

MUNICIPAL CLERKS HANDBOOK

2nd Edition

Prepared by:

The Mississippi Municipal Clerks and Collectors Association

and

*The Mississippi State University Extension Service
Center for Government and Community Development*



FOREWORD

We are pleased to provide this copy of the *Municipal Clerks Handbook* and hope you find it a helpful reference for your office.

The MSU Extension Service Center for Government and Community Development (GCD) is proud to be a partner with the Municipal Clerks and Collectors Association and the International Institute of Municipal Clerks in providing this type of resource. We look forward to continuing to work with you to strengthen and expand our educational and certification programs.

The Mississippi State University Extension Service's educational outreach programs for municipal clerks were established more than 40 years ago and have served as a model for other states.

Thank you to all the clerks and others who have helped review and provide input for this handbook. Also, thanks to GCD's Janet Baird for her diligent work compiling, fact-checking, and completing all the other tasks that went into publishing this handbook.

Sumner Davis, Head

Center for Government and Community Development

PREFACE

The municipal clerk is the oldest of public servants in local government. The clerk's profession, along with that of the tax collector, traces back before Biblical times. For example, the modern Hebrew translation of town clerk is "Mazkir Ha'ir," which means city or town "reminder." Before writing came into use, the early keepers of archives were often called "remembrancers," as their memories served as the public record.

Over the years, the municipal clerk has become the hub of government, the direct link between the inhabitants of the community and their government. The clerk is the historian, holding the entire recorded history of the community and its people in his or her care. Depending on the form of government and the size of the municipality, the clerk is also the auditor, bookkeeper, custodian of the municipal seal, clerk of the police court, registrar of voters, personnel director, and tax collector.

The eminent political scientist Professor William Bennett Munro, writing in 1934 in one of the first textbooks on municipal administration, stated: "No other office in municipal service has so many contacts. It serves the mayor, the city council, the city manager (when there is one), and all administrative departments without exception. All of them call upon it, almost daily, for some service or information. Its work is not spectacular, but it demands versatility, alertness, accuracy, and no end of patience. The public does not realize how many loose ends of city administration this office pulls together."

There is no single reference for the municipal clerk to turn to when questions arise. In 1972, the Mississippi Municipal Clerks, Tax Assessors, and Tax Collectors Association, in conjunction with the Mississippi State Cooperative Extension Service, developed the *Handbook for Mississippi Municipal Clerks, Assessors, and Tax Collectors*. The last revision of that handbook was in 1989.

When I became a municipal clerk in 1987, that publication became my "go-to" reference for how to perform the duties of municipal clerk. One of my long-range goals when I came to work for the MSU Extension Service in 2008 was to rewrite the handbook. During the last year, this goal has become a reality: we now have a handbook for clerks to consult when they need help in conducting their official duties.

There are many people that I want to thank for their assistance with this publication. First, I want to thank Sumner Davis, head of the MSU Extension Center for Government and Community Development, for allowing me to pursue this dream of mine. Also, I appreciate the administration of the Mississippi State University Extension Service for its support in working with municipalities around the state.

I offer sincere thanks to the Mississippi Municipal Clerks and Collectors Association for their support of this project. The Handbook Committee has been a great resource for content and editing of the handbook. Committee members include Kathy Johnson, Lucedale; Celia Boren, Tunica; Debbie Bernardo, Hattiesburg; Cathy Clark, Clarksdale; Amelia Wicks, Greenville; Lesa Hardin, Starkville; Suzette Davis, Collins; Donna McKenzie, Columbia; and Raenell Moore, Calhoun City.

Thanks also to the Office of the State Auditor, Attorney General's Office, Ethics Commission, Secretary of State's Office, Gary Friedman, Esq., of Phelps Dunbar, LLP, and Debbie Bernardo, Hattiesburg Clerk of Council, for allowing me to use materials from their offices. These people have been a great resource to municipal clerks for many years and have all been willing to teach in the Certification Program for Municipal Clerks.

Lastly, I want to thank the people of Mississippi municipalities who are involved in municipal government, either in an elected position or as an employee or volunteer. Without each of you, municipalities would not be as strong as they are.

Responsibility for the final draft of this handbook, including any errors or shortcomings, falls to the editor. Readers of this publication who discover errors or who have suggestions for improvement are asked to communicate with the editor so that changes can be made when the book is next revised.

Respectfully,

Janet P. Baird
Extension Instructor and
Institute Director for the
Municipal Clerk Certification Program
Center for Government & Community Development
Mississippi State University Extension Service

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ROLE OF MUNICIPAL CLERK 2016 Supplement

The Office of City Clerk is one of the oldest and most respected positions in municipal government. Its varied responsibilities are set forth in detail within the Mississippi Code of 1972, Annotated (MCA), and throughout the chapters of this Handbook.

Along with all other duties, the Clerk is a public relations person. For all practical purposes, the Clerk's office represents the city to the citizens of the community, as well as to the city's visitors. In the vast majority of municipalities within the State of Mississippi, the Mayor and Board of Aldermen serve on a part-time basis. This places the City Clerk, who in most cases is full-time, in the central contact position for those who visit or call the city government offices. Most complaints and requests for information about all municipal operations are handled through the office of the Clerk.

