elected by the council shall serve until their successor or successors are elected and qualified. Section 11-43-4, Code of Alabama 1975.

(c) All Cities and Towns. The council has the authority to provide for a tax assessor, tax collector, chief of police and a chief of the fire department and to especially prescribe their duties. The appointment of these officers may be delegated to the mayor and may or may not have the consent of the council. Section 11-43-5, Code of Alabama 1975.

The Supreme Court of Alabama in the case of *Scott v. Coachman*, 73 So.3d 607 (Ala. 2011), and the Attorney General in AGO 2012-039, have provided a detailed analysis of the current laws relating to the appointing powers of the mayor and councilmembers. See Section 25(b) of this handbook for complete details.

The council must designate persons to administer oaths and issue warrants of arrest for violations of law and the ordinances of the city or town and the persons authorized to approve appearance bonds of persons arrested. Section 11-43-5, Code of Alabama 1975. The council should not fail to make these designations. In filling these positions, the council should consider the availability, at all times, of officers to perform these functions which facilitate the operations of the police department and the municipal court. A municipal judge has the powers noted above, but the council should appoint others with similar authority to issue warrants of arrest and approve appearance bonds. Any such appointments should be coordinated with the Administrative Office of Courts, which has the power to appoint municipal court magistrates.

In construing *Rennow v. State*, 255 So.2d 602 (Ala. Crim. App. 1971), the Attorney General has advised that any person who could be deemed to be a member of the prosecution staff, by virtue of gathering evidence, might be suspect on the question of being **neutral and detached** and is not be eligible for appointment to issue warrants of arrest. AGO to Hon. Robert M. Field, November 9, 1971. This case has been construed to prohibit mayors, councilmembers, police officers and prosecuting attorneys from issuing arrest warrants.

(d) Roll Call Voice Vote Required. All elections of officers shall be made viva voce (roll call voice vote), and a concurrence of a majority of the members to the council shall be required. All members of the council may vote any provision of law to the contrary notwithstanding. On the vote resulting in an election or appointment, the name of each

member and for whom he voted shall be recorded. Section 11-43-45, Code of Alabama 1975.

Sec. 62. Compensation for Councilmembers

The council may, by ordinance adopted at least six months prior to the election, establish the salary for the members of the council for the next term. If the council fails to take action within the time allowed or takes no action at all, the officers of the succeeding administration receive the same salaries paid the mayor and council of the last term. AGO to Hon. R. E. Pate, October 29, 1964. No limitations are set by statute for the salary of councilmembers; salaries are left to the discretion of the council. Section 11-43-2, Code of Alabama 1975. The salary for councilmembers may be based on attendance at council meetings as long as it is established at least six months prior to the election. AGO 1985-219 (to Hon. John M. Kellum, February 15, 1985). The municipality can only pay for elected officials to receive certain benefits, such as health insurance, if they are included in the salary ordinance adopted six months prior to the election. AGO 1981-193 (to Roy Owens, January 28, 1981).

Sec. 63. Expenses of Councilmembers

Councilmembers are entitled to reimbursement for expenses incurred in the performance of official duties required of them just as a mayor is entitled to such reimbursement. *See*, Section 22 of this handbook.

Sec. 64. Salaries, Benefits, and Working Conditions of Officers and Employees

(a) Salaries of Officers. The salaries of all officers must be fixed by the council. Section 11-43-8, Code of Alabama 1975. Where the council has established fees for services performed by officers, it may prescribe that such officers shall receive a salary in lieu of all other compensation. In such cases, those fees must be collected by the officer and paid to the municipal treasury. Section 11-43-6, Code of Alabama 1975.

If a maximum salary is established by statute for a particular office, the council may not prescribe a salary in excess of the maximum. If a salary maximum has been established by ordinance, the council may increase the salary upon two-thirds affirmative vote of all members elected to the council by and with the consent of the mayor. Section 11-43-8, Code of Alabama 1975. If a minimum salary is prescribed by statute, an officer is entitled to the minimum whether or not the council has established a salary for the office.

(b) Compensation of Employees. If compensation has not been prescribed by statute, employees shall receive such compensation as the council may prescribe by ordinance. For all attested certificates and transcripts, other than those ordered by the council, the clerk shall be paid in fees not in excess of those allowed to county officers for like services. The clerk must account for such fees as other public moneys if he or she is receiving a salary of fixed compensation from the city or town. Section 11-43-7, Code of Alabama 1975. If a municipal officer or employee has been temporarily suspended pending approval or disapproval by the council, the employee may be paid or not paid, during the time of suspension, at the discretion of the council. AGO to Hon. C. A. Nix, August 13, 1964.

Municipal employees may not be required by a municipality to acquire or maintain an account at a particular financial institution for the purposes of direct deposit or electronic funds transfers. AGO 2002-276.

(c) Mayor's Salary. The mayor's salary is established by ordinance of the council at least six months prior to the next general municipal election. Section 11-43-80, Code of Alabama 1975. *See*, Section 21 of this handbook for further details.

(d) Certain Salaries Unalterable. The fees, salary, compensation or emoluments of any officer, whose election or appointment is required or authorized by statute, may not be increased or diminished during the term for which the officer was elected or appointed and no gratuitous appropriation may be made for the benefit of any officer or employee in addition to that salary. Section 11-43-9, Code of Alabama 1975. A similar provision is found in Sections 68 and 281, Alabama Constitution, 1901.

While Alabama courts have held that for new and additional duties additional compensation can be voted or granted without violating these constitutional provisions (*State v. Henry*, 139 So. 278 (Ala. 1932); *Jackson v. Sherrod*, 92 So. 481 (Ala. 1921); *Taylor v. Davis*, 102 So. 433 (Ala. 1924)), it is not advisable for the council to increase the compensation of any officer, whose appointment or election is required or authorized by statute, during the term for

which he or she was elected or appointed without discussing the individual case with the municipal attorney.

(e) Personnel Systems for Police Officers. State law requires that all cities of 5,000 or more in population establish personnel systems for their police officers. Sections 11-43-180 through 11-43-190, Code of Alabama 1975. The League recommends establishing a personnel system for all employees and has developed a model set of personnel regulations for this purpose.

(f) Mayor's Veto Power. The authority of the mayor to veto ordinances and resolutions of a permanent nature is discussed in Section 38 of this handbook.

(g) Retroactive Raises Prohibited. Section 68, Alabama Constitution, 1901, prohibits the council from increasing the compensation (salary or wage) of employees retroactive to a date beyond the first day of the pay period for which compensation will later be due. AGO to Hon. Hugh Patterson, June 25, 1957 and AGO 2000-105.

(h) Group Insurance. The council is authorized to establish group insurance programs and annuity contracts for officers and employees of the municipality. Sections 11-91-1 through 11-91-8, Code of Alabama 1975. *See*, Section 21(d) of this handbook for certain exceptions. Municipalities may elect to participate in a state health insurance program known as the Local Government Insurance Plan. Section 36-29-14, Code of Alabama 1975.

(i) Jury Duty. Upon receiving a summons to report for jury duty, any employee, on the next day he or she is engaged in his or her employment, shall exhibit the summons to his or her immediate superior, and the employee shall thereupon be excused from his or her employment for the day or days required of him or her in serving as a juror in any court created by the Constitution of the United States or of the State of Alabama or the laws of the United States or of the State of Alabama.

An employee may not be required or requested to use annual, vacation, unpaid leave, or sick leave for time spent responding to a summons for jury duty, time spent participating in the jury selection process, or for time spent actually serving on a jury. Nothing in this subsection shall be construed to require an employer to provide annual, vacation, or sick leave to employees who otherwise are not entitled to the benefits under policies of the employer.

Notwithstanding the excused absence provided above, any full-time employee shall be entitled to his or her usual compensation received from such employment.

It shall be the duty of all persons paying jurors their fee or compensation for services to issue to each juror a statement showing the daily fee or compensation and the total fee or compensation received by the juror.

Notwithstanding the above, a court shall automatically postpone and reschedule the service of a summoned juror who is an employee of an employer with five or fewer full-time employees, or their equivalent, if another employee of that employer also has been summoned to appear during the same period. A postponement pursuant to this section shall not affect an individual's right to one automatic postponement under Section 12-16-63.1. Section 12-16-8, Code of Alabama 1975. The \$10-per-day payment for jury service in circuit court authorized by Section 12-19-210, Code of Alabama 1975, is an expense allowance rather than a fee and should not be subtracted from the employee's paycheck. AGO 1979-115. In *Norfolk Southern Railway Co. v. Johnson*, 740 So.2d 392 (Ala. 1999), the Alabama Supreme Court held that Section 12-16-8.1, Code of Alabama 1975, protects employees from being dismissed for service on a jury, which protects employees from retaliation for any action related to jury service.

(j) Firefighter Payroll Deductions. Municipalities which employ full-time firefighters shall adopt policies or regulations which will provide for deductions from the salaries of its firefighters or groups of firefighters whenever a written request for such deductions is submitted to the council. Section 36-1-4.2, Code of Alabama 1975.

(k) Benefits for Relatives of Police Officers and Firefighters Who Die in Line of Duty. If a peace officer, certified police officer, or reserve law enforcement officer, firefighter or volunteer firefighter who is a member of a volunteer fire department registered with the Alabama Forestry Commission is killed either accidentally or deliberately or dies as a result of injuries received while engaged in the performance of duties, or dies as a direct and proximate result of a heart attack or stroke, his or her dependents or parents shall be entitled to compensation in the amount of \$100,000 to be paid from the state treasury, unless the death was caused by willful misconduct of the officer or was due to personal intoxication or willful failure or refusal to use safety appliances provided by the employer or by the willful

refusal or neglect of the officer to perform a statutory duty or any other willful violation of law or a willful breach of a reasonable rule or regulation governing the performance of duties or employment of which rule or regulation he or she had knowledge. State law provides that certain death or disability compensation paid on behalf of peace officers or firemen is in the nature of workers' compensation so as to comply with a specific exclusion in the Internal Revenue Code at 26 USC §104. *See*, Sections 36-30-1 through 36-30-7, Code of Alabama 1975.

(l) Workers Compensation. Section 25-5-13, Code of Alabama 1975, states that all municipalities over 2,000 in population, according to the most recent federal decennial census, must comply with the state workers compensation law. This section exempts from the act all cities with populations exceeding 250,000. A city whose population was once over 250,000 and has subsequently dropped below 250,000 inhabitants loses their exemption. *Birmingham v. George*, 988 So.2d 1031 (Ala. Civ. App. 2007). Municipalities of less than 2,000 in population may elect to come under the state workers compensation program by filing written notice with the State Department of Industrial Relations. Municipalities also have the option of purchasing workers compensation insurance or self-insuring. Section 25-5-8, Code of Alabama 1975. Through efforts of the League, the Municipal Workers Compensation Fund was formed to help cities and towns save money on workers compensation insurance. More information on the program is available from League headquarters.

Absent any local legislative act to the contrary, it would be legal for a city to pay an injured employee 100 percent of his or her normal pay during the employee's period of disability. In doing so, the city would be entitled to a complete setoff of the injured employee's workers' compensation benefits. It would also be legally permissible to condition payment of the injured employee's salary during the benefit period on the employee's assignment of his or her 2/3 compensation check to the city. AGO 2000-186.

(m) Unemployment Compensation. Municipalities are required under existing laws to participate in unemployment compensation coverage for their employees.

(n) Social Security. Municipalities may elect to cover their officers and employees under the federal Social Security program. Section 36-28-5, Code of Alabama 1975. Clerks are responsible for handling Social Security withholdings and reports and for the punctual remittance of payments covering municipal employees. Once a municipality elects coverage for its employees, the municipality cannot later withdraw coverage.

(o) Employees' Retirement System. Municipalities may participate in the Employees' Retirement System of Alabama. Section 36-27-6, Code of Alabama 1975. Interested municipalities should contact the Employees' Retirement System of Alabama, P.O. Box 302150, Montgomery, Alabama 36104, or by phone at (334) 517-7000 or Toll Free (877) 517-0020. Certain firefighters and law enforcement officers under the Employees' Retirement System earn hazardous duty time for full time employment. Section 36-27-59, Code of Alabama 1975. Sections 36-27-170 thru 36-27-175, Code of Alabama 1975.

(p) Tax Withholdings. The clerk, in maintaining payroll records, should maintain a separate payroll account for each employee to be kept current with each wage or salary payment, showing the amount of withholding for Social Security, state and federal income tax, group insurance and any other program established by the municipality which involves withholding from employees' wages and salaries.

(q) Garnishment. Money due officials or employees of a municipality as salary for services performed for or on behalf of said municipality may be garnished. Section 6-6-481, Code of Alabama 1975.

