



A SELECTED READING

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Keeping the Journal

Complete and accurate minutes must be kept of meetings of city councils. AGO 90-00045. The following citations reflect the vital importance of keeping an accurate journal of the proceedings of the municipal governing body. In addition, a governing body frequently must follow statutory procedure to effectively accomplish certain acts. Each member of the governing body must realize the importance of keeping the journal and never neglect this duty just because it seems routine. While the greatest responsibility for the minutes rests with the clerk, each member of the governing body has a duty to see that meetings are held regularly and that procedural requirements are met.

- The law contemplates that a permanent record should be made of the proceedings of a municipal governing body, and papers evidencing their actions should not be simply pasted in some book susceptible to easy spoilation or destruction. *Chenault v. Russellville*, 169 So.2d 706 (Ala.1936). Records of the meetings of municipal governing bodies are required to the end that those who may be called to act under them may have no occasion to look beyond such records; the record avoids the mischief of leaving municipal corporate action to be proven by parol evidence. *AL. City G. & A. Ry. v. Gadsden*, 64 So. 91 (Ala.1913).
- The record of the municipal governing body must show all proceedings. Omissions from the record cannot be supplied by parol evidence in whole or in part. *Jones v. McAlpine*, 64 AL 511, 1879 WL 1136 (Ala.1879).
- So long as minutes remain as minutes of the governing body, they cannot be impeached or varied in a collateral proceeding by parol evidence. *Anniston v. Davis*, 13 So. 331 (Ala.1893).
- If the council fails to amend the record upon proper petition, direct action for amendment must be taken – usually by mandamus to compel correction – in order to properly challenge the record of a municipal governing body’s proceedings. *Penton v. Brown Cumber Inv. Co.*, 131 So. 14 (Ala.1930).
- When the ordinance book and journal of a municipality are in conflict, the journal takes precedence and is controlling. AGO 88-00091.

The following paragraphs explain basic statutory requirements for the holding of valid meetings of municipal governing bodies and for the recording of proceedings.

Statutory Requirements

Records of council meetings are required by Section 11-43-52, Code of Alabama 1975, which provides that “The council shall determine the rules of its own proceedings and keep a journal thereof, which shall be open to the inspection and examination of all citizens and shall have the force and effect of a record, and a copy thereof, certified by the clerk, shall be prima facie evidence in any court or elsewhere.”

The journal is recognized as a public record and the Legislature has deemed it wise to make it acceptable in courts and elsewhere when properly certified by the clerk. No requirements are made as to the type of book which should be used, nor does this section make any provision for the approval of the minutes or what shall be recorded therein. In the cases noted above, it is apparent the courts expect that a permanent record book will be kept in such a manner that it is not subject to easy spoilation or destruction and that the record must show all action taken by the governing body. The record must be of such completeness that it can stand alone, without explanation.

In a mayor-council city or town, ordinances are required to be recorded in a separate permanent ordinance book. Section 11-45-8, Code of Alabama 1975. Therefore, it is permissible to refer to ordinances introduced and passed by the council by number and title rather than setting them out in full in the minutes. Unless a mayor-council municipality keeps a separate permanent resolution book, resolutions adopted by the council should be set out in full in the minutes.

Clerk's Duty

The clerk of all cities and towns shall attend the meetings of the council and shall keep a record of its proceedings. The clerk shall have custody of the rules, ordinances and resolutions of the council and shall keep a record of them when adopted by the council. During the absence of the clerk, the council may appoint some person to perform those duties. Section 11-43-100, Code of Alabama 1975. The Legislature has squarely placed with the clerk the burden of keeping the minutes.

When the clerk is absent, the council may appoint some person from outside the council to perform the clerk's duties or it may appoint one of its own members to do the job. When one of the members of the governing body is appointed to keep the record of proceedings at a meeting, that member does not lose the right to vote on issues coming before the council at the meeting. *Clark v. Uniontown*, 58 So. 725, 726 (Ala. 1912).