Over the years, Municipal Clerks have become the hub of government, the direct link between the inhabitants of their communities and their governments. The Clerk is the historian of the community, for the entire recorded history of the town (city) and its people's in his or her care.

The eminent political scientist, Professor William Bennett Munro, writing in one of the first textbooks on municipal administration (1934), stated: "No other office in municipal service has so many contracts. It serves the mayor, the city council, the city manager (when there is one); and all administrative departments without exception. All of them call upon it, almost daily, for some service or information. Its work is not spectacular, but it demands versatility, alertness, accuracy, and no end of patience. The public does not realize how many loose ends of city administration this office pulls together."

A. POSITION STATUS: ELECTIVE OR APPOINTIVE

1. CODE CHARTER – MCA § 21-3-3

a. ELECTIVE: **Prior to July 1, 2017**

In cities operating under a code charter the office of City Clerk is designated by the Mississippi Code to be elective. (The status of the office in municipalities operating under private charters is determined by that charter.) While the position is designated as elective by statute, the code further gives the governing authority of each municipality the power to provide an ordinance that the City Clerk's office be changed to appointive. The appointive status of the office could not become effective, however, during the term of office of the current elected City Clerk. **After July 1, 2017 all municipality clerks will be appointed.**

b. APPOINTIVE: **After July 1, 2017**

From and after July 1, 2017, the governing authorities of the municipality shall appoint a city or town clerk who shall likewise serve as an officer of the municipality. The clerk

shall hold office at the pleasure of the governing authorities and may be discharged by such governing authorities at any time, either with or without cause, and it shall be discretionary with the governing authorities whether or not to require such person appointed to reside within the corporate limits of the municipality in order to hold such office.

2. COUNCIL-MANAGER – MCA § 21-9-29

Council may appoint a city clerk or the city manager may appoint the clerk.

3. MAYOR-COUNCIL – MCA § 21-8-23

City Clerk and Clerk of Council are two separate positions, although the same person may be appointed to fill both positions.

- The City Clerk is appointed by the Mayor, subject to confirmation by the council. (MCA § 21-8-23)
- The Clerk of Council is appointed by the Council. (MCA § 21-8-13)

4. INTERIM POSITION

No person shall serve in an interim or hold-over capacity for longer than one hundred eighty (180) days after the expiration of the term to which he was appointed in a position that is required by law to be filled by appointment of the governing body, or by mayoral appointment with the advice and consent of the council or aldermen. If such position is not filled within one hundred eighty (180) days after the expiration of the term, no municipal funds may be expended to compensate any person serving in the position. Effective July 1, 2016

B. QUALIFICATIONS

1. GENERALLY

Qualifications for City Clerk may vary with the size of the municipality. There are, however, certain skills, knowledge bases and abilities which the Clerk should possess. Because the Clerk serves as auditor and bookkeeper, considerable knowledge of accounting and bookkeeping is vital. As Clerk of the Court, adequate knowledge of municipal laws, policies, codes and regulations is highly desirable. Knowledge of the operations of municipal government will be helpful in recording and transcribing the municipal minutes in a clear and accurate manner. The ability to establish and maintain effective working relationships with superiors, associates, subordinates and the general public is necessary, since the Clerk serves not only as a registrar of voters, but as custodian of the official seal and can serve as ex officio treasurer.

2. RESIDENCY REQUIREMENT

In municipalities where the Office of the City Clerk is elective, the city clerk must reside within the corporate limits of the municipality. This is derived from Section 250 of the Mississippi Constitution.

In municipalities where the Office of City Clerk is appointive, according to the 1985 amendment to MCA § 21-3-3 of the Mississippi Code “ ... it shall be discretionary with the governing authorities whether or not to require such person appointed thereto to reside within the corporate limits of the municipality in order to hold such office.”

3. BOND REQUIREMENT

The clerk is required to post bond of not less than \$50,000 (MCA § 21-15-38). Premium on the surety bond shall be paid by the municipality from the municipal treasury. At its discretion, the governing authority may purchase “errors and omissions insurance” for municipal officers and employees.

C. DEPUTY CLERKS

1. MCA § 21-15-23 provides for appointment of one or more deputy clerks by resolution or ordinance. Deputy clerks share all the powers, responsibilities and authority of the city clerk. Salaries are set by ordinance, but it must not exceed that of the city clerk. Deputy clerks serve at the will and pleasure of the governing authorities.
2. A deputy clerk is required to take an oath of office before entering upon the duties of the office, and must post a bond of not less than \$50,000 (MCA § 21-15-23). The appointment and oath must be retained on file in the city clerk’s office. Takes the same oath of office as does the clerk.

D. DUTIES

A more detailed explanation of each duty can be found in the following chapters.