(r) Fair Labor Standards Act. The Fair Labor Standards Act (FLSA) was extended to include employees of state and local government effective April 16, 1986. The FLSA includes, among other things, minimum wage, overtime and child labor provisions. All local government employees, with the exception of police officers and firefighters, are subject to essentially the same regulations as employees of private industry – 40-hour work week, overtime, etc. Special provisions cover police officers and firefighters.

Section 207(o)(5) of the Fair Labor Standards Act, which provides that state and local government employees who request to use accrued compensatory time off "shall be permitted ... to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the public agency," does not require an employer to grant specific time requested by an employee but instead requires that compensatory time be permitted within a reasonable period after the employee requests its use unless it causes undue disruption.

Houston Police Officers' Union v. Houston, 330 F.3d 298 (5th Cir. 2003). A public employer's practice of requiring employees to use accrued compensatory time when the amount reaches a level predetermined by the employer does not violate the Fair Labor Standards Act (FLSA). Nothing in the FLSA or its implementing regulations prohibits an employer from compelling the use of compensatory time. *Christensen v. Harris County*, 529 U.S. 576 (2000).

We strongly suggest that local government administrators obtain a working knowledge of the FLSA regulations and develop an acceptable recordkeeping system which details hours worked by each employee. Further information can be obtained from the U.S. Department of Labor.

(s) National Guard/Military Reservists. Section 31-2-13, Code of Alabama 1975, requires cities and towns to pay employees who are members of the National Guard or military reserves for up to 168 hours per year while they are on active duty with the Guard or Reserves. AGO 2006-135. Weekend drills are included within the meaning of this section. *Britton v. Jackson*, 414 So.2d 966 (Ala. Civ. App. 1981). A city or town cannot reduce an employee's vacation or sick leave to offset the requirements of this law. Federal law requires that time spent on active duty with the military be counted as time served on the job for purposes of seniority, in-grade step increases or other benefits the employee would have been entitled to without the service interruption. Time spent on military leave counts toward retirement if the employee pays the required employee contribution for that period. AGO 1999-240.

A qualifying individual is entitled to 168 hours of leave with pay while in federal status per calendar year and an additional 168 hours of leave with pay while in the active service of the state by the governor. A member who has used only a portion of his or her federal status hours of leave with pay may use the remainder of federal leave status with pay when called into federal service in the war on terrorism. Because Section 31-2-13, Code of Alabama 1975, provides a cap on military leave with pay of 168 hours per calendar year, neither the state nor any subdivision thereof is permitted to pay more military leave with pay than 168 hours per calendar year. Section 31-2-13, Code of Alabama 1975, provides no caps on other benefits that the state or any political subdivision thereof can provide to those persons who are on active military duty, and thus, the state or any political subdivision thereof may provide other benefits if they are otherwise authorized to do so. Neither the state nor any political subdivision thereof can refuse an employee the right to join the reserve or guard or interfere in his or her membership in the reserves or guard. AGO 2002-090.

Credit for Active Federal Service. Service in the National Guard or Naval Militia of Alabama, when called, drafted, or ordered into the service of the United States, shall be considered as equivalent service in the Alabama National Guard or Naval Militia for any and all state purposes regarding privileges, honors, pay, allowances, and exemptions provided by law for members of the National Guard and Naval Militia of Alabama. Section 31-2-13, Code of Alabama 1975.

(t) Incentive Awards. Notwithstanding any limitations of law pertaining to the municipality, the mayor of any municipality in Alabama is authorized, subject to budget restraints approved by the governing body, to make cash or non-cash awards not to exceed \$1,000 to employees of the municipality in recognition of exemplary performance or for innovations that significantly reduce costs or result in outstanding improvements in services to the public. Any employee selected to receive a cash or non-cash award for exemplary performance or for innovations that significantly reduce costs must first be recommended by his or her supervisor and approved by the governing body of the municipality. Section 11-40-22, Code of Alabama 1975. An employee incentive plan must state a quantitative amount that an employee can earn, and the plan must be established prior to the beginning of the fiscal year. AGO 2007-129 and AGO 2008-110.

(u) Possession of Handguns by Officers and Employees. Municipalities may restrict or prohibit employees, including those with a permit issued or recognized under Section 13A-11-75, Code of Alabama 1975, from carrying firearms while on the municipal property or while engaged in the duties of the person's employment. A municipality may not, however, restrict or prohibit the transportation or storage of a lawfully possessed firearm or ammunition in an employee's privately owned motor vehicle while parked or operated in a public or private parking area if the employee satisfies all of the following:

(1) The employee either:

- a. Has a valid concealed weapon permit; or
- b. If the weapon is any firearm legal for use for hunting in Alabama other than a pistol:

- i. The employee possesses a valid Alabama hunting license;
 - ii. The weapon is unloaded at all times on the property;
 - iii. It is during a season in which hunting is permitted by Alabama law or regulation;
 - iv. The employee has never been convicted of any crime of violence as that term is defined in Section 13A-11-70, nor of any crime set forth in Chapter 6 of Title 13A, nor is subject to a Domestic Violence Order, as that term is defined in Section 13A-6-141;
 - v. The employee does not meet any of the factors set forth in Section 13A-11-75(a)(1)a.1-8; and
 - vi. The employee has no documented prior workplace incidents involving the threat of physical injury or which resulted in physical injury.
- (2) The motor vehicle is operated or parked in a location where it is otherwise permitted to be.
- (3) The firearm is either of the following:
- a. In a motor vehicle attended by the employee, kept from ordinary observation within the person's motor vehicle.
 - b. In a motor vehicle unattended by the employee, kept from ordinary observation and locked within a compartment, container, or in the interior of the person's privately owned motor vehicle or in a compartment or container securely affixed to the motor vehicle.

See Division 3, Chapter 11, Title 13A, Code of Alabama 1975.

(v) Public Employees' Defined Contribution Savings Fund. The state Legislature has enacted legislation to make available for state and local officers and employees a defined contribution plan as described in Section 401 of the Internal Revenue Code, so as to enable the participants to conveniently and economically receive the fullest benefits offered by federal tax law as it relates to qualified defined contribution savings plans for public employees covered by a mandatory defined benefit public employee savings plan and participating in voluntary supplemental deferred compensation or tax sheltered annuity plans under Internal Revenue Code Sections 457 and 403(b) respectively. Sections 36-27C-1 through 36-27C-9, Code of Alabama 1975.

(w) Time Off to Vote. Each employee in the state shall, upon reasonable notice to his or her employer, be permitted by his or her employer to take necessary time off from his or her employment to vote in any municipal, county, state, or federal political party primary or election for which the employee is qualified and registered to vote on the day on which the primary or election is held. The necessary time off shall not exceed one hour and if the hours of work of the employee commence at least two hours after the opening of the polls or end at least one hour prior to the closing of the polls, then the time off for voting as provided in this law shall not be available. The employer may specify the hours during which the employee may absent himself or herself as provided in this section. Section 17-1-5, Code of Alabama 1975.

(x) Personnel Systems – Under 5,000 in Population. Any law to the contrary notwithstanding, the council of any municipality with a population of less than 5,000 inhabitants, by resolution duly adopted, may abolish or create a civil service system or other personnel board for its officers and employees. However, any person holding an office or position or who is a member of any civil service or merit system within the municipality upon any such action by the municipality shall continue all rights, interest and privileges vested or vesting therein. Section 11-43-5.1, Code of Alabama 1975.

Sec. 65. Dismissal of Officers

The council may remove, by a two-thirds vote of all those elected to the council, any such person in the several departments for incompetency, malfeasance, misfeasance or nonfeasance in office and for conduct detrimental to good order or discipline, including habitual neglect of duty. Section 11-43-160, Code of Alabama 1975. In municipalities having a population of less than 12,000 inhabitants, according to the last or any subsequent federal census, the mayor

may vote on the removal of any person appointed to office in the municipality pursuant to this section and the mayor shall be considered as a member of the council in determining whether there is a two-thirds vote of the council for the removal of the officer. Section 11-43-81, Code of Alabama 1975.

In *Orange Beach v. Duggan*, 788 So.2d 146 (Ala. 2000), the Alabama Supreme Court held that procedural due process does not require an entirely neutral decision-maker at a pre-termination hearing for a public employee, where a full-evidentiary post termination hearing remedies any defects at the pre-termination hearing.

The mayor's authority to dismiss or remove officers and employees of the municipality is discussed in Section 25(c) of this handbook.

Sec. 66. Surety Bonds – Officers and Employees

All officers or employees handling money or exercising authority over property of municipalities shall, before entering upon the discharge of their duties, give bond, with surety, to be approved by the mayor, in such penalty as the council may prescribe, conditioned for the faithful discharge of the duties of the office and faithfully to account for all moneys received. Section 11-43-13, Code of Alabama 1975.

The Attorney General has ruled that premiums on required bonds may be paid by the municipality if the council adopts a resolution or ordinance authorizing same. The opinion relied upon the council's authority to control the finances of municipalities provided by Section 11-43-56. AGO to Hon. Frank Gwaltney, October 22, 1957.

Sec. 67. Council's Control over Expenditures

The council has management and control of the finances and all of the property, real and personal, belonging to the municipality, unless otherwise provided by statute. Section 11-43-56, Code of Alabama 1975. Routine recurring expenses which are necessary to the operation of a municipality, such as compensation of officers and employees, payments on contracts approved by council resolution or ordinance and payments of principal and interest on bond or warrant issues are examples of the type of payments that come within the exception above.

In all cities, the council is required to appropriate such sums as are necessary to meet the expenses of the administrative departments of the city and to meet the interest on its indebtedness, not exceeding 90 percent of its estimated revenues. Section 11-43-57, Code of Alabama 1975.

The treasurer is forbidden to pay warrants except those drawn by the clerk and approved by the mayor or by the person designated by the council with authority to approve warrants. Such warrants are to show which department is to be charged. In cities of 6,000 or more, the council may authorize the clerk to draw warrants on the treasurer without the approval of the mayor, provided the mayor has written his or her approval on the voucher for which the warrant is issued. Section 11-43-120, Code of Alabama 1975. *See also*, Section 30, "Legality of Expenditures," in this handbook.

Sec. 68. Revenues

(a) Licenses. The major source of revenue for a municipality is found in the power to license businesses, trades, professions and vocations not prohibited by the Constitution and statutes of this state, which are engaged in or carried on in the municipality. Section 11-51-90, Code of Alabama 1975. The council is responsible for establishing these licenses and the rates to be charged. Under the authority of Section 11-51-90, above, courts have upheld the authority of a municipality to levy a license tax in the nature of a sales tax (*Al Means v. Montgomery*, 104 So.2d 816 (Ala. 1958)), and an occupational license tax (*Estes v. Gadsden*, 94 So.2d 744 (Ala. 1957)).

Licenses on the following businesses are limited by statute:

- Insurance companies other than fire and marine (Section 11-51-121)
- Fire and marine insurance companies (Section 11-51-120)
- Railroads (Section 11-51-124)
- Express companies (Section 11-51-126)

- Sleeping car companies (Section 11-51-125)
- Telegraph companies (Section 11-51-127)
- Telephone companies (Section 11-51-128)
- Public utilities (Section 11-51-129)
- Banks (Section 11-51-130)
- Savings and loan associations (Section 11-51-131)
- Motor carriers (Section 37-3-33)
- Retailers and wholesalers of beer (Section 28-3-194)
- Retailers and wholesalers of table wine (Section 28-7-13)
- Financial institutions (Section 40-16-6)
- Waste grease (Section 11-40-23)
- Real estate companies (Section 11-51-132)

No license may be levied on persons engaged in the production of farm products for the sale of such products. Section 11-51-105, Code of Alabama 1975. Municipalities may not license a farmer's cooperative organized under Title 2, Chapter 10, Code of Alabama 1975. *State v. Franklin County Co-op*, 464 So.2d 120 (Ala. Civ. App. 1985).

In *Town of Mulga v. Town of Maytown*, 502 So.2d 731 (Ala. 1987), the Alabama Supreme Court held that one municipality may license a gas distribution system owned by another municipality. A municipality may require a utility board organized by another municipality under Section 11-50-310 of the Code to pay a license tax. AGO 2001-003.

The Attorney General has ruled that municipalities may not waive license taxes on entities that conduct business within a part of the police jurisdiction without express authority from the legislature. AGO to Hon. Pierre Pelham, June 9, 1967. However, a municipality may declare a moratorium on the collection of late fees and penalties from licensees who voluntarily present themselves for payment of the license fee. Interest on the amounts owed cannot be waived. AGO 1984-276 (to Hon. Arnold W. Umbach, May 10, 1984).