Types of Meetings

Alabama's Open Meetings Act (OMA) defines a "meeting" as a prearranged gathering of a quorum of a governmental body or a quorum of a committee or subcommittee of a governmental body either at a time set by law or to exercise the powers which it possesses or to approve the expenditure of public funds. A meeting would also include a gathering, whether or not prearranged during which the members deliberate specific matters that, at the time of the exchange, the participating members expect to come before the body, committee, or subcommittee at a later date. The term "meeting" would not include occasions when a quorum attends social gatherings, conventions, conferences, training programs, press conferences, media events, or otherwise gathers so long as the governmental body does not deliberate specific matters that the participating members expect to come before the body at a later date. Section 36-25A-2, Code of Alabama 1975. For a discussion of "serial meetings" as defined by Section 36-25A-2(13), see the article in this publication titled *The Open Meetings Act*.

There are three basic types of council meetings – regular, adjourned and special called meetings. The council is required to hold at least two regular meetings each month. A town is only required to hold one council meeting per month. Section 11-43-50, Code of Alabama 1975. The council determines the date, time and place of regular meetings at its organizational session. Section 11-43-49, Code of Alabama 1975.

Meetings of the municipal council held pursuant to adjournment of a regular meeting are legal, and no special notice to the councilmembers is required. *Culpepper v. Phenix City*, 113 So. 56, 58 (1927). Such meetings are not special meetings but are regarded as a continuation of a regular meetings. 4 McQuillin Mun. Corp. § 13:59 (3d ed.) Adjournments are presumed to be regular when nothing to the contrary appears in the record. However, notice to the public may be required under the OMA if the body will reconvene on a different day. Section 36-25A-3, Code of Alabama 1975. Here it is quite important to accurately record whether the council adjourned *sine die* (thereby ending the meeting entirely) or until a particular time.

The presiding officer of the council may call a special meeting of the council whenever, in his or her opinion, the public interest may require it or whenever two councilmembers or the mayor request the presiding officer, in writing, to call a special meeting. If the presiding officer fails or refuses to call such a meeting, the two councilmembers or the mayor making the request shall have the right to call a special meeting. Section 11-43-50, Code of Alabama 1975.

Usually the call of a special meeting is handled through the clerk. When a special meeting is held, the clerk generally prepares a waiver of notice for each councilmember to sign. The waivers must be incorporated into the minutes of the meeting. A waiver might be in substantially the following form. Words in brackets indicate optional language: "We, the undersigned members of the City [Town] Council of the City [Town] of _____, Alabama, hereby waive notice of the calling of a special meeting of the City [Town] Council of the City [Town] of _____ [for the purpose of _____ and such other business that may be brought before the Council] and do consent that said meeting [for said purposes] be held at the City [Town] Hall in the City [Town] of _____, Alabama, at _____ o'clock a.m. [p.m.] on the _____ day of _____, 20__."

The signature of each member should be secured before the meeting begins. It is desirable for the waiver to be typed onto the page of the minutes preceding the record of the meeting. Note that the statute does not require that notice of the purpose of the meeting be included in the notice. However, some municipalities might desire to include an explanation. *Ryan v. Tuscaloosa*, 46 So. 638 (Ala.1908); Section 11-43-50, Code of Alabama 1975.

In the *Ryan* case, the court held that a meeting of the council, not held on a regular meeting date, at which all councilmembers and the mayor were present, was a valid "called meeting," despite the fact that the required notice may not have been given. While this case is comforting, it is strongly recommended that the minutes include the waiver of notice and recite that the waiver was signed by all members of the council prior to the holding of the meeting.

It must be remembered that in municipalities of less than 12,000, or those who have grown over 12,000 but are less than

25,000 that have elected to continue as provided in Section 11-43-2, the mayor is a voting member of the council. Section 11-43-2, Code of Alabama 1975. Whenever the giving of notice or recording of votes is required for all members of the council, the mayor must be included. Likewise, in a city of 12,000 or more, the council president is a member of the council and must be treated as other members in the giving of notice and the recording of votes. Section 11-43-40, Code of Alabama 1975.

Open Meetings - Executive Sessions

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 98-00134. A meeting of a governmental body, except while in executive session, may be openly recorded by any person in attendance by means of a tape recorder or any other means of sonic, photographic, or video reproduction provided the recording does not disrupt the conduct of the meeting. Section 36-25A-6, Code of Alabama 1975.