STATUTORILY

The Clerk of each municipality is designated by statute, and serves as:

1. Auditor, MCA § 21-15-21.
2. Bookkeeper, MCA § 21-35-11, § 21-39-5.
3. Custodian of the official seal, MCA § 21-15-17.
4. Clerk of the police court, MCA § 21-23-11.
5. Registrar of voters, MCA § 23-15-35. The clerk of the municipality shall be the registrar of voters and shall be authorized to register applicants as county electors. As to registration of municipal electors based on receipt of a copy of the application for registration by the county registrar, see MCA § 23-15-39(3).
6. *Ex officio* treasurer (in municipalities not having depositories), MCA § 21-3-5 and § 21-39-19.

In addition to serving in the positions listed above, each municipal clerk is statutorily required to:

1. Certify building, plumbing, electrical, sanitary, and like codes (together with the mayor), which have been adopted and cited in an ordinance by the governing body of the municipality and file same as a part of the permanent records of the clerk's office; MCA § 21-19-25.
2. Keep the "municipal Minutes" in which he shall record the proceedings and all orders, ordinances and judgments of the governing authorities, and shall record the proceedings and all orders, ordinances and judgments of the governing authorities, and shall keep the same fully indexed alphabetically, so that all entries on the minutes can be easily found ("All official actions of the governing authorities of a municipality shall be evidenced only by official entries duly recorded on such minute book"); MCA § 21-15-17.
3. Keep a "Docket of Claims," in municipalities of 2,000 or more, or in others so ordering, MCA § 21-39-7.
4. Keep the "Municipal Docket" upon which he shall enter each subject, other than claims and accounts, to be acted upon by the governing authorities at the next meeting ("After each meeting he shall make up such docket for the next regular meeting and he shall examine the statutes of the state and the ordinances of the municipality to ascertain the subjects required or proper to be acted upon at the following meeting and shall docket all such matters"), MCA § 21-15-19.
5. Make monthly financial reports to the governing body at its regular meeting; MCA § 21-35-13.
6. Keep the ordinance book; MCA § 21-13-12 and § 21-15-17.
7. Copy the assessment rolls; MCA § 21-33-41.
8. Certify and publish the levy for municipal taxes; MCA § 21-33-47.
9. Certify certain tax levy information to the Department of Revenue; MCA § 21-33-47.
10. Issue warrants; MCA § 21-39-13.
11. Certify copies of ordinances whenever proof of their existence is needed in judicial proceedings; MCA § 21-13-17.

By law, the municipal clerk has most of the financial administration duties. The clerk must have knowledge of accounting and municipal legal requirements.

A. Auditor of the Municipality (MCA § 21-15-21):

The clerk shall be the auditor of the municipality. He shall keep a record, in which he shall enter and preserve accounts of each particular fund, and the accounts of each municipal officer. The treasurer or depository shall not receive money from any source until the same has been reported to the clerk and audited and a receipt warrant issued therefor. All fines and forfeitures shall be reported by the officer collecting the same immediately after such collection, and be paid into the treasury. The record of the auditor shall be subject to inspection by the taxpayers of the municipality at any time during business hours.

1. Maintain books of accounts: MCA § 21-35-11 requires the city clerk to open and keep records as prescribed by the State Auditor of each and every fund (State Auditor prescribed the accounting system Accounting Chapter). As required by this statute, the system is designed to be on a cash basis to show the status of the budget. The records shall contain accounts, under headings, corresponding with the several headings of the budget, so that the expenditures under each heading and the purpose of the expenditure may be known at once. The records shall also show the source of all monies received and paid into each fund of the municipality. *** City clerk is liable for damages to the municipality if records are not maintained as required!
2. Maintains record of receipts and expenditures for governing authorities. MCA § 21-39-5 provides that the clerk shall mark filed, as of the date of presentation, each and every claim against the municipality. The clerk shall number the claims in regular consecutive order. Each year's records shall be kept separate and begin with a new number each year. In issuing any warrant to pay any claim, the clerk shall enter the number of the claim on the body of the warrant so that the claim may be easily found, and so that duplication may be avoided. The clerk must designate on each warrant the fund out of which it is paid and to what account the sums shall be charged in the records. MCA § 21-39-5 requires claims to be received, dated and filed by the city clerk in the order in which they are received, and establish claims as public records. MCA § 21-39-7 goes a step further in that it requires a formal claims docket for municipalities with populations of more than 2,000.
3. Makes a monthly report of receipts and expenditures for governing authorities: MCA § 21-35-13 requires the city clerk at each regular meeting to submit to the governing authorities a report showing the expenditures and liabilities incurred against each separate budget item for the month and also for each preceding month of the fiscal year together with the unexpended balance of each appropriation item. The clerk shall also set forth receipts from property taxes and receipts from other taxes and all other sources of each fund.
4. Draws warrants for claims and accounts. MCA § 21-39-13 provides that the clerk shall draw all warrants or checks for claims and accounts **allowed and approved by the governing authorities. All expenditures must be approved by the governing authorities in the minutes.** (Even if it's an otherwise lawful expenditure, unless it's approved in the minutes, the municipality can't pay it). All warrants or checks must be signed by the mayor or a majority of the members of the board or aldermen in a code charter municipality. All warrants must be attested by the clerk, attesting to the validity and genuineness of the check, and the seal must be affixed to the checks. Every check must show to whom it is issued, for what purpose, and the ordinance or order approving the claim by minute book and page. All warrants and checks must be drawn against the proper account or fund.