Alabama municipalities use the calendar year for the license year. Between October and the first day of January, the council can study the license schedule and amend as necessary before the beginning of the license year on January 1. League bulletins and reports are available to assist municipalities in performing this important task.

(b) Ad Valorem Taxes. All cities and towns of the state are authorized to levy a five-mill tax upon real and personal property located within their limits computed on the value as assessed for state and county taxation. No referendum is required for the levy of this tax. Section 216, Alabama Constitution, 1901. Amendment 56 (Section 216.04) Alabama Constitution, 1901, authorizes all municipalities to levy such a tax at a rate not exceeding 12.5 mills, provided that all over five mills is authorized by the electors at an election called for that purpose. Amendments six (Dallas Section 4), eight (Section 216.01), 13 (Section 216.03), 17 (Section 216.02), 54 (Winston Section 9), and 84 (Marion Section 4), Alabama Constitution, 1901, provide different rates for specified cities and towns. The responsibility for levying the ad valorem tax rests upon the council.

Amendment 373 (Section 217) Alabama Constitution, 1901:

- Authorizes any county, municipality or other taxing authority to decrease any local ad valorem tax rate at any time, provided such decrease does not jeopardize the payment of any bonded indebtedness secured by such tax.
- Authorizes increasing local ad valorem tax rates through a procedure calling for, first, a proposal and public hearing by the local taxing authority; second, enactment of the proposal by the legislature; and third, approval in a special election by a majority of the qualified electors of the area in which the tax is to be levied or

increased who vote on the proposal.

- Provides that, except as otherwise provided in the Constitution for the cities of Mountain Brook, Vestavia Hills and Huntsville, the amount of ad valorem taxes payable to the state and to all counties, municipalities and other taxing authorities with respect to any item of taxable property described as Class 1 Property (utility property) shall never exceed two percent of the fair and reasonable market value of such taxable property in any one taxable year. For Class II Property (all property not otherwise classified), the limit is 1.5 percent. For Class III Property (agricultural, forest, single-family, owner-occupied residential, and historic site property), the limit is 1 percent. For Class IV Property (private automobiles and pickup trucks), the limit is 1.25 percent.
- Allows all local taxing entities within a county to levy additional millage not to exceed two mills in the aggregate to recoup the costs of the court-ordered statewide reappraisal program. The additional millage is to remain until the cost of the reappraisal program has been recovered.

This amendment was implemented by legislation codified in Chapters 7 and 8 of Title 40 of the Code of Alabama 1975.

Most cities and towns use the optional method of levying and collecting their ad valorem taxes which is provided in Sections 11-51-40 through 11-51-74, Code of Alabama 1975. Under this authority, the council adopts an ordinance establishing the levy in May. A certified copy of this action is delivered to the county tax assessor on or before June 1. If this procedure is followed, the county tax collector makes the collection for the municipality, which is due on October 1, based on the state and county assessment for the preceding year. If a municipality has established its ad valorem tax by ordinance, providing it shall be in force from year to year until repealed or amended, then the council would not be required to take any further action on the subject except to amend or repeal.

(c) Service Charges and Fees. All municipalities are authorized to establish charges for garbage pickup and disposal services. Section 11-47-135 and Section 22-27-5, Code of Alabama 1975. A municipality may also require its citizens to use this service. *See*, AGO to Hon. P. W. Thrasher, February 4, 1966. Sewer service charges may be established for the use of the municipal sewer system. Section 11-81-184, Code of Alabama 1975. Municipalities have the authority to install parking meters. *Decatur v. Robinson*, 36 So.2d 673 (Ala. 1948). A city or town may charge fees for fire inspections; for building, plumbing, electrical and gas permits; and for the use of the city scales. Section 11-43-59, Code of Alabama 1975. Food inspection fees are authorized by Section 11-47-136 and cemetery fees are authorized by Section 11-47-40.

(d) Special License Taxes. Under the authority of Section 11-51-90, Code of Alabama 1975, many municipalities levy special license taxes upon such items as gasoline, tobacco products, amusements and liquor (wet municipalities). Municipal tobacco taxes were frozen by the state Legislature to the rate that was in effect on May 18, 2004. Section 40-25-2, Code of Alabama 1975. A municipality may amend its tobacco tax ordinance to decrease the rate of the tax on tobacco products without violating Section 40-25-2, Code of Alabama 1975. AGO 2006-024. Counties and municipalities may use the authority granted in Section 40-25-2(g) of the Code of Alabama 1975 to administer a tobacco tax for cigarettes and require the use of monthly reports, rather than stamps, to account for the monthly sales of cigarettes and remit the taxes collected. AGO 2004-221.

(e) State-Shared Revenues. Although the procurement of revenues distributed to municipalities by the state on a shared basis requires no action on the part of the council, elected municipal officials should be aware of these sources of revenue. Cities and towns may, depending upon circumstances, receive a share of the following state taxes: Rebuild Alabama motor fuel taxes, seven-and five-cent per gallon gasoline tax, four-cent per gallon tax on gasoline and lubricating oil, state inspection fee on motor fuels and motor oil, motor vehicle license tag tax, ABC store profits, table wine tax, uniform beer tax, two-percent sales tax on ABC store sales, privilege tax on oil and gas production, TVA in-lieu-of-tax payments, and coal taxes. Municipalities also receive annual payments from the State Oil and Gas Trust Fund. It is important to note that some state-shared revenues have state restrictions as to how such money may be deposited and spent. More detailed information on these shared revenues can be found in *Selected Readings for the Municipal Official*.

(f) True Sales Tax. In 1969, the Legislature authorized municipalities to convert their gross receipts license tax in the nature of a sales tax to true sales and use taxes on the consumer rather than on the seller. Sections 11-51-200

through 11-51-207, Code of Alabama 1975. All municipalities are authorized to collect their true sales taxes and gross receipts license taxes in the nature of sales taxes with municipal personnel or through the use of the Alabama Department of Revenue or a private collector. Sections 11-51-180 through 11-51-185, Code of Alabama 1975.

(g) Remote Sellers Sales Tax. The “Simplified Sellers Use Tax Remittance Act”, codified at Sections 40-23-191 to 199.3, Code of Alabama 1975, allows “eligible sellers” to participate in a program to collect, report and remit a flat 8 percent Simplified Sellers Use Tax (SSUT) on sales made into Alabama. An “eligible seller” is one that sells tangible personal property or a service into Alabama from an inventory or location outside the state and who has no physical presence and is not otherwise required by law to collect tax on sales made into the state. The term also includes “marketplace facilitators” as defined in Section 40-23-199.2(a)(3), Code of Alabama 1975, for all sales made through the marketplace facilitator’s marketplace by or on behalf of a marketplace seller. Section 40-23-193, Code of Alabama 1975, provides that the collection and remittance of the SSUT tax relieves the eligible seller and the purchaser from any additional state or local sales and use taxes on the transaction.

The proceeds from the SSUT 8 percent tax are distributed as follows:

- 50% is deposited to the State Treasury and allocated 75 percent to the General Fund and 25% to the Education Trust Fund.
- The remaining 50% shall be distributed 60% to each municipality in the state on the basis of the ratio of the population of each municipality to the total population of all municipalities in the state as determined in the most recent federal census prior to distribution and the remaining 40% to each county in the state on the basis of the ratio of the population of each county to the total population of all counties in the state as determined in the most recent federal census prior to distribution.

(h) Franchises. Section 11-43-62, Code of Alabama 1975, and Section 220, Alabama Constitution, 1901 provide authority for cities and towns to require that franchise fees be paid by public utilities as a condition of franchise rights to use municipal streets. Such contracted franchise fees are separate from the municipal licensing power. See Section 11-49-1, Code of Alabama 1975, for additional provisions relating to franchising of electric suppliers.

Sec. 69. Credit Card Payments

The use of credit cards for any payments made to a municipal office, department, agency, board or commission may be authorized by the municipal governing body in which the office, department, agency, board or commission is located as provided in Sections 11-103-1 through 11-103-5, Code of Alabama 1975, and if authorized, shall be accepted pursuant to rules and regulations promulgated by the municipal governing body in which the office, department, agency, board or commission is located.

Except as otherwise provided, the law shall be construed to allow acceptance of credit card payments of any types of amounts payable to a municipality as authorized by the municipal governing body, including but not limited to, taxes, license and registration fees, fines and penalties. For purposes of the law, the term “credit card” shall include credit cards, charge cards and debit cards issued by any bank, foreign lender, domestic lender or credit card bank as defined in Section 5-20-3, Code of Alabama 1975.

Sec. 70. Borrowing

(a) Debt Limit – Municipalities under 6,000 in Population. The borrowing power of cities and towns of less than 6,000 in population is limited to 20 percent of the value of property located therein as assessed for state and county taxation. This limit may be exceeded by an amount equal to three percent of such valuation for the purpose of constructing or purchasing water, gas, electric or sewer utilities or for improving streets. This limitation does not affect the authority to make temporary loans to be paid within one year, made in anticipation of taxes, and not exceeding one-fourth of the annual revenues of the municipality. Amendment 268 (Section 225) Alabama Constitution, 1901.

Further exclusions from obligations charged against the debt limit of municipalities under 6,000 are those incurred

for the purpose of providing sanitary or stormwater sewers or street or sidewalk improvements where the cost is assessed in whole or in part against the property benefited and obligations incurred for providing schoolhouses where such obligations are secured by pledge of a special tax deemed adequate by the council to serve the principal and interest of the debt. Amendment 126 (Section 225.01) Alabama Constitution, 1901.

(b) Debt Limit – Cities Over 6,000 in Population. The borrowing power of cities of 6,000 or more, is limited to 20 percent of the value of property located therein as assessed for state and county taxation. Temporary loans are excepted in the same manner as provided for municipalities under 6,000 as discussed above. Obligations incurred for the purpose of providing schoolhouses, water works and sewers and obligations issued for the purpose of street and sidewalk improvements where the cost is assessed in whole or in part against the property are excepted from obligations figured in the computation of the city’s total debt for this purpose. Amendment 268 (Section 225) Alabama Constitution, 1901.

(c) Temporary Borrowing. A municipality may borrow for any purpose or purposes by means of negotiable note, nonnegotiable warrant, or certificates of indebtedness, signed by the mayor and attested by the clerk, payable not later than 12 months after the date of issuance, and pledge to the payment thereof license taxes, ad valorem taxes, rents or revenues from water or any other taxes or revenues due to the city within one year. Such debts may be renewed. Sections 11-47-1 and 11-47-4, Code of Alabama 1975. Borrowing under these provisions requires no election and is done by resolution of the council authorizing such action.

In addition to this method, the council may issue evidences of indebtedness in the form of interest-bearing warrants, notes or bills payable, maturing at such times as the council may determine, not exceeding 30 years from the date of issue and agree to annually levy, collect and apply to the payment thereof, any special tax or license authorized on the date of the agreement. Such warrants may be issued for any lawful purpose and no election is required for their issuance. A municipality may give a mortgage or deed of trust with such warrants where they are issued for the purpose of constructing a public building or utilities system. Section 11-47-2 and 11-47-3, Code of Alabama 1975.

The debt limit provisions of the constitution apply to debts created under this authority to create temporary obligations. The issuance of warrants, due within 30 years, is the most commonly used method of general obligations financing of small to medium-sized projects.

(d) Bonds. Large projects requiring amortization over a long period of time are generally financed by the issuance of bonds. There are two types of bonds – **general obligation bonds** which are secured by the general credit of the municipality and **revenue bonds** which are payable solely from the revenues of the project they are used to finance. An election must be held before the council may issue general obligation bonds, unless the proceeds of such bonds are for refunding a former issue or for the construction of street and sidewalk improvements or sanitary or stormwater sewers, the cost of which is to be assessed in whole or in part against the property abutting the improvement. General obligation bonds are subject to the debt limit restrictions noted above and may not be payable later than 30 years from the date of issuance. Section 222, Alabama Constitution, 1901; Section 11-81-6, Code of Alabama 1975.

Revenue bonds are not charges against the general credit of the municipality and do not affect the revenues of the city derived from its taxing power. No election is required and debts created in this manner are not chargeable against the municipal debt limit. They may be made payable over a period of 50 years.

The governing body of any county, city or town or the governing body of any municipal authority which authorizes the issuance of refunding or funding bonds may exercise all powers deemed necessary by the governing body for the execution and fulfillment of any plan or agreement for the settlement, adjustment, refunding or funding of the indebtedness of the county, city, or town not inconsistent with the provisions of law relating to the issuance of refunding or funding bonds. Section 11-81-3, Code of Alabama 1975.