No minutes should be taken at portions of board meetings which are held in executive session. AGO 97-00013 and AGO 2002-163. The League recommends that the clerk note in the minutes of the public meeting from which the individuals have gone into executive session, the names of those individuals going into executive session so that there is a record of who was in attendance at an executive session. For further information on this topic see the article in this publication entitled *The Open Meetings Act*.

Form and Content

First and foremost, it is essential for the minutes to reveal that the council has complied with the jurisdictional requirements for holding a legal meeting. In the *Penton* case cited previously, it was pointed out that the minutes of the council could not be attacked collaterally, but when offered in evidence, if the minutes show on their face that the council failed to meet the requirements of a legal meeting, then such proceedings are void. To avoid this pitfall, the clerk should be careful to record the following facts:

- The date, hour and place of the meeting;
- Whether the meeting is a regular, adjourned or special meeting;
- That proper notice was given to each member in the event it is a special meeting; and
- The names of the members of the council in attendance.
- The member's time of arrival or departure with respect to the order of proceedings of the council.

The minutes are a written summary of what happened in a meeting. The minutes should record the items considered by the council and the action taken. A verbatim transcript of the proceedings is not required. AGO 99-00153. Further, minutes **should not include** lengthy reports of the discussion and comments which took place unless a member requests that his or her remarks be made a part of the record. Basically, the record should show satisfactory evidence of the subject matter of decisions made by the council and evidence that these decisions were adopted in accordance with the law governing the council in its deliberations on the subject.

The council must be familiar with the statutory procedural requirements relating to the making of its decisions. The clerk should not be expected to tailor the minutes to fit these requirements. This illustrates the importance of preparing the agenda of the council prior to the meeting so members may review the statutory requirements for particular items of business before the meeting.

Approval of Minutes

Alabama has no statutory requirement relating to the approval of the minutes of the municipal council. Generally, the rules of procedure adopted by the council include a provision covering this subject. It is universal custom that one of the first orders of business is the reading and approval of the minutes of the last preceding meeting.

Many cities have adopted the practice of having the clerk distribute copies of the minutes to councilmembers several days before the meeting to dispense with the time-consuming procedure of reading the minutes. In such a case, the minutes should note that the minutes of the prior meeting were distributed to each member and that the presiding officer called for any corrections. If corrections are noted, the action taken should be carefully recorded. If no corrections are noted, then the presiding officer announces that no corrections were offered and that the minutes stand approved as written.

Correction of Minutes

The municipal governing body is authorized to correct its minutes so that they correctly recite what took place, despite the fact that they may have been incomplete or erroneous as first written. *Harris v. East Brewton*, 191 So. 216 (Ala.1936).

Minutes adopted by a city council may be amended to correctly state that which took place at such meeting. Corrective amendments may be made at any time but they cannot prejudice intervening rights of third persons which have arisen subsequent to the meeting of the council or commission. *Guntersville v. Walls*, 39 So. 2d 567 (Ala.1949).

Minutes may be amended to correctly record what happened at a meeting after an action has been filed against the municipality challenging an ordinance adopted at such meeting. *Estes v. Gadsden*, 94 So. 2d 744 (Ala.1957).

Where minutes are corrected, they speak as of the original date, notwithstanding at the time the act controlled by the minutes was done, the minutes were incomplete and erroneous. *Harris v. East Brewton*, 191 So. 216 (Ala.1939).

No one member may add to or delete the record unless he shall procure the consent of a majority of the council. AGO to Hon. Venia P. Hutchinson, October 15, 1973.

With regard to the correction and adoption of the minutes, *Roberts Rules of Order; Newly Revised 11th Ed.*, states that “Corrections, if any, and approval of the minutes are normally done by unanimous consent. The chair calls for the reading of the minutes, asks for any corrections, then declares the minutes approved.” Section 48, page 474. Further, if “the existence of an error or material omission in the minutes becomes reasonably established after their approval – even many years later – the minutes can then be corrected by means of the motion to *Amend Something Previously Adopted*, (§35) which requires a two-thirds vote, or a majority vote with notice, or the vote of a majority of the entire membership, or unanimous consent.” Section 38, page 475. See also Section 41, pages 354-355 regarding amendment of minutes. Since most Alabama municipalities have adopted *Roberts Rules of Order* as a procedural guide in all cases not specifically provided for otherwise by ordinance, it is suggested that these provisions be followed when amendments to the minutes are necessary.