All warrants or checks shall be drawn in the order of their allowance (approval). No check shall be signed until there is sufficient money in the fund upon which it is drawn. * * * MCA § 21-39-17 imposes criminal liability on the clerk if the clerk willfully or feloniously signs a check to spend money from the treasury when the expenditure is not authorized by any order entered on the minutes: misdemeanor, punishable by a fine of \$500 or imprisonment in county jail for 6 months, or both, AND removal from office. *** Also, MCA § 21-39-5 provides that the clerk is subject to suit on his/her bond for damages which the city incurs as a result of the clerk's failure to perform any duties with regard to claims or the claims docket!

5. MCA § 21-35-31 requires every municipality to have its municipal books audited annually before the close of the next succeeding fiscal year in accordance with the procedures and reporting requirements prescribed by the State Auditor. The audit or report shall be made upon a uniform formula set up and promulgated by the State Auditor, or his designee. Two copies of the audit or report shall be mailed to the Auditor within thirty (30) days after completion. The Auditor shall submit a composite report to the Legislature showing any information concerning municipalities in this state that the Auditor deems pertinent and necessary to the Legislature in its deliberations. A synopsis of the audit or report shall be published within thirty (30) days by the governing authority in a newspaper published in the municipality (if none, in any newspaper with general circulation in the county where the municipality is located).

B. Minutes and Seal (MCA § 21-15-17)

1. Clerk is required to keep the minutes of all meetings of the governing authority. All proceedings, orders, ordinances, resolutions and any other actions of the governing authority should be placed in the minutes. The minutes must be indexed alphabetically, so that all entries can be easily found. Minutes MUST, at a minimum, contain the following:
 - a. Time, date and place of meeting
 - b. Members present
 - c. All final actions of the governing body
 - d. Votes, by member, on each action

Members may designate any other items they wish to appear. (MCA § 25-41-11)

2. All ordinances must be recorded in the minutes, either in full or just by title. If only the title is recorded in the minutes, the mayor and clerk must read, verify and subscribe the ordinance in full.
3. Each municipality shall adopt a municipal seal, and the municipal clerk is the custodian of the municipal seal.

4. Adoption of minutes. MCA § 21-15-33 requires that the minutes be adopted and approved by a majority of the members of the governing body at the next regular meeting or within 30 days of the meeting they represent, whichever occurs first. Upon such approval, the minutes are valid from and after the date of the meeting. The governing body may, by ordinance, designate that the minutes be approved by the mayor. The fact they are not signed within 30 days does not void actions taken.

C. Claims Docket (MCA § 21-39-7)

1. Claims are the requests for payment for commodities and services received by the municipality.
2. MCA § 21-39-5 requires claims to be received, dated and filed by the city clerk in the order in which they are received to establish priority of claims. This record of claims is a public record.
3. MCA § 21-39-7 requires the city clerk in a municipality of more than 2,000 to keep a claims docket in which the clerk shall enter all demands, claims and accounts presented during the month. The clerk must enter the name of the claimant, the number of the claim, the amount of the claim and on what account. Claims numbers must appear on any check issued in payment.
4. MCA § 21-39-9 requires governing authority to review all unpaid claims and determine if there is an obligation. An obligation exists if the related materials and supplies were properly contracted for and received by the municipality. The governing authority should adopt procedures to determine if any obligation exists and whether a claim should be paid, which should include some mechanism to determine if the goods or services were actually received.
5. Contents of claims docket: What items should appear on the claims docket, and what items need not appear on the claims docket?

Items required to be listed on the claims docket:

- a. All claims by third parties providing commodities or services
- b. Total amount of payroll ***** prepayment of salaries is allowed when salaries or rates of pay have been set by board order or line item in the budget and such prepayment has been authorized by order in the minutes.
- c. Electronic transfers to PERS
- d. Claim for partial payment on construction contract

Items not required to be listed on the claim dockets:

- a. Appropriations to municipal departments (these expenditures are authorized by MCA § 21-39-17)
 - b. Donations authorized by statute (but may be included)
 - c. Maturities of bond principal and interest (but may be included)
MS AG Op., Cochran (March 8, 1996).
6. MCA § 21-39-13 and § 21-35-17 provide that when claims are approved, the city clerk must determine that the funds are available in the budget and sufficient cash is in the municipal depository to pay the claims. Upon this determination, the mayor or a majority of the governing authority must sign the check, and the city clerk must attest the check. Payment is then promptly made to the claimant. MCA § 21-35-17 imposes liability upon the governing authority for approving claims in excess of the budget. The city clerk's budget report should verify that funds are in the budget to cover the claim.