The numerous details involved in the issuance of bonds are technical and beyond the intended scope of this handbook. Generally, a municipality handles the issuance of bonds through a firm of investment bankers acting as fiscal agent for the municipality. The council should contact several such firms before taking final steps in such financing.

Sec. 71. Adopting the Budget

For most cities and towns, there are no legal requirements that mandate a city or town operate on a budget. Nevertheless, municipal administration has become so complex that most cities and towns have adopted the practice of operating on a budget. Budgeting is financial planning which involves detailed projection of revenues, expenditures and borrowing for a specified fiscal period.

Usually the mayor, at the council's request, submits recommendations which amount to a tentative budget for the coming fiscal year. Customarily, the mayor, as budget officer, and the council meet in conference to discuss, item by item, provisions of the tentative budget. After the conference, the council must determine the final form of the budget. At the beginning of the fiscal year, the council must adopt a resolution making appropriations to the various departments as established in the budget and adopt new ordinances needed to provide additional revenues which may be required to finance the appropriations.

The importance of a good municipal budget cannot be overemphasized. A budget is a plan for the municipal economy for the coming year. In the budget process, the council must review the efficiency of operations during the past year. This review often reveals ways to save money – money that could be used for improvement projects and other capital requirements. *See*, Section 29 of this handbook.

Sec. 72. The Municipal Audit

The mayor is required to have an annual audit made of the financial records of the municipality. The mayor must submit the audit to the council at the first meeting after its completion. The audit report must be spread upon the minutes of the council. *See*, Section 28 of this handbook.

Sec. 73. Ordinances and Resolutions

(a) Authority to Adopt Ordinances and Resolutions. A municipality is authorized to adopt ordinances and resolutions to carry into effect the powers and duties conferred on it by statute and to provide for the safety, preserve the health, promote the prosperity, improve the morals, order, comfort and convenience of the inhabitants of the municipality. Section 11-45-1, Code of Alabama 1975.

(b) Restrictions on Power to Adopt Ordinances and Resolutions. A municipality may not adopt ordinances which are inconsistent with the general laws of the state. Section 89, Alabama Constitution, 1901. In construing this restriction, the courts have held that a municipality may not make lawful that which the state has declared unlawful, but that, under its police power, a municipality may declare unlawful those acts which are not unlawful under statute, unless the statute specifically precludes the municipal power in this respect. *Birmingham v. West*, 183 So. 421 (Ala. 1938); *Ex parte Cowert*, 9 So. 225 (Ala. 1891). A municipality may provide regulation within the municipality additional to that prescribed by statute, as long as an ordinance does not contravene a statute. AGO 2005-114.

A municipal governing body cannot, by agreement, bind its successors to forego or to exercise their legislative powers. AGO 1997-118.

Ordinances must be reasonable and certain and not left to the discretion of the officers or the court which, after conviction, imposes penalties for violations. In adopting an ordinance, the council may not delegate the exercise of legislative discretion to an administrative officer to determine if an ordinance has been violated. *Eidge v. Bessemer*, 51 So. 246 (Ala. 1909); *Sanford Service Co. v. Andalusia*, 55 So.2d 854 (Ala. Civ. App. 1951).

A determination regarding whether a municipal ordinance is constitutional can only be made by the courts. AGO 2000-104.

(c) Penalties for Violations. To enforce obedience to most ordinances, a municipality has the authority to provide penalties by fine not exceeding \$500 and by imprisonment or hard labor not exceeding six months, one or both. However, there are several exceptions to this authority provided by state law.

(d) Manner of Adopting Ordinances and Resolutions of a Permanent Nature. An ordinance should begin with the following phrase: "Be It Ordained by the City [or Town] Council of _____ as follows:" While it has been held to be directory rather than mandatory, this opening style of an ordinance is prescribed by Section 11-45-2, Code

of Alabama 1975. *Glenn v. Prattville*, 71 So. 75 (Ala. Civ. App. 1916).

No ordinance or resolution intended to be of permanent operation shall be adopted by the council at the same meeting at which it is introduced unless all councilmembers – including the mayor in municipalities with populations of less than 12,000 – who are present at the meeting vote unanimously in favor of suspending the rules to allow immediate consideration of the measure. AGO 2008-022. Consent for immediate consideration must be shown by a vote taken by “yeas and nays,” with the names of the members voting entered on the minutes. This provision has been held to be mandatory. *Cooper v. Valley Head*, 101 So. 874 (Ala. 1924); *Thompson v. Wingard*, 34 So.2d 606 (Ala. 1948); *Bush v. Greyhound Corporation*, 208 F.2d 540 (5th Cir. 1953). An ordinance intended to be of permanent operation that is introduced at a regular council meeting and does not receive unanimous consent for immediate consideration may subsequently be considered by the council at a properly called special meeting. AGO 2004-053.

If unanimous consent for immediate consideration is obtained, the council must conduct a separate vote on the ordinance. In cities of 12,000 or more in population, a majority of the members elected to the council must vote in favor of an ordinance or resolution which is intended to be of permanent operation, on its final passage, before it may become law.

In all towns and in cities of less than 12,000 population an affirmative vote of a majority of the whole number of members of the council to which the corporation is entitled, including the mayor, shall be required to enact any ordinance or resolution intended to be of permanent operation. Section 11-45-2, Code of Alabama 1975.

It must be remembered that in cities and towns of less than 12,000 in population, the mayor is a member of the council and his or her consent for immediate consideration should be recorded with the consent of the councilmembers. Also, the mayor is included as a member of the council in determining the vote necessary for passage of the ordinance.

See, Section 38(c) of this handbook for an explanation of the term “ordinance or resolution intended to be of permanent operation.”

(e) Authority of the Mayor Relating to the Adoption of Such Ordinances. *See*, Section 38 of this handbook.

(f) Record of Ordinances. As soon as practicable after their passage, all ordinances must be recorded in a book kept for that purpose and the ordinances must be authenticated by the signature of the clerk. Section 11-45-8(a), Code of Alabama 1975.

(g) Publication of Ordinances. All ordinances of a general or permanent nature, except as hereinafter provided, shall be published in some newspaper of general circulation published in the municipality. If no such newspaper is published in the municipality, such ordinances may be published by posting copies thereof in three public places within the municipality, one of which shall be at the post office or the mayor’s office in such city or town. In the event no newspaper is published in the municipality and there is a newspaper published in the county in which the municipality is located having a general circulation in the municipality, at the option of the governing body of such municipality, the ordinance may be published in such newspaper.

Note that Section 11-45-8 (b)(2), Code of Alabama 1975, provides an alternative method of publishing zoning, planning, franchise and license ordinances. For more information, see Subsection (o), below.

In towns having a population of less than 2,000 inhabitants, as shown by the 1950 federal census, the governing body of such town shall have the option of publication of the ordinance by posting as above provided, or in a newspaper published in the town, or in the county having a general circulation in the town. Section 11-45-8(b)(1), Code of Alabama 1975. When publication is made by newspaper, insertion in only one issue is necessary. *See also* AGO 2011-005.

A newspaper is published at the place where it is entered into the post office and where it is first put in circulation and not the place where it is printed. AGO 1995-127. Whether a newspaper whose offices are outside of the municipality but that is circulated within the municipality, is a newspaper in general circulation published in the municipality for legal advertising purposes, under Section 11-45-8(b) of the Code of Alabama 1975, is a question of fact to be determined by the city council. AGO 2002-198. *See also*, the opinion at 143 Q. Rep. Att. Gen. 32. Legal notices published in newspapers mailed under a publications class rate (which replaces the second class rate effective July 1,

1996) are in compliance with state requirements for publication. AGO 1996-182.

Several opinions of the Attorney General define the term “Newspaper of general circulation”. A newspaper of general circulation for purposes of publishing legal notices must contain some items of general interest. Although a newspaper may be primarily directed to a particular locality or group, it must nevertheless contain some items of interest to persons who do not live in that locality or who are not members of that group including, but not limited to, national, state or county news, editorials, human interest stories and advice columns (citing *Great Southern Media v. McDowell County*, 284 S.E.2d 457 (N.C. 1981)). AGO 2002-043. *See also*, AGO to Hon. Russell B. Johnson, dated July 5, 1960.

(h) Clerk’s Certificate of Publication. The clerk is required to append a certificate stating the time and manner of publication to the record of the ordinance. Section 11-45-8(b)(4), Code of Alabama 1975.

(i) Effective Date of Ordinance. When the ordinance is published in the newspaper, it shall take effect from and after the time it shall first appear therein. When the ordinance is published by posting, it shall take effect five days thereafter. The only exception to the above effective dates is when the ordinance itself sets out a different effective date. When an ordinance is published by posting, the municipality shall take reasonable steps to maintain the posting for not less than 30 days. In addition, if the municipality maintains an Internet website, the municipality, at a minimum, shall include a copy of the ordinance or notice of the substance of an ordinance on its website for 30 days. Section 11-45-8(b)(3), Code of Alabama 1975.

(j) Franchise Ordinances. The publication of ordinances granting franchises must be paid for by the party or parties to whom the franchise is granted. Section 11-45-8(b)(5), above.

(k) Ordinances Exempted from Publication. Ordinances authorizing or ratifying contracts with public utilities for services for a specified time, and ordinances authorizing the issuance of bonds, debentures, notes, warrants and other obligations are specifically exempt from the publication requirements of Section 11-45-8(d), above.

(l) Zoning Ordinances. The publication of zoning ordinances is provided for in Sections 11-52-77 and 11-52-78, Code of Alabama 1975. These sections give a municipality an option of how to publish zoning ordinances. First, the municipality may require publication of the proposed ordinance in a newspaper of general circulation which is published in the municipality or, if there is no such newspaper, the ordinance must be posted in four conspicuous places within the municipality. 85 Q. Rep. Att. Gen. 16. The municipality must publish the entire ordinance followed by the publication of a synopsis of the ordinance one week later and then hold a public hearing before the ordinance can be voted on. At least 15 days must pass between the last notice and the public hearing and vote on the zoning ordinance.

As an alternative, municipalities may publish notice for three consecutive weeks in a newspaper of general circulation in the county. In Act 96-241, the Legislature clarified its intent that this provision requires publishing the notice at least once a week for three consecutive weeks. The notice must include the following information:

- a provision that the council will consider a zoning ordinance or an amendment to its existing zoning ordinance, and that a copy of the proposal is available for public inspection at the city or town hall;
- the location of the city or town hall;
- a map showing the location of the property proposed to be zoned or rezoned;
- a general description of the property proposed to be zoned or rezoned, including the common name by which the property is known; and
- the time and place where persons opposing or favoring the zoning or rezoning may present their views to the council.

The notice must be published in a standard format in the legal section of the newspaper. In addition, the same notice must be published one time in the regular section of the newspaper in the form of a one-quarter page advertisement.

Both methods require notice and a public hearing before adoption of a zoning ordinance. Until one of these methods of notifying the public is followed, no adoption of a zoning ordinance or an amendment thereto will be valid.

AGO to Hon. Terry G. Snow, May 19, 1976. Further, after adoption, the ordinance must be published as required by law.

(m) Public Improvement Ordinances. The publication of public improvement ordinances is provided for in Section 11-48-7, Code of Alabama 1975. For these ordinances, there is an added requirement that a copy of the ordinance be sent by registered or certified mail to the last persons listing the affected property for city or town taxation.

(n) Adopting Ordinances by Reference. The publication of long ordinances setting out detailed regulations could prove extremely expensive for a municipality. To relieve some of the costs in such cases, the legislature has provided for municipalities to adopt by reference, without setting out at length in the ordinance, rules and regulations which have been printed as a code in book or pamphlet form for: (1) construction, erection, alteration or improvement of buildings; (2) installation of plumbing and plumbing fixtures; (3) installation of electric wiring; (4) installation of gas or gas fixtures; (5) fire prevention; (6) health and sanitation; (7) milk and milk products; (8) parks; (9) airports; (10) water works and sewers; (11) traffic; (12) mechanical; (13) swimming pools; (14) housing; (15) standard code for elimination and repair of unsafe buildings and other similar codes.

Before adopting such a code in book or pamphlet form, the governing body of a municipality must, by resolution, call for a public hearing on the proposal. At least 15 days' notice must be given of the time, place and purpose of the hearing. Notice of the hearing can be accomplished by publication of the resolution once a week for two successive weeks or by posting notices of such for the length of time required for the publication or ordinances of a permanent nature (see above). The resolution must provide that not less than three copies of the code under consideration shall be filed in the office of the municipal clerk, open for public inspection, for not less than 15 days prior to the public hearing. Section 11-45-8(c), Code of Alabama 1975.