The truth or sufficiency of the public record may be challenged by a petition for writ of mandamus filed in the Circuit Court pursuant to Section 6-6-640 of the Code of Alabama 1975.

Election of Officers

All elections of officers shall be made by roll call of the council, and a concurrence of a majority of the whole number of elected members of the council shall be required. On the vote resulting in an election or appointment, **the name of each member and for whom he or she voted shall be recorded**. Section 11-43-45, Code of Alabama 1975. Secret ballots are not allowed. AGO 81-00200. This section is mandatory, and the clerk should be certain that the council follows the proper procedure in such actions. This section has been construed to require a majority of the remaining members elected to the council. For example, if the council is composed of eight councilmembers and the council president, for a total of nine members, and if there is one vacancy on the council, this leaves eight elected members on the council. To elect a person to fill the vacancy would require five affirmative votes. *Reese v. State*, 62 So. 847 (Ala.1913).

Voting Requirements

To pass ordinances and resolutions of a general and permanent nature in cities of less than 12,000 and in towns, there must be the affirmative vote of a majority of the whole number of members of the council, including the mayor. Section 11-45-2(b), Code of Alabama 1975. For example, if the city has five councilmembers and a mayor, it takes four votes to pass an ordinance of general and permanent operation. This number is not lessened when you have a vacancy on the council or when a councilmember is absent from a meeting.

In cities of 12,000 or more, there must be an affirmative vote of a majority of the members elected to the council. Section 11-45-2(b), Code of Alabama 1975.

Before such an ordinance or resolution can be adopted at the meeting when it is first introduced, unanimous consent of the members present at the meeting must be given for the immediate consideration of such ordinance or resolution. Section 11-45-2(b), Code of Alabama 1975. Alabama courts have been strict in requiring that the minutes reveal unanimous consent for passage of an ordinance at the first meeting at which it is introduced. The yea and nay vote must be shown on the record. *Thompson v. Wingard*, 34 So. 2d 606 (Ala.1948). These provisions of the statute are mandatory. *Cooper v. Town of Valley Head*, 101 So. 874 (1924).

To pass an ordinance over the mayor’s veto in cities of 12,000 or more requires the affirmative vote of two-thirds of the members elected to the council. However, the mayor of a city with a population of 12,000 to 25,000 that continues to operate as a city having a population less than 12,000 as provided in 11-43-2 may not exercise veto power and his or her signature as the mayor may not affect the validity of an ordinance or resolution passed by the council while the mayor is a voting member of the council. Sections 11-45-4 and 11-45-5, Code of Alabama 1975.

To change the size of the council requires a two-thirds vote of the council in cities of 12,000 or more. Section 11-43-40, Code of Alabama 1975.

To combine the duties of two offices requires a vote of two-thirds of the members elected to the council in cities of 6,000 or more and the consent of the mayor. The consent of the mayor is not required in cities with population of 12,000 to 25,000 that continues to operate as a city having a population less than 12,000 and the mayor is a voting member of the council. Section 11-43-3, Code of Alabama 1975.

To remove any officer 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 requires a two-thirds vote of all the members elected to the council. Section 11-43-160, Code of Alabama 1975; AGO 2012-039.

Unless the required vote is otherwise specified, a majority vote of those voting, provided a quorum is present, is sufficient to adopt a measure by the council. **A quorum consists of a majority of the whole number of members which the municipality is entitled to have on the council.** Section 11-43-48, Code of Alabama 1975. This includes the mayor in cities of less than 12,000 and in towns, and it includes the council president in cities of 12,000 or more. Except as noted above, the clerk must always treat the mayor as a member of the council in municipalities of less than 12,000. His or her consent for the suspension of the rules for immediate consideration of an ordinance or resolution of a permanent nature should always be recorded along with the other members of the council.