D. Municipal Docket (Agenda) (MCA § 21-15-19)

1. Clerk is required to keep the “municipal docket,” upon which is to be entered each subject, other than claims and accounts, to be acted upon by the governing authority at the next meeting.
2. The Mayor may place items on the agenda. Aldermen/council members may place any item of city business within the jurisdiction of the legislative branch of government.
3. The Mayor may not use statutory authority to preside over meetings to prevent an alderman from placing items on the agenda or to prevent discussion of or voting on any matter on the agenda at the meeting.
4. Governing authorities may include on the agenda a time for members of the public to speak, but are not required to do so.

E. Ordinances

1. Basic Authority: municipal governing authority may adopt ordinances and enforce them by a fine not to exceed \$1000 or imprisonment for not more than 90 days, or both. (MCA § 21-13-1)
2. There are specific rules surrounding the adopting of ordinances:
 - a. The style of all ordinances must be “Be it ordained by the mayor and board of aldermen (or city council, etc) of the city (town or village) of _____, . . .” (MCA § 21-13-7).
 - b. Ordinances may only contain one subject, and the title to any amendment should clearly state the subject matter of the amendment. (MCA § 21-13-9)

- c. All ordinances must be reduced to writing before a vote is taken. The final vote must be recorded in the minutes by the clerk. If one or more members of the governing body requests, the clerk shall read the ordinance before the vote is taken.
 - d. All ordinances are to be certified by the clerk, and signed by either the mayor or a majority of the governing authority, recorded in the ordinance book and published at least one (1) time before the ordinance is effective. If the ordinance appears in full in the minutes, and the minutes have been duly signed, there is no need for each ordinance to be separately signed and attested in the minutes. (MCA § 25-15-33)
 - e. If text of ordinance is extremely long, MCA § 21-17-19 provides that the substance of an ordinance can be published in lieu of the full text; the substance of the ordinance is defined as an explanatory statement summarizing the full text, in which the chief purpose of the measure is explained in clear and unambiguous language, which does not exceed 300 words. The clerk must post the full text of the ordinance in three specific public places (outlined in MCA § 21-17-19) in the municipality during the full publication period.
 - f. No ordinance shall be in force for one (1) month after its passage, except for those for the immediate and temporary preservation of the public peace, health or safety or for other good cause, which is adopted by unanimous vote. Such a measure, when adopted unanimously by the full membership of the governing authorities can become effective from and after passage. The ordinance must state the reason why it is to become effective immediately. This does not relieve any notice and publication procedures, and an emergency ordinance must be recorded in the ordinance book in the same manner as any other ordinance. (MCA § 21-13-11)
 - g. Ordinances granting franchise or any right to use or occupy the streets, highways, bridges or public places in the municipality, have special requirements - any such ordinance must be introduced in writing at a regular meeting and shall remain on file in the clerk's office for at least 2 weeks prior to any action.
3. Ordinance Book. The municipal clerk shall keep the ordinances of the municipality in a book and shall append to each ordinance a note indicating the date of passage, and a citation to the minute book and page of the minutes containing the record of its passage. Ordinances not entered in the minute book are considered void. (MCA § 21-13-13)
 4. Revision and Publication of Ordinances. Municipalities may revise and codify ordinances and publish them in a book or in pamphlet form. The entire book may be adopted as the official code of municipal ordinances by

the governing authority without re-approving each individual ordinance. (MCA § 21-13-15)

5. Building codes. Municipal governing authorities may adopt building codes, plumbing codes, electrical codes, gas codes, sanitary codes or any other codes dealing with public health, safety and welfare by ordinance. The ordinance must be presented in writing to the governing authority. However, the ordinance need not set out in full the entire code being adopted, but may simply reference it. The clerk is not required to transcribe the entire code in the ordinance book, but the code is to be certified to by the mayor and clerk and kept as a permanent record in the clerk's office. Publication may be accomplished by publishing the substance. (MCA § 21-19-25)
6. Clerk also has the duty to certify copies of ordinances for introduction into evidence in judicial proceedings. (MCA § 21-13-17)

F. Ex Officio Treasurer. Under MCA § 21-3-5 in code charter municipalities not having a depository and under MCA § 21-39-19 in ALL municipalities not having a depository, the clerk serves as ex officio treasurer of the municipality and receives, keeps and pays out all moneys belonging to the municipality, according to law.

G. Taxes

1. Assessment Rolls. MCA § 21-33-41 requires clerk to make a copy of the assessment rolls of both real and personal property, attach his/her certificate to the rolls, and give it to the tax collector. The clerk preserves the original as a public record in the clerk's office.
2. Certification of tax levy. MCA § 21-33-47 provides that when the governing authority has made the levy of taxes by resolution, the clerk shall certify the tax levy to the tax collector of the municipality and send a copy to the Department of Revenue. The clerk shall publish the resolution levying the taxes, as provided in MCA § 21-17-19, within 2 weeks after it is entered on the minutes.
3. Collection of taxes.
4. Municipal Tax Sale
5. Redemption of land sold for municipal taxes. MCA § 21-33-61 provides that the owner, or any person with an interest in land sold for taxes, can, within 2 years from the date of the sale, redeem the land by paying taxes, penalties and costs in the office of the city clerk. The clerk issues to the owner a release of all claim or title of the municipality or purchaser attested by the municipal seal. MCA § 27-45-11 provides for redemption of municipal school district tax sales in the office of the city clerk.