The authority granted by this provision has amounted to great savings for Alabama cities and towns. The council must be cautious and follow very closely the prescribed procedure. The ordinance by which the council adopts a standard code by reference may be enacted at the time of the public hearing or thereafter and it must be published as other ordinances of a permanent nature. The League has a special report covering the procedure to be followed for this purpose. That report is available to any official requesting it.

(o) Alternate Publishing Procedure for Ordinances relating to planning or zoning or the licensing or franchising of businesses. All ordinances of a general and permanent nature relating to planning or zoning or the licensing or franchising of businesses, as an alternative to the publishing requirements of subsection (g), above, may be published in a synopsis form in some newspaper of general circulation published in the municipality provided that the synopsis, at a minimum, includes the following information:

a. A summary of the purpose and effect of the ordinance.

b. If the ordinance relates to planning or zoning, a general description of the property or properties affected by the ordinance including the common name by which the property or properties are known and the substance of the ordinance.

c. If the ordinance relates to the licensing of businesses or the granting of a franchise, the categories of businesses affected by the ordinance and the substance of the ordinance.

d. The date upon which the ordinance was passed and, if different from the date of publication, the effective date of the ordinance.

e. A statement that a copy of the full ordinance may be obtained from the office of the city or town clerk during normal business hours. Section 11-45-8 (b)(2), Code of Alabama 1975.

Sec. 74. Codification of Ordinances

The council has the authority to revise and codify the ordinances of the municipality and to adopt a code of ordinances by reference. Section 11-45-7, Code of Alabama 1975. Over a period of years, a municipality will adopt numerous ordinances which need to be collected, indexed and simplified. In addition to granting authority for this

purpose, Section 11-45-7 gives a municipality the authority to adopt, by reference, the final draft of the printed code without publication at length in a newspaper. Municipal codes adopted under the authority of this section may be permanently codified and recorded in a loose-leaf notebook – bound volumes are not required. AGO to Ed E. Reid, February 18, 1955.

Sec. 75. Municipal Contracts

See, Section 32 of this handbook.

Sec. 76. Municipal Liability

Prior to July 10, 1975, Alabama municipalities were liable for injuries caused by wrongful or negligent performance of their corporate or ministerial duties, but they were immune from suit for injuries caused by the wrongful or negligent performance of their governmental duties. On July 10, 1975, the Alabama Supreme Court, in the case of *Jackson v. Florence*, 320 So.2d 68 (Ala. 1975), abolished the doctrine of governmental immunity for Alabama cities and towns. The court made it clear the decision applied only to causes of action arising after July 10, 1975. The *Jackson* decision opened the door to municipal liability in the performance of such functions as police, fire, recreation, maintenance, museums, sanitation and all other functions in the same manner as a private corporation. The decision has made risk management a critically-important aspect of municipal operations.

Section 11-47-24, Code of Alabama 1975, requires municipalities to provide defense and indemnity for employees who may be sued for damages arising out of the performance of their official duties and while operating a motor vehicle or equipment engaged in the course of their employment. In no event shall a municipal corporation be required to provide defense and indemnity for employees who may be sued for damages arising out of actions which were either intentional or willful or wanton. A municipality cannot be held liable for the intentional torts of its employees pursuant to Section 11-47-190, Code of Alabama 1975. *Wheeler v. George*, 39So.3d 1061(Ala. 2009).

A municipality is not required to pay the legal expenses incurred by an employee to appeal a disciplinary action to the personnel board. A municipality may pay the legal fees if the city council determines that: (1) the city has a proper corporate interest in the action; (2) the actions allegedly committed were done in the discharge of official duties; and (3) the official acted honestly and in good faith. A city may also pay the legal expenses in anticipation of litigation if the city council determines that it is in the best interest of the city to settle the anticipated litigation. AGO 2001-210.

A county commission may reimburse a county official for legal fees if the county commission determines (1) the lawsuit against the county official is based upon and grows out of the performance of a duty in connection with his or her office, (2) the suit does not involve a willful or wanton personal tort, (3) the official was not guilty of a criminal offense, (4) it is in the proper interest of the county to expend county funds for the purpose of defending the official because of the risk of future litigation against the county itself arising out of the same or similar circumstances, and (5) the official in committing the acts in the discharge of the duties that are the subject of litigation must have acted honestly and in good faith. AGO 2002-061. **NOTE:** While this opinion relates to county commissions, the same test applies to city councils. *See, Montgomery v. Collins*, 355 So.2d 1111 (Ala. 1978).

State legislation limits municipal liability to \$100,000 per person, \$300,000 per occurrence and \$100,000 for property damage. This is the maximum municipal liability in state tort actions, regardless of whether the municipality is paying as a result of direct liability or through indemnification. *See*, Sections 11-93-1 through 11-93-3, Code of Alabama 1975. The limits do not apply in tort actions brought in federal court. Statutes which capped damage awards against cities, towns, and governmental entities at \$100,000 did not apply to a personal injury action which was brought against a police officer in his individual and personal capacity. Municipal peace officers are deemed to be officers of the State for purposes of the statute that affords them immunity when sued in their individual capacity. Whether they have such immunity depends upon the degree to which the action involves a State interest. *Suttles v. Roy*, 75 So.3d 90 (Ala.2010). Directors of nonprofit corporations or associations, including members of municipal boards, are exempt from individual civil liability for actions arising from the line and scope of their duties. Sections 10-11-1 through 10-11-5, Code of Alabama 1975. Punitive damages may not be recovered against a municipality. Sections 6-11-26, Code of Alabama 1975.

The Alabama Municipal Insurance Corporation was formed by the League in 1989 to provide liability, property and casualty insurance for its members. Information about obtaining liability insurance coverage is available upon

request from League Headquarters.

For more detailed information on the subject of municipal liability see the article entitled “Municipal Liability” in the League’s *Selected Readings for the Municipal Official* (2020 ed.).

Sec. 77. Claims against Municipalities

All claims against municipalities (except bonds and interest coupons and claims for damages) shall be presented to the clerk for payment within two years from the accrual thereof or shall be barred. Claims for damages growing out of torts shall be presented within six months from the accrual thereof or shall be barred. Section 11-47-23, Code of Alabama 1975.

No recovery can be had against a municipality on claims for **personal injuries** unless a **sworn statement** is filed with the clerk by the injured party or his or her personal representative, stating substantially the manner in which the injury was received; the day, time and place where the accident occurred and the damages claimed. Such claims must be filed within six months from accrual thereof. Section 11-47-192, Code of Alabama 1975.

Suits against municipalities can only be brought in the county where the injury occurred or in the county in which the municipality is located. Section 6-3-11, Code of Alabama 1975. If a municipality is physically located in two counties, venue for a premises liability suit against the municipality is appropriate in either county, regardless of where the municipality’s seat of government is located. *Ex Parte Haleyville*, 827 So.2d 778 (Ala. 2002).

A 10-year statute of limitations governs actions brought by public agencies against public officers for nonfeasance, misfeasance, or malfeasance. Section 6-2-33, Code of Alabama 1975. Other statutes of limitations govern actions filed by individuals against public officers.

Section 6-5-336, Code of Alabama 1975, grants immunity to municipal volunteers engaged in certain activities for governmental entities. However, this immunity does not protect the governmental entity from liability under the doctrine of respondeat superior.

Sec. 78. Suits Challenging Municipal Ordinances

In any proceeding which involves the validity of a municipal ordinance or franchise, the municipality shall be made a party and shall be entitled to be heard. If the ordinance or franchise is alleged to be unconstitutional, the attorney general of the state shall also be served with a copy of the proceeding and is entitled to be heard. Section 6-6-227, Code of Alabama 1975.

Sec. 79. Municipal Property – Liens on and Levy and Sale of

All property, real or personal, belonging to the several counties or the municipal corporations in this state and used for county and municipal purposes shall be exempt from levy and sale under any process or judgment whatsoever. Section 6-10-10, Code of Alabama 1975. The authorities are many and uniform against the right to declare a lien upon public property of a municipal corporation held and used for governmental purposes. *Nunnally v. Dorand*, 18 So. 5 (Ala. 1895).

Sec. 80. Prohibitions Governing Councilmembers

The limitations and restrictions against councilmembers are covered by Section 37 of this handbook which explains prohibitions against municipal officers. If a salary has been established for councilmembers, then the office is one of profit and is subject to the limitations imposed by Section 280 of the Alabama Constitution of 1901 which prohibits the holding of two offices of profit by the same person at the same time.

Sec. 81. Sales Tax Liability

A municipality is not required to pay the state sales tax on its purchases. Section 40-23-4(11), Code of Alabama 1975. Municipalities are not required by law to secure a sales tax exemption number.

Sec. 82. Rewards

When a high crime or misdemeanor is committed in any municipality, its governing body may offer publicly a reward not exceeding \$3,000 to the person who gives information leading to the arrest and conviction of the guilty person. The reward shall be paid to the informer by the municipality upon order of the court before which such conviction is had. Section 15-9-2, Code of Alabama 1975.

Sec. 83. Escheat Law

Municipalities and municipal boards are exempt from the Uniform Disposition of Unclaimed Property Act (state escheat law). Section 35-12-73(a)(2), Code of Alabama 1975. See also AGO 2009-083.

Sec. 84. Relocation of Utilities

Costs of relocating utility facilities due to state construction of a federally-funded highway may be reimbursable. See, Section 23-1-5, Code of Alabama 1975.

Sec. 85. Firearms

(a) Regulation of Firearms. Except as provided below or otherwise prohibited by state or federal law, open carry of a firearm is permitted and concealed carry of a firearm is authorized for those with a proper permit. (See Section 7 of Act 2013-283). Section 11-45-1.1 of the Code of Alabama was repealed by Act 2013-283 and the regulation of firearms by local governments was further restricted. Except as otherwise provided in Act 2013-283, or as expressly authorized by Alabama statute, the regulation of firearms ammunition and firearms accessories is reserved to the State Legislature. Section 13A-11-61.3, Code of Alabama 1975. Further, the authority of a political subdivision to regulate firearms, ammunition, or firearm accessories shall not be inferred from its proprietary authority, home rule status, or any other inherent or general power. As discussed in Section 64(u) of this handbook, employers may impose policies regulating or prohibiting an employee's carrying or possession of firearms, firearm accessories, or ammunition during and in the course of the employee's official duties.

Municipalities may only restrict the possession of firearms in the following locations:

- a. Inside the building of any police department.
- b. Inside the premises of any jail or any correctional or detention facility including a community corrections facility.
- c. Inside a courthouse or courthouse annex or any building in which a city council is currently holding a regularly scheduled or specially called meeting.
- d. Inside any facility hosting a school or professional sporting event (that doesn't involve firearms) unless the person has a permit.
- e. Inside any municipally-owned building or facility that the municipality wishes to restrict access with a firearm without permission, if access of unauthorized persons and prohibited articles is limited by (1) the continuous posting of guards and (2) the use of security devices such as scanning devices, key cards, turnstiles or other physical barriers to entrance.

Except as otherwise provided, any firearm on the premises of a facility listed above must be kept from ordinary view and locked within a compartment or inside the interior of the person's motor vehicle or in a compartment securely affixed to the motor vehicle. Section 13A-11-61.2, Code of Alabama 1975.

Municipalities may regulate and prohibit the discharge of firearms within the limits of the municipality. Provided, however, that the discharge of a firearm in defense of one's self or family, or in defense of one's property, may not be construed to be a violation of state law or any local ordinance. Section 13A-11-61.3(g)(11), Code of Alabama 1975.

(b) Disposal of Abandoned, Condemned or Forfeited Firearms. There is no provision for the sale of pistols condemned under Section 13A-11-84, Code of Alabama 1975. Therefore, firearms condemned by law enforcement

entities may not be sold by a municipality, even where the proceeds from the sale would be used for law enforcement purposes. AGO 2002-241. A municipal police department has the authority to exchange condemned firearms given to the police department pursuant to Section 20-2-93, Code of Alabama 1975 if the firearms would be exchanged with a licensed firearms dealer that the police department could use. The exchange for credit would not be subject to the bid law. Further, the police department must obtain a court order allowing the sale or trade of any component parts remaining after firearms are destroyed or dismantled under Section 13A-11-84(b), Code of Alabama 1975. AGO 2003-182. A Sheriff or Chief of Police may sell or trade forfeited guns seized for violation of the Alabama Uniform Controlled Substances Act under Section 20-2-93, Code of Alabama. Proceeds from sales must be deposited in the general fund and made available to the department upon requisition of the chief law enforcement official of such department. Regarding abandoned and other guns, Section 11-47-116(a), Code of Alabama authorizes municipalities to pass an ordinance to provide for the taking up, storing and sale of abandoned and stolen property. AGO 2011-070. See also AGO 2009-090. **Note:** The League recommends contacting Alcohol, Tobacco, and Firearms (ATF) before exchanging any weapons.