The failure of a councilmember to vote on a particular question should be recorded as an abstention. It is a nullity and cannot be counted as a concurrence with the majority of the members voting on a ballot in order to make a required majority. AGO 91-00020. Where a statute requires the affirmative action of a majority of the entire board or a majority of the members present, a refusal to vote may result in a defeat of the proposition because in such cases affirmative action is required, and those who refuse to vote cannot be counted in the affirmative majority required by statute. *Reese v. State*, 62 So. 847 (Ala.1913); AGO 97-00059; See AGO 85-00139 (opining two affirmative votes were sufficient to make appointment to City Board of Education by City Council when three councilmen abstained from voting). Unless a specific vote requirement is set out by state legislation, a three-to-two vote, with one abstention, is sufficient to elect a person to serve on a utility board. AGO 97-00059

The clerk should cultivate the habit of calling the roll for a vote on any question. While a vote may be taken on routine business by a show of hands or by voicing the ayes and nays by group call, issues which require a specific vote by roll call are usually the most important. It is easy to fall into the bad habit of recording that a particular question passed by unanimous vote of the members. This might satisfy most of the business transacted, but it is not adequate for the few very important items listed above. Therefore, it is a good idea to insist on a roll call to avoid mistakes on routine matters and to meet statutory requirements on others.

The Municipal Audit

As a general rule, the clerk does not set out full reports of committees and department heads in the minutes. These reports should be required in writing, and the minutes should reveal that a report was made on a particular subject by a particular person or committee. If council action was taken on the report, such action should be recorded. The reason for not recording a full report is that the original is the best evidence. II Charles W. Gamble and Robert J. Goodwin, *McElroy's Alabama Evidence* § 212.01(1) (6th ed. 2009). Special report files should be maintained for the separate preservation of reports.

There is an exception to this rule. It is standard operating procedure for municipal audits to be submitted to the council at its first meeting after completion of the audit and spread on the minutes. Section 11-43-85, as amended in 2022, specifically requires that a municipality with annual expenditures of less than one hundred thousand dollars (\$100,000), who decides to conduct an annual report in lieu of a biennial audit must submit the report to the council at its first meeting after the completion of the report and it must be spread on the minutes

Public Hearings

The council is required by law to hold public hearings before taking action on certain matters such as the adoption of public improvement assessment ordinances the establishment of an improvement assessment roll, the adoption of zoning ordinances, and the adoption of ordinances in pamphlet form by reference. It is absolutely essential for the minutes to show these public hearings were held, for these requirements are mandatory and go to the jurisdiction of the council to perform these functions. It is not necessary for discussions and arguments to be included in the minutes. But the record should show all definite questions put to the council at such hearings and the final action taken by roll call vote.

Motions and Seconds

The record should reveal the names of councilmembers who make motions or introduce measures to be voted on by the council. The record should also show the name of the member who seconded a motion put to the council. No second is required for nominations or for adjournment, unless the rules of the council require a second in such cases.

Adjournment

The record should show how the council adjourned, whether *sine die* or to a specific time prior to the next regular meeting. Where the meeting is adjourned until a particular hour of the same day, it is best to show on the record the time of adjournment. The record of adjournment evidences termination of the meeting and that the minutes thereof are all contained in the foregoing record.

Signing the Minutes

While no requirement exists for mayor-council cities and towns, it is customary for the clerk to sign the minutes. The clerk's signature shows that the minutes were taken and prepared by the officer charged with that responsibility. Also, it is customary for the presiding officer of the council to sign approval of the minutes to show that they were adopted and approved by the council.

Marginal References

The minutes of a municipality become more and more voluminous with the passage of time. Consequently, it becomes harder and harder to find a particular action which the council took on a measure presented sometime in the past. Many clerks use extra wide margins on the left side of the minutes and enter brief captions covering the subject matter in the adjacent minutes. Others caption paragraphs in bold underscored letters. While captions are not regarded as a part of the minutes, the references help immeasurably in finding a particular council action without reading through the entire minutes.

Conclusion

A close working relationship between the clerk and the presiding officer of the municipal governing body is essential to keeping a good journal. The agenda of the meeting should be worked out well in advance of the meeting so that each officer knows the issues to be presented and considered. Care should be taken to ensure that all jurisdictional requirements are followed and that they are recorded in the journal. Ordinances and resolutions should be presented in writing. Finally, it should be remembered that when a statute uses the word "**shall**," the action required is **mandatory**. *Prince v. Hunter*, 388 So. 2d 546 (Ala. 1980). The validity of the proceedings depends upon strict compliance with such requirements.

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