6. Privilege License

- H. Municipal Court Clerk.** MCA § 21-23-11 provides that the clerk of the municipality shall be the clerk of the municipal court, unless the governing authority shall otherwise elect. Duties of municipal court clerk are set out by statute.
- I. Registrar of Voters.** MCA § 23-15-35 provides that the municipal clerk shall be the registrar of voters. The registrar keeps the municipal registration books and complies with all provisions of law regarding state and local elections. Upon receipt of a copy of the application for registration by the county registrar, the clerk makes a determination of the municipal voting precinct for municipal electors. MCA § 23-15-39(3).
- J. Preserving Public Records.**
1. Local Government Records Committee. MCA § 25-60-1 *et seq.* Each municipality must establish and maintain an active and continuing program for the management of records. MCA § 25-60-5(1) provides that any municipal official or employee who accepts a document for filing as a public record shall, in addition to any other fee, collect \$1.00 per document. In municipalities collecting more than \$300 per month in this fashion, half of the fee shall be deposited into the general fund and the other half of the fee submitted to the State Treasurer for the statewide local government record management fund. In municipalities collecting less than \$300 per month in such fees, this may be done on a quarterly basis.
 2. Preservation of essential records. A governing authority may make reproductions of records of the municipality deemed to be necessary to the operation of government in an emergency created by disaster, and arrange for the safekeeping of those records. (MCA § 21-15-35)
 3. Reproduction of Records; destruction of originals. A governing authority may make reproductions and destroy originals, in accordance with a records control schedule approved by the Local Government Records Committee. (MCA § 21-15-37)

COUNCIL/BOARD PROCEEDINGS AGENDAS & MINUTES 2016 Supplement

One of the major duties of the City Clerk is to attend and keep records of the Board or Council meetings. These duties often vary with the size of the town or city. Individual municipalities may have different ways of conducting meetings, as well as different ways of keeping records. For instance, several Mississippi cities have gone to “transparent government,” meaning agendas, minutes and other records are prepared, produced and archived with software designed specifically for municipal governments. Whether records are digital, paper or a combination of both, the City Clerk usually plays an important role in preparing for the meetings, in taking minutes, and in providing information of the resulting decisions.

AGENDA

Agendas, quite simply, are the way we clerks organize our meetings. They do serve as a guide so that everyone will know the items to be considered for action and the order in which they will be considered. Agendas should be prepared concisely and accurately and logically, and when final, should serve to help conduct an orderly, open, effective meeting.

The Clerk shall keep a book of permanent construction to be styled “**Municipal Docket**” (MCA § 21-15-19). Each subject, other than claims and accounts, which is to be acted upon by the governing authorities at the next meeting should be entered in this docket book. After each meeting, the Clerk should write the docket for the next regular meeting. If hearings and other matters are set for future dates, they should be put in the file folder for that specific date. This docket sheet will then be used in preparing the agendas on future dates. The use of this docket sheet makes quick referral easier for ascertaining when certain bids are to be received, when hearings are to be held or when definite dates need to be established for other matters.

The City Clerk should communicate with the Mayor, members of the Board or Council, and with the departments which will be affected by the items appearing on the agenda. Each member of the governing body should have information on the agenda subjects in advance of the meeting to provide time for study and for obtaining additional information. In preparing the agenda, the deadline date and hour for entering items on the agenda should be established; and only emergency items should be allowed to be included after the deadline date. The City Clerk should deliver copies of the agenda well in advance of the meeting. These copies should go to the members of the governing body, to the department heads, and to other persons who may have relevant information.

Content

The Agenda format should be uniform. That means the headings should be standard. Use terms that best suit your city and group headings in the way that best meets your city's needs.

This is not a comprehensive list, but headings can include:

- Name of the Body (City Council, Board of Aldermen, City Commission, Planning Commission)
- Type of Meeting (Regular, Recessed, Special Called, Public Hearing, Public Meeting)
- Date of Meeting
- Place of Meeting
- Time of Meeting
- Invocation
- Pledge of Allegiance
- Call to Order
- Roll Call (Board members, officials and staff members who are present)
- Minutes of previous meetings
- Ceremonial Matters (presentations, awards, proclamations, introductions)
- Policy Agenda
- Consent (Routine) Agenda
- Public Comment (This is an established time for the public to address items not on the printed agenda. It is strongly recommended that a time limit be set. The time limit can be noted on the public agenda.)
- Recommendations from officers and departments
- Directors/Council reports and comments
- Public Hearings (legally advertised and set for a specific time)
- Communications
- Informational Matters
- Old Business
- New Business
- Ordinances
- Resolutions
- Introduction
- Executive (Closed) Session
- Adjournment
- Posting Statement (This statement documents when and where the printed agenda was posted for public review.)

Suggestions for Preparing the Agenda (from IIMC)

1. Use specially designed agenda forms or city letterhead.
2. Center the meeting date, time and place.
3. Capitalize and underline major headings.
4. Number major headings.
5. Use capital letter designators for major sub-headings and numbers for subs under those sub-heads. If more subs are required, use lower case letters.