Sec. 86. Rural Scenic Right-of-Way Plan.

Any Class 7 or 8 municipality may establish a Rural Scenic Right-of-Way Plan for the use for recreational purposes of the right-of-way along municipal streets and county roads under certain conditions. Section 11-69-1, Code of Alabama 1975.

Sec. 87. Municipal Option Elections

Any municipality having a population of 1,000 or more inhabitants may change its classification from dry to wet or from wet to dry by a municipal option election called upon presentation of a petition signed by 30 percent of the number of voters voting in the last preceding general election of the municipality. The election will determine whether or not alcoholic beverages may be legally sold within the municipality. Sections 28-2A-1 through 28-2A-3, Code of Alabama 1975.

In addition to the procedure established above, the governing body of any Class 1, 2, or 3 municipality or any municipality having a population of 18,500 or more, which is legally wet, and which has previously annexed or hereinafter annexes territory into the municipality which lies in a county which is legally dry, shall, before the annexed territory becomes wet, pass an ordinance calling for a citywide referendum to be held to determine whether the annexed portions of the municipality shall be legally wet as herein provided. If the governing body of the municipality adopts an ordinance determining that all of the area within the corporate limits of the municipality should be legally wet, and if this decision is approved at a subsequent referendum called to decide this issue, alcoholic beverages may be lawfully sold, distributed and consumed within the newly annexed portions of corporate limits of the municipality. If a municipality adopts such an ordinance and if the results of the subsequent referendum are in favor of making the annexed portions of the municipality wet as evidenced by a majority of the electors of the municipality voting in the referendum voting in favor of the proposition, all of the provisions of this title, relating to alcoholic beverages in wet counties, including Chapters 3, 3A, 6, and 7, shall be immediately put into operation with respect to and effective throughout the corporate limits of the municipality. If, however, after the passage of an ordinance, the called referendum shall fail, the annexed portions of the municipality shall remain legally dry, but the vote shall not affect the wet status of those portions of the municipality which were legally wet before the referendum was conducted. Section 28-2A-20, Code of Alabama 1975.

Sec. 88. Public Safety

Several statutes in the Alabama Code address municipal public safety functions.

(a) Peace Officers' Standards Act. Sections 36-21-40 through 36-21-50, Code of Alabama 1975, created the Alabama Peace Officers Standards and Training Commission (POST). The Act prescribes minimum standards, including educational standards, for all law enforcement officers including municipal police officers. The commission is charged with the duty of enforcing the provisions of the act.

Each chief of police must annually complete 20 hours of executive level continuing education courses approved by the Peace Officers' Standards and Training Commission. Police officers, other than the chief of police, must obtain 12 hours of continuing education approved by Peace Officers Standards and Training Commission. Section 36-21-51,

(b) Reserve Law Enforcement Officers. Municipalities are authorized to appoint, with or without compensation, one or more reserve law enforcement officers to assist or aid full-time or part-time certified law enforcement officers. Such reserve law enforcement officers shall serve at the pleasure of the municipal governing body. State law establishes the qualifications for municipal reserve law enforcement officers and limits the functions which they may perform. Section 11-43-210, Code of Alabama 1975.

(c) Firefighters' Standards Act. Sections 36-32-1 through 36-32-12, Code of Alabama 1975, created the Alabama Firefighters' Personnel Standards and Education Commission to enforce certain minimum standards, including educational standards, for all paid employees of municipal fire departments.

(d) Municipal Ambulance Authority. Sections 11-87-1 through 11-87-5, Code of Alabama 1975, authorize counties and municipalities to establish separate or joint nonprofit ambulance services or to contract for such services, to appropriate funds for such services and to charge limited fees for such services. Sections 22-18-1 through 22-18-8, Code of Alabama 1975, provide for the licensing of ambulance drivers, including municipal ambulance drivers. The act and the regulations promulgated under the act are enforced by the Division of Emergency Medical Services of the State Department of Public Health.

(e) Reimbursement of Training Expenses. In those instances in which a law enforcement officer, certified corrections officer, fire protection personnel or firefighter of any municipality, county, sheriff's department, fire district or the state is employed by the state of Alabama, any county, sheriff's department, fire district or another municipality, within 24 months after completing the training requirements mandated by Article 3 of Chapter 21 of Title 36 of the Code of Alabama 1975 (commencing with Section 36-21-40) or by Chapter 32 of Title 36 (commencing with Section 36-32-1), the total expense of the training, including but not limited to, salary paid during training, transportation costs paid to the trainee for travel to and from the training facility, room, board, tuition, overtime paid to other employees who fill in for the trainee during his or her absence and any other related training expenses, shall be reimbursed to the municipality, county, fire district or state which paid for the training. The municipality, county, fire district or state which paid for the training shall submit an itemized sworn statement to the new employer of the law enforcement officer, fire protection personnel or firefighter, as the case may be, shall demand payment thereof and may enforce collection of the obligation through civil remedies and procedures. The term "law enforcement officer" shall have the same meaning as in Section 36-21-40 and the term "fire protection personnel and firefighter" shall have the same meaning as in Section 36-32-1. *See*, Section 36-21-7, Code of Alabama 1975. The 24-month period for reimbursing police training costs in Section 36-21-7, Code of Alabama 1975, is computed from the time an individual completes the POST training. AGO 1997-117. Fringe benefits a police officer receives are not part of his or her salary. While these benefits are not part of the salary, they must be included in the training costs which must be reimbursed by a non-training agency which hires an officer under Section 36-21-7, Code of Alabama 1975. AGO 1998-064.

Similar reimbursement provisions exist for municipal court clerks or magistrates (Section 12-14-53, Code of Alabama 1975); water and wastewater operators (Section 22-25-16, Code of Alabama 1975) and ambulance service operator, ambulance driver, ambulance attendant, ambulance driver-attendant or emergency medical technician (Section 22-18-8, Code of Alabama 1975).

(f) Uniform Commercial Drivers License. State and federal law require drivers of commercial motor vehicles to have a Uniform Commercial Drivers License. Section 32-6-49.1, et seq., Code of Alabama 1975.

(g) Homeland Security and Disaster Assistance. The Alabama Homeland Security Act of 2003 sets out the duties of municipal officials as to homeland security. Sections 31-9A-1 through 31-9A-16, Code of Alabama 1975.

A municipal governing body is authorized to provide assistance, by means of gift or loan, to the governing body of another municipality or county located within the state when such county or municipality has been declared a disaster area by the governor or by the president of the United States. Such assistance may be in the form of funds not otherwise appropriated, services, or other aid as determined by the governing body offering assistance. The terms upon which such assistance is offered should be mutually agreed upon, reduced to writing and approved by the governing bodies of both the assisting government and the recipient government. Section 11-80-9, Code of Alabama 1975.

The legislature created the Alabama Disaster Recovery Program and the Alabama Disaster Recovery Program

Fund to provide assistance to counties and municipalities to meet local needs during and immediately following certain disasters. Sections 31-9-80 to 31-9-85, Code of Alabama 1975.

(h) Contract for Law Enforcement. A municipality may contract with another municipality for the performance of policing duties within its jurisdiction. The contract must comply with the specifications set forth in Section 11-102-1, et seq., Code of Alabama 1975. Each municipality must adopt an ordinance approving the contract, and each municipality should adopt all ordinances, resolutions, and policies necessary to authorize law enforcement officers of one municipality to carry out policing duties within the jurisdiction of the other municipality or municipalities. AGO 2013-041. Along these same lines, the county sheriff and his or her deputies may enforce municipal ordinances of the town provided the contract between the town and sheriff provides for such enforcement. AGO 2016-005.

The governing body of a Class 6 municipality may enter into contracts which provide for the police department of the municipality to provide law enforcement services beyond the corporate limits of the municipality but within the police jurisdiction of the municipality, and may prescribe the conditions under which the services may be rendered. The governing body of the municipality may enter into a contract or contracts with any county or county board, any property owner of a manufacturing or industrial concern or any property owner within any residential or business area for its police department to render law enforcement services on the terms as may be agreed to by the governing body of a Class 6 municipality and the contracting party or parties. Notwithstanding the above, the governing body of the municipality may not enter into a contract or contracts with any county or county board, any property owner of a manufacturing or industrial concern or any property owner within any residential or business area for its police department to render law enforcement services to enforce traffic regulations, including speeding and enforcement of speed zones. When the police department of a Class 6 municipality is operating pursuant to a contract or contracts pursuant to this section on any call beyond the corporate limits but within the police jurisdiction of the Class 6 municipality, the department shall be deemed to be operating in a governmental capacity and subject to the same liability for injuries as the department would be if the department was otherwise operating within the corporate limits of the Class 6 municipality. Section 11-40-10.1, Code of Alabama 1975.

(i) Emergency Vehicle Lights. Authorized emergency vehicles shall be equipped with at least one lighted lamp exhibiting a colored light as hereinafter provided visible under normal atmospheric conditions from a distance of 500 feet to the front of such vehicle and a siren, exhaust whistle or bell capable of giving an audible signal. The color of the lighted lamp exhibited by police vehicles may be red or blue and the color of the lighted lamp exhibited by fire department and other authorized emergency vehicles, including ambulances, shall be red. No vehicle other than a police vehicle will use a blue light. An amber or yellow light may be installed on any vehicle or class of vehicles designated by the director of public safety, but such light shall serve as a warning or caution light only and shall not cause other vehicles to yield the right of way. This provision shall not operate to relieve the driver of an emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway nor shall it protect the driver of any such vehicle from the consequences of an arbitrary exercise of such right of way. Section 32-5A-115(c), Code of Alabama 1975. Pursuant to Section 32-5A-115, Code of Alabama 1975, an ambulance must display at least one red light. This section of law does not prevent the use of other colors of lights on ambulances, except that blue lights may only be used on police vehicles and amber or yellow lights may only be used on vehicles approved by the director of the Department of Public Safety. AGO 2000-118.

(j) Speed Limit Enforcement. Any speed limit set pursuant to Section 32-5A-171, Code of Alabama 1975, shall be enforced by any municipality or any law enforcement officer of a municipality only within the corporate limits of the municipality and not within the police jurisdiction of the municipality. A law enforcement officer or a peace officer of any incorporated municipality or town which has less than 19,000 inhabitants according to the most recent federal decennial census shall not enforce this section on any interstate highway. State law authorizes municipalities to set speed limits and post speed limits on state and county roads within their incorporated limits. AGO 2012-050.

(k) Animal Control. Each county in the state shall provide a suitable county pound and impounding officer for the impoundment of dogs, cats, and ferrets found running at large in violation of the provisions of Chapter 7A of Title 3, Code of Alabama 1975. Every municipality with a population over 5,000 in which the county pound is not located shall maintain a suitable pound or contribute their pro rata share to the staffing and upkeep of the county pound. If the owner of an impounded animal is known, the owner shall be given direct notice of the impoundment. Section 3-7A-7, Code of Alabama 1975; AGO 2001-193.

No county or municipal governing body may adopt or continue in effect any ordinance, rule, or resolution concerning the care and handling of livestock or animal husbandry practices involved in the production of agricultural and farm products on private property. Certain exceptions are provided. Section 2-15-5(e), Code of Alabama 1975.

The Alabama Family Farm Preservation Act provides that farm operations, if operated lawfully under certain conditions, may not be characterized as public or private nuisances or be determined to be in violation of a municipal or county ordinance. Sections 2-6B-1 to 2-6B-6, Code of Alabama 1975.

(l) Electronic Traffic Tickets. Municipalities are authorized to use an electronic traffic ticket (e-ticket) system. Section 32-1-4, Code of Alabama 1975.

(m) Regulation of Fertilizer. A county commission or municipal governing body may not adopt or continue in effect any ordinance, rule, or resolution regulating the registration, packaging, labeling, sale, distribution, transportation, storage, or application of fertilizers. The entire subject matter of the foregoing shall be subject to the jurisdiction of the Department of Agriculture and Industries. This section shall not affect, supersede, or override any zoning ordinance or business license enacted by a county or municipal government, except to the extent the zoning ordinance or business license purports to regulate fertilizer as prohibited by this section, which provisions are null and void. A political subdivision of the state is not subject to the requirements of this law if the political subdivision's National Pollutant Discharge Elimination System permit or other Alabama Department of Environmental Management administrative action requires, based on federal or state requirements for impaired water bodies, a stricter standard than this section imposes. The political subdivision must demonstrate to the satisfaction of Alabama Department of Environmental Management that the discharges from the municipal separate storm sewer system (MS4) within its jurisdiction have the potential to impact an impaired water body and whether the MS4 is subject to an applicable total maximum daily load (TMDL) requirement for the impaired water body. The political subdivision must document in the public record the rationale supporting the exemption provided in this section, including all documents utilized to support the exemption. Any exemption pursuant to this section shall lapse upon restoration of water quality as documented in the Alabama's Water Quality Report to Congress and there are no federal or state requirements requiring a stricter standard than this section imposes. Upon lapse of the exemption, the law shall apply. Section 11-80-15, Code of Alabama 1975.

(n) Accident Response Service Fees. No law enforcement agency, law enforcement officer, or other entity shall impose an accident response service fee (fee imposed for the response or investigation by a law enforcement officer or agency of a motor vehicle accident) on an insurance company, the driver or owner of a motor vehicle, or any other person or entity. Section 32-10-13, Code of Alabama 1975.

Sec. 89. Alabama Convention Facilities Act

Any city, county or entities or authorities thereof may apply to the state director of finance for state assistance payments for any convention facilities owned by a city, county or entities or authorities thereof in which bonds for the facilities were issued after May 11, 1989, or such facilities for which the construction, or substantial expansion, reconstruction or renovation is completed after May 11, 1989. Section 11-100-1, et seq., Code of Alabama 1975.

Sec. 90. Rent Control Prohibition

No municipality may enact any ordinance which has the effect of controlling the amount of rent charged for leasing private property. Section 11-80-8.1, Code of Alabama 1975.

Sec. 91. Defacing Public Property

Sections 13A-8-71 and 13A-8-72, Code of Alabama 1975, make it unlawful to intentionally deface or destroy any public property, which includes traffic devices. Depending upon the dollar amount of the damage, the violation may be either a felony or a misdemeanor. If the violator is under the age of 18, the parent or parents the minor lives with and who have custody of the minor are liable for actual damages and court costs. Minors convicted of destroying or defacing public property must be ordered by the court to correct or clean up the results of their actions.

Sec. 92. Community Notification Act

The Community Notification of Released Convicted Sex Offenders law commonly referred to as the “Community Notification Act” places certain responsibilities on municipal law enforcement personnel. The Act is codified in Chapter 20 of Title 15, Code of Alabama 1975,

Sec. 93. Alabama Competitive Access Provider Act

Sections 11-50B-1 through 11-50B-12, Code of Alabama 1975, authorizes municipalities and municipal instrumentalities to provide certain telecommunications services, including cable services, interactive computer services and Internet access and services.

Sec. 94. Display of Alabama Flag on Public Buildings

Each municipal building located in this state which is open to the general public and supported in whole or in part by public funds, shall prominently display the Alabama state flag, in accordance with appropriate flag display protocol, on a flag pole or flag poles located near the main entrance of each building. Any municipality with a population of 1,000 or less, according to the most recent federal decennial census, shall be exempt from this section unless other flags are being flown in the municipality by the municipality. Section 1-2A-8, Code of Alabama 1975.

Sec. 95. Water Diversion.

The rule as to whether or not a property owner can divert water onto another person’s property differs depending on whether the property is located within the corporate limits of a municipality or outside the corporate limits of a municipality. For a complete discussion of the rule *see, Bailey v. Floyd*, 416 So. 2d 404 (1982).

Sec. 96. Energy Cost Savings Contracts.

Governmental units are authorized to enter into guaranteed energy cost savings contracts. Section 41-16-143, Code of Alabama 1975.

Sec. 97. Immigration.

The Alabama Legislature has enacted numerous laws to address illegal immigration. These laws may be found in Sections 31-13-1 thru 31-13-30, Code of Alabama 1975.

Chapter 4

Establishing Council Committees

Sec. 98. Council Committees

While no statute requires them to do so, most councils have set up committees as an integral part of their organization. In practice, a good part of the work of the council is accomplished through committees. Meeting apart from regular and special sessions of the full council, these committees give detailed attention to the programs and policies entrusted to their study and investigation.

The real purpose of council committees is to study the needs of the departments falling under each committee and to make policy recommendations for the operation of those departments. In properly doing their work, council committees should confer with the mayor for his or her views on the policies and programs under consideration because, as the chief executive, the mayor will be responsible for carrying them out. After thoroughly studying the facts concerning a particular problem, the committee presents its conclusions and recommendations to the full council for appropriate action. **A council committee is not an administrative body and is not created to exercise any executive authority over the administrative departments of the municipality.**

The Attorney General has ruled there is no requirement that a council establish committees. But, if council committees are created, it must be emphasized that they are advisory only. AGO to Hon. M.A. Lee, June 15, 1977.

A committee of the council is an investigative body and committee reports should be made to the full council at its meetings. AGO to Hon. Joe Graham, September 4, 1973.

Council committees are formed for convenience. Neither the committee nor its chairman possesses any administrative or executive authority. Such administrative or executive powers are vested in the mayor whose duty it is to carry out policies established by the council as reflected in the ordinances and resolutions. AGO to Hon. Reid Kent, December 11, 1972.

Council committees are advisory only and cannot supervise or give directions to city employees. AGO 1985-156 (to Hon. H.T. Mathis, January 8, 1985).

Council members on council committees are assigned to various municipal departments to serve only in an advisory capacity. The mayor has exclusive authority to direct, supervise and control administrative personnel. AGO 1981-109 (to Hon. Frank M. Manderson, December 8, 1980).

The council cannot adopt an ordinance authorizing standing committees to direct and supervise the work of departments assigned to their study and observation. AGO to Hon. Norman Plunkett, June 22, 1977.

Members of council committees may be appointed as determined by the internal rules of procedure. AGO to Hon. Gwin Wells, June 4, 1981 and 1982-486 (to Diane D. Barnett, July 30, 1982).

Customarily, the presiding officer of the council makes appointments to council committees. Usually three members of the council are appointed to each committee. The mayor of a municipality under 12,000 in population is a member of the municipal council and, therefore, is eligible to serve on committees which the council might establish. AGO to Hon. Joe Starnes, October 19, 1964.

The council has complete authority to regulate its internal affairs in administrative matters. Therefore, the council may change the assignments of individual council members on council committees. AGO to Hon. John Myrick, June 15, 1977.

Council committees are subject to the Alabama Open Meetings Act (OMA) found at Chapter 25A, Title 36, Code of Alabama 1975. The posting by a municipal governing body of its organizational ordinance or resolution

specifically stating the place, date, and time of regular council meetings and standing committee meetings, and a general description of the nature and purpose of those meetings is sufficient to meet the notice requirements of the law. If there is a preliminary agenda of the meeting, it must be posted as soon as practicable in the same location as the notice of the meeting. AGO 2006-027. Additionally, the OMA requires council committees to adopt and follow rules of parliamentary procedure. Section 36-25A-5, Code of Alabama, 1975.

Council committees are required to take minutes of their meetings. A committee of a city council that meets at least quarterly may approve its minutes at the next committee meeting. If the committee does not ordinarily meet quarterly, but the members of the committee serve on the council, the committee may meet to approve the minutes at the time of the next council meeting. AGO 2011-010.

Meetings of council committees must be open to the public. AGO 1992-267. For meetings of a standing committee that do not have regularly scheduled meetings set by ordinance or resolution, notice is to be posted as soon as practicable after the meeting is called, but in no event less than 24 hours before the meeting is scheduled to begin. AGO 2006-027.

The following committees are generally appointed in towns and in cities under 12,000 in population: (1) finance; (2) utilities; (3) streets, parks and cemetery; (4) police and fire department; and (5) sanitation and recreation.

In cities of 12,000 or more, the list of committees is usually larger. For example, one city provides for the appointment of the following committees: (1) finance; (2) streets and lights; (3) police; (4) fire; (5) sanitation and cemetery; (6) auditing; (7) public relations; (8) public buildings and lots; (9) judiciary and ordinances; and (10) parks and playgrounds.

The following is an excerpt from a city code of a city of more than 12,000 inhabitants relating to the appointment of council committees. This passage is only a sample, but may be used as a guide in the adoption of an ordinance to establish council committees.

ORGANIZATION – APPOINTMENT OF STANDING COMMITTEES

As soon as the oaths have been taken, the president of the council shall take his seat and call the councilmembers to order, and they shall then be considered as organized for the transaction of business as the city council and proceed with electing a president pro tempore, after which the president of the council shall appoint the following standing committees, to-wit:

Section 1. The executive, finance and ordinance committee to consist of the president of the council as chairman and one alderman from each ward.

Section 2. The committee on police to consist of three members of the council.

Section 3. The committee on fire department to consist of three members of the council.

Section 4. The committee on streets, sewers, sanitation and drainage to consist of three members of the council.

Section 5. The committee on water to consist of three members of the council.

Section 6. The committee on parks and playgrounds to consist of three members of the council.

Section 7. The committee on schools, library, hospitals and charity to consist of three members of the council.

Section 8. The committee on lights to consist of three members of the council.

Section 9. The abattoir committee to consist of three members of the council.

Section 10. The airport committee to consist of the mayor and two members of the council.

Section 11. The committee on cemetery to consist of three members of the council.

Section 12. The committee on shop and garage to consist of three members of the council.

All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

Chapter 5

Establishing Council Procedure

Sec. 99. Council Procedure

Section 11-43-52, Code of Alabama 1975, provides that the council may adopt rules for its own procedure. This action should be one of the first items of business at the organizational meeting of the council.

Members of the council will want to handle municipal business properly and with dispatch. Experience has shown that without an established set of rules it is difficult for councils to function efficiently. Moreover, members of the council receive only a nominal salary, if any, and time wasted in confusion regarding procedural matters is an unwarranted imposition on them. In addition, an established procedure for handling business can help prevent differences between members of the council. If all matters are taken up according to the same procedure, a councilmember will not feel that a measure in which he or she is particularly interested is receiving inadequate consideration. The councilmember will be less likely to become involved with other members of the council in arguments over procedural matters.

Following standard procedures also makes it easier for new councilmembers to become familiar with their tasks. The work of the presiding officer is lightened substantially by a formal set of rules to rely on when conducting meetings. Finally, adoption of a standard set of rules and adherence to them will eliminate any criticism or charge that the council did not follow correct procedure in dealing with specific items. For these reasons – and many others – it is important for the council to adopt a set of rules governing its procedure.

In many instances, past councils will have adopted rules of procedure which are adequate. Where these are in the form of ordinances of permanent operation which remain in effect until repealed, it is not necessary to re-enact them. In some instances, however, the previous council may have provided that the ordinance governing its procedure will expire at the end of its term and a check should be made so that the new council can set up rules for its procedure if necessary. Even if an old ordinance will continue in effect, the new council may still deem it advisable to amend it. In some instances, of course, there will be no council rules at all governing the procedure of the council.

It is unlikely that a council's adopted rules of procedure will address every possible parliamentary situation. For this reason, we suggest the council state in its rules that parliamentary situations not covered by the local rules will be resolved in accordance with a standard manual of parliamentary procedure such as *Robert's Rules of Order* or *Mason's Manual of Legislative Procedure*.

Sample Ordinance

The following sample ordinance might be used as a guide for the council to establish its rules of procedure.

An Ordinance

BE IT ORDAINED BY THE COUNCIL OF _____, ALABAMA, that the order of procedure in all instances for meetings of the council shall be as follows:

Section 1. That the rules or order of procedure herein contained shall govern deliberations and meetings of the council of _____, Alabama.

Section 2. Regular meetings of the council shall be held on the following dates: the first and third Tuesdays of each month. [Note: *The day of the week and weeks of the month on which regular council meetings will be held are left to the discretion of the council, provided that at least two council meetings are held each month. Only one meeting per month is required in municipalities of less than 2,000 population.*]

Section 3. Special meetings may be held at the call of the presiding officer by serving notice on each member of the council not less than 24 hours before the time set for such special meetings; or special meetings may be held as

otherwise provided by Section 11-43-50, Code of Alabama 1975 or other law.. Notice of all special meetings shall be posted on a bulletin board accessible to the public at least 24 hours prior to such meeting.

Section 4. A quorum shall be determined as provided by Section 11-43-48, Code of Alabama. The number of members required to make a quorum does not change when a council has vacancies. Council members who are present at a council meeting that have a conflict of interest on a particular issue can be counted for purposes of making a quorum even though they cannot vote on a particular issue.

Section 5. All regular meetings shall convene at ___ o'clock ____ [*a.m. or p.m.*] at the city hall and all meetings, regular and special, shall be open to the public.