6. Double space between subjects.
7. Single space if a subject is more than one line.
8. Be consistent when capitalizing titles or proper names of organizations, districts or companies.
9. Avoid acronyms or abbreviations unfamiliar to the public.
10. Schedule appropriately; leave enough time for discussion and action.
11. Prepare a draft agenda for appropriate managers and elected officials to review.
12. Be receptive to changes in the agenda; often, changes can expedite the business at hand.
13. Be sure that all agenda items are ready, both politically and administratively, and be sure to include any relevant reports or back-up material that will be helpful to decision-making.
14. Avoid using adjectives and adverbs in the agenda; use objective language.
15. Consider whether to print a statement on the agenda that the Council or Board may act on any item, regardless of how it is worded. This allows for the use of terms like "Consider" and "Discuss."

Consent or Routine Agenda

The Consent Agenda is an effective procedure for handling routine matters on the agenda quickly. It is a wonderful tool to help shorten Council meetings, which otherwise could take three or four hours.

The Consent Agenda contains items that are not controversial and that generally do not need further discussions. These items may be approved as a group with one motion and one vote.

Typical items on a Consent Agenda vary, but can include:

- Approval of License applications
- Approval of minutes
- Setting of public hearings
- Approval of contracts and agreements
- Approval of payments and claims
- Acknowledgements of donations, correspondence, etc.
- Approval of bid specifications
- Approval of advertisements

Generally the Council and the Administration agree in advance on the types of items that belong on the Consent Agenda, and the Council receives background information in advance to prepare for the vote.

Consent items are not discussed separately. If an item needs discussion, it is removed from the Consent Agenda and discussed separately, either immediately after the Consent Agenda is approved or in its normal sequence on the regular agenda.

Typically, the motion would be to approve Consent Agenda items __ through __ with the exception of __. There is no one rule as to who may cause an item to be moved from the Consent to the regular agenda: it can be whenever discussion is necessary, at the request of a Council member, at the request of a Council member or citizen, or simply for good cause. It may be wise to protect strongly the right to discuss any item, simply to maintain good public relations and the public's confidence.

Some cities place an explanatory note on the Agenda. Two examples from IIMC:

- "All matters listed under the Consent Agenda are considered to be routine by the City Council and will be enacted by one motion in the form listed below. There will be no separate discussion of these items. If discussion is desired, that Item will be removed from the Consent Agenda and considered separately."
- "All items listed with an asterisk (*) are considered to be routine and non-controversial by the Council and will be approved by one motion. There will be no separate discussion of these items unless a council member or citizen requests it, in which case the item will be removed from the Consent Agenda and considered in its normal sequence on the agenda as part of the General Orders."

The Consent Agenda is passed in one motion, but in the minutes, the actions that are passed are recorded individually. Many clerks record each of the items with yeas and nays as if passed separately. Others do not record the individual vote for each consent agenda item; rather, they list them along with the motion and vote passing the entire group of items.

Distribution of the Agenda

The Clerk should have copies of the agendas available for the public and the various departments, as well as for the governing board. The agendas for the governing board and the city attorney should contain all supporting documentation. The agenda for the public will contain just the topics for discussion.

COUNCIL OR BOARD MEETINGS

General Rules

All official Council meetings and committee meetings, except for Executive Sessions, are open to the public and to the media. (*See the Open Meetings Chapter for additional discussion on the Open Meetings Act.*)

The state's open meeting act is at Title 25 Chapter 41 of the Mississippi Code of 1972.

- MCA § 25-41-1 states that "public policy is public business and shall be conducted at open meetings except as otherwise provided herein."
- MCA § 25-41-3 defines public bodies, and the exceptions to the definition. It also defines meeting as "an assemblage of members of a public body at which official acts may be taken upon a matter over which the public body has supervision, control, jurisdiction or advisory power; [and]...any such assemblage through the use of video or teleconference devices."
- MCA § 25-41-5 states that all official meetings of any public body, unless otherwise provided in Title 25 or in the Mississippi or U.S. constitutions, are public meetings and shall be open to the public at all times unless declared an executive session as described in MCA § 25-41-7. This section also addresses requirements for public notice, teleconference and video meetings, agendas, and minutes.
- MCA § 25-41-7 covers the rules for entering into executive session. It states that any public body may enter into executive session to transact public business, providing that the public body's meeting begins as an open meeting and three-fifths of all members present vote in favor of the executive session. The body must first vote to consider the necessity for the executive session, and then to go into executive session. MCA § 25-41-7 (4) specifically lists the reasons for which a public body can go into executive session. MCA § 25-41-7 (5) requires that the vote on the question of entering into an executive session be recorded and spread upon the minutes. (When coming out of executive session, the vote is to come out of executive session and re-open the meeting to the public, at which point the meeting can be resumed or adjourned. This vote also should be spread across the minutes.)
- MCA § 25-41-9 gives public bodies the power to make and enforce reasonable rules and regulations for the conduct of persons attending meetings.
- MCA § 25-41-11 states that minutes must be kept for all meetings, whether open or executive session, of a public body (including teleconference or video meetings). These minutes must show members present and absent; the date, time and place of the meeting; any final actions; any votes taken; and any other information that the public body requests be reflected in the official record. The minutes shall be recorded within 30 days after recess or adjournment and shall be open to public inspection during regular business hours.
- MCA § 25-41-13 covers public notice requirements.
- MCA § 25-41-15 gives the Mississippi Ethics Commission the responsibility for enforcing the open meetings law.
- MCA § 25-41-17 states that requirements of the open meetings law do not apply to chance meetings or to social gatherings of members of a public body.