Section 6. The order of business shall be as follows:

1. A call to order
2. Roll call
3. Reading and approval of the minutes of the previous meeting
4. Reports of standing committees
5. Reports of special committees
6. Reports of officers
7. Reading of petitions, applications, complaints, appeals, communications, etc.
8. Auditing accounts
9. Resolutions, ordinances, orders and other business.
10. Public comments

Section 7. No member shall speak more than twice on the same subject without permission of the presiding officer.

Section 8. No person, not a member of the council, shall be allowed to address the same while in session without permission of the presiding officer.

Section 9. Every officer, whose duty it is to report at the regular meetings of the council, who shall be in default thereof, may be fined at the discretion of the council.

Section 10. Motions shall be reduced to writing when required by the presiding officer of the council or any member of the council. All resolutions and ordinances and any amendments thereto shall be in writing at the time of introduction.

Section 11. Motions to reconsider must be made by a member who voted with a prevailing side and at the same or next succeeding meeting of the council.

Section 12. Whenever it shall be required by one or more members, the “yeas” and “nays” shall be recorded and any member may call for a division on any question.

Section 13. All questions of order shall be decided by the presiding officer of the council with the right of appeal to the council by any member.

Section 14. The presiding officer of the council may, at his or her discretion, call any member to take the chair, allow him or her to address the council, make a motion or discuss any other matter at issue.

Section 15. Motions to lay any matter on the table shall be first in order; and on all questions, the last amendment, the most distant day and the largest sum shall be first put.

Section 16. All meetings of the council shall be open to the public, except when the council meets in executive session as authorized by state law.

Section 17. The council may meet in executive session only for those purposes authorized by state law. When a councilmember makes a motion to go into executive session for an enumerated purpose, the presiding officer shall put the motion to a vote. If the majority of the council shall vote in favor of the motion to go into executive session, the body shall then move into executive session to discuss the matter for which the executive session was called. No action may be taken in an executive session. When the discussion has been completed, the council shall resume its deliberations in public.

Section 18. A motion for adjournment shall always be in order.

Section 19. The rules of the council may be amended in the same manner as any other ordinance of general and permanent operation.

Section 20. The rules of the council may be temporarily suspended by a vote of two-thirds of the members present.

Section 21. The chairman of each respective committee, or the councilmember acting for him or her, shall submit or make all reports to the council when so requested by the presiding officer or any member of the council.

Section 22. All ordinances, resolutions or propositions submitted to the council which require the expenditure of money shall lie over until the next meeting; provided, that such ordinances, resolutions, or propositions may be considered earlier by unanimous consent of the council; and provided further, that this rule shall not apply to the current expenses of, or contracts previously made with, or regular salaries of officers or wages of employees of the city.

Section 23. The clerk, engineer, attorney, chief of police and such other officers or employees of the City [or Town] of _____, shall, when requested, attend all meetings of the council and shall remain in the council room for such length of time as the council may direct.

Section 24. No ordinance or resolution of a permanent nature shall be adopted at the meeting at which it is introduced unless unanimous consent be obtained for the immediate consideration of such ordinance or resolution, such consent shall be by roll call and the vote thereon spread on the minutes.

Section 25. *Robert's Rules of Order* is hereby adopted as the rules of procedure for this council in those situations which cannot be resolved by the rules set out in this ordinance.

Section 26. This ordinance shall go into effect upon the passage and publication as required by law.

[Signatures of Councilmembers]

Approved this the ___ day of _____, 20__.

Mayor

Passed and approved this the ___ day of _____, 20__.

Clerk

The above is, of course, only a suggested ordinance and the council could revise it to meet any local circumstances. We strongly urge, however, the adoption of an ordinance governing council procedures if an adequate ordinance does not already exist.

This example is an ordinance of permanent operation and must be adopted and published in the manner prescribed by law for ordinances of permanent operation.

Chapter 6

Parliamentary Procedure

Sec. 100. Parliamentary Procedure

The rules of procedure set out in Chapter 5 cover such things as the order of business and the method of recording votes and other items which apply to the council as a group, but the rules do not establish the procedure to be followed by individual councilmembers in making motions and engaging in debate. The standard practice in this, however, is to follow the general rules of parliamentary procedure for deliberative – that is, legislative – bodies in general.

For a more detailed explanation of the rules of parliamentary procedure, please see the article in the League publication, *Selected Readings for the Municipal Official* (2020 ed.).

However, an excellent summary of these rules as they apply to municipal council meetings appeared in the July 1952 issue of *American City* magazine. Written by Hon. Joseph T. Karcher, who served as Municipal Attorney for Sayreville, New Jersey, this analysis was based on long years of experience and presented a comprehensive yet brief review of what a councilmember should know about parliamentary law and procedure. The summary is reprinted below:

For many years now, I have had the privilege of sitting as counsel to the governing bodies of various municipalities. One of my duties, of course, has been to give opinions on proper parliamentary procedure. Some 10 years before my work in the municipal field, I have served three years in the state Legislature.

This diversified experience brought thoughts very forcibly to mind:

1. How much more effective a municipal official could be if he or she were familiar with parliamentary procedure.
2. How relatively few parliamentary rules he or she needs to know.
3. How few municipal officials manage to take the time or effort to learn or to use effectively even these few basic rules.

Definition, Importance and Analogy to Other Rules. Parliamentary law, or parliamentary procedure, is the set of rules or customs that regulate the procedure of all deliberative assemblies. Its importance lies in the fact that it is designed to bring order out of chaos. There is hardly any enterprise or field of endeavor in which we human beings participate that is not covered by some rules. This is true, for instance, in boxing, football, basketball and all the sports. It is likewise true of operating automobiles and aircraft, watercraft and the like. And so we find these rules to govern man's deliberations when a group of men or women come together for the conduct of one type of business or another.

Thus we see that these rules are – or ought to be – in daily and effective use in all legislative or so-called deliberative bodies, large and small. They are also in use, to at least a limited extent, by civic, fraternal, union, veteran, and church organizations and societies, and by boards of directors of corporations, large and small. If they are not, they certainly should be, if business is to be conducted properly, efficiently and effectively.

As a matter of fact, even the average person ought to know these rules in order to protect his or her basic rights. However, it is not necessary to know all of the rules. In all but extraordinary situations, only the basic rules of parliamentary procedure come into play in the average meeting conducted by a mayor and municipal council and similar deliberative assemblies.

I therefore propose to devote my attention primarily to a discussion of the more or less basic rules of procedure. In my opinion, these rules would cover 95 percent of all the situations that might conceivably arise in the conduct of an average meeting by the governing body of a municipality.

Only One Main Motion May be Pending. One of the principal misunderstandings of the average municipal official is that there can be only one motion pending at a time. I have heard this a thousand times. What a person really means to say is that there can be only one “main” motion pending at one time. However, there may be many other motions of a different character applied to the main motion all pending at one time.

To summarize these various classes of motions, I may say that they fall roughly under four headings – main, subsidiary, incidental, and privileged motions.

Definition of Main Motion. The main motion is understood from its name and indicates that it seeks to accomplish some concrete objective. In other words, it is the most common or familiar type of motion wherein a member asks the body to vote in favor of doing some concrete or specific items of business on the agenda.

Subsidiary Motions. Once this main motion is made, it then becomes subject to these other three classes of motions. The first one I mentioned was the subsidiary motion. The nature of this type of motion can also be fairly well understood from its name. It means something supplemental, auxiliary, secondary or subordinate. Consequently, when such a motion is made, it must be disposed of before the main motion can be disposed of.

Incidental Motions. The next group of motions to which a main motion is subjected are the incidental motions. “Incidental” carries with it the thought that it is a minor or subordinate factor, rather than a primary or major one. Hence, this motion must also be disposed of before the main motion can be acted upon.

Privileged Motions. And finally, we have the so called privileged motions, which is a term that everyone generally understands. Privilege, of course, means that it enjoys a special right, power or immunity not generally enjoyed by others. Hence, this type of motion must likewise be disposed of before a main motion can be acted upon.

Unclassified Motions. Of course, there are some motions known as unclassified motions, such as to “reconsider,” “take from the table,” “to ratify,” “to rescind” and others.

Most motions require a seconding motion. This is the simplest of all motions and all that is required is to say, “I second the motion.” There are a few exceptions which do not require seconding, such as nominations generally, points of order, questions of privilege, demands for a division of the question, calls for the order of the day and the like.

Enumeration of Subsidiary Motions. We are now ready to study in some detail, and by actual examples, what motions fall into the several classifications; how to make them; which take precedence over the other; when they yield to another motion and the like.

First, let me enumerate for you eight or nine of the most commonly used subsidiary motions in the inverse order of their priority. They are as follows:

- To postpone indefinitely
- To amend the main motion
- To amend the amendment
- Substitute for the whole
- Refer to the committee
- Postpone debate until a specified time
- Limit or extend debate
- The previous question
- Lay on the table

These are the most commonly used motions of all. Any one or all of them could conceivably be applied to any pending main motion. In such event, they would have to be disposed of before the main motion could be acted upon.

Enumeration of Incidental Motions. Next, you should consider the incidental motions. In some respects, these

are similar to subsidiary motions in the sense that they apply to the matter or question immediately pending before the meeting.

- Leave to withdraw motion
- Parliamentary and other inquiries
- Division of question
- Division of vote
- Objection of consideration of question
- Suspension of rules
- Point of order
- Appeal

Since these motions arise out of the pending question, it is only logic and common sense that they should take precedence over and be disposed of before the main motion out of or because of which they arose. While they take precedence over the main question and most of the subsidiary motions, they yield to and are subordinate to all privileged motions.

Enumeration of Privileged Motions. The next class of motions to be considered is the so-called privileged motions. They differ from both the subsidiary and the incidental motions in that they do not necessarily relate directly to the pending question. They have to do with the efficient functioning of the meeting and usually pertain to its orderly progress in a manner which will promote the good and welfare of the group as a whole.

- The most commonly used privileged motions, in the **inverse order of their priority**, are the following:
- Call for the order of the day
- Question of privilege
- Motion of recess
- Motion to adjourn
- Motion fixing time to which the meeting shall adjourn.

As their name implies, they take precedence not only over the main motions, but over the subsidiary and incidental motions as well. Consequently, they must be disposed of before the main motion may be disposed of.

Unclassified Motions. I have already mentioned unclassified motions. For all practical purposes, these should be treated as main motions. You will note that all of them pertain to taking further action upon some matter which has already been previously considered and either acted upon favorably or adversely or upon which final action has been deferred. Among the most commonly used are the following:

- To take from the table
- To ratify
- To rescind
- To reconsider

Summary of Objectives. In conclusion, we may say that all of the various motions may be classified into certain groups according to their objectives, namely:

Motions to change – Such as to amend, to refer to a committee.

Motions to delay – Such as to postpone consideration to a specific time or to lay on the table.

Motions to limit debate – Such as the motion to limit or to move the previous question.

Motions to suppress the question – Such as to object to the consideration of the question, to postpone consideration indefinitely or to lay on the table.

Motions to bring question to immediate vote – Such as the motion for the previous question.

Motions to take further action on a matter – Such as the motion to ratify, to rescind or reconsider.

These are the motions I referred to as unclassified, where the action taken thus far is apparently incomplete or unsatisfactory and further action is desired.

Conclusion

I sincerely trust that from this brief outline the reader may have been able to obtain a bird's-eye-view of the wide scope of this subject. I have tried to condense in this short article the high spots of a subject which would normally take a number of articles or lectures to treat exhaustively. I hope that the municipal official will not feel that it is too complex to be mastered, or that he or she has to know all of the rules. I can only conclude as I started, by saying that no one knows all of the rules; but the rules with which you will most frequently come in contact with in your meetings are relatively few and relatively simple.

I have attempted to give you a comprehensive digest of the subject so you still at least recognize these various motions when they arise. I urge you to take a keen interest in this subject and to acquire some recognized manual on parliamentary procedure. I am certain that with a little practice you will all become fairly expert parliamentarians. If you do this, then I will feel that we have both made a worthwhile contribution to the advancement of home rule, or actual democracy in practice, and to the promotion and preservation of our way of life.



The Alabama League of Municipalities was organized in 1935 and has served since that time as the recognized voice of the cities and towns in Alabama. Representing more than 450 member municipalities, the League works to secure enactment of legislation enabling all cities and towns to perform their functions more efficiently and effectively; offers specialized training for both municipal officials and employees; holds conferences and meetings at which views and experiences of officials may be exchanged; and conducts continuing studies of the legislative, administrative and operational needs, problems and functions of Alabama’s municipal governments.

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