The presiding officer (usually the Council President or Mayor) calls the meeting to order and conducts the meeting according to the order of business as established in the agenda. It is the job of the presiding officer to preserve order and decorum and to promote civility in discussion.

Also, the presiding officer determines all points of order and states the items submitted for a vote as well as the results of all votes.

It is not a state requirement, but many towns and cities follow Robert's Rules of Order or The Standard Code of Parliamentary Procedures in conducting meetings. If you do so, make sure that your local ordinance includes that Robert's Rules of Order or The Standard Code of Parliamentary Procedures will be followed.

Types of Meetings

Regular Meetings-State law covers meeting requirements; you can consult the Mississippi State Code for the law governing your city's form of government, but know that under MCA § 21-17-17, Mississippi municipalities are granted the power to adopt ordinances to change their meeting dates.

Special Called Meetings - Special Called Meetings can be held when necessary. The notice of Special Called Meetings should be posted as soon as possible and should specify the day, hour and location, as well as the subjects to be considered. At a Special Called Meeting, only the items that are listed on the agenda may be discussed.

Recessed Meetings - Council or Board meetings may be recessed to a later date and time, as long as it is before the next regular meeting.

Public Meetings – These generally occur when the Council or Board meets together and deals in any way with the business of that body. Two basic legal requirements of a public meeting are that the public be notified and be allowed to attend. Regular Council or Board meetings are public, of course, but special public meetings can be held on specific topics, for example, to inform the public and seek citizen opinion on a new water treatment system.

Public Hearings – These are public meetings held specifically to obtain public testimony or comment. A public hearing may occur as part of a regular or special meeting, or it may be the sole purpose of a special meeting, with no other matters addressed. Public hearings can address matters like unsafe properties, city budgets and motor vehicle assessment schedules, to name a few. The public notice for public hearings is generally dictated by state law.

Work (Study) Sessions - These are open to the public and are generally held to review upcoming requests or programs, hear progress reports or status updates, or receive other information that may warrant discussion.

Executive (Closed) Sessions – These are closed to the public, and may be held in accordance with the Mississippi State Open Meetings Act. The allowable reasons for holding Executive Sessions are covered in MCA § 25-41-7 of the Mississippi Code of 1972. It would be wise to keep this on hand to ensure your board follows the law when meeting in executive session.

Emergency Meetings - These are called when there is a matter the governing body could not reasonably have foreseen and so could not provide adequate notice. The meeting is limited to discussion and action with respect to the emergency, and notice of the meeting should be provided as soon as possible.

Rights of Citizens - State law does not require that your Council or Board allow citizens an opportunity to speak, though doing so is generally considered an effective community relations tool. If you choose to allow citizens time during your meeting, it would be a good idea to establish a written policy that provides a time limit, usually from three to five minutes. This policy also should clarify sign-in procedures and any other requirements; it would be a very good idea to state the limits of acceptable behavior and to reserve the right to remove any speaker who violates the rules.

Minutes are required for all types of meetings even when no action is taken by the council or board.

A quorum is required for the transaction of any and all business. The governing body may enact its own rules and regulations regarding the order of the business and the keeping of minutes, as previously stated.

Meeting Requirements by Form of Government

A. Code Charter Form of Government - MCA § 21-3-19

- Regular Meeting – First Tuesday of month with time and place set by ordinance. May also have a second Regular Meeting not less than 2 weeks and not more than 3 weeks after first meeting.
- Recessed Meeting – A day fixed by order and entered on the minutes in which the board may conduct any business. The recessed meeting must be prior to the next regularly scheduled meeting.
- Special Meeting – The Mayor or any two (2) aldermen may call a special meeting in which the time and the specific subject matters to be acted upon are included. The notice must be given to Board members at least three (3) hours before the meeting and must be posted at City Hall. The notice is to be included in the minutes.
- Holiday – If a regular meeting falls on a holiday then the Board will meet on the following day at the same time and location.

B. Commission Form of Government - MCA § 21-5-13

- Regular Meeting – First Monday in July after an election and thereafter twice each month with the time and place set by the Council.
- Special Meeting – The Mayor or any two (2) aldermen may call a special meeting.
- Holiday - If a regular meeting falls on a holiday then the Board will meet on the following day at the same time and location.

C. Council Form of Government – MCA § 21-7-9

- Regular Meeting – First Tuesday after the first Monday in January after an election and monthly thereafter on the first Tuesday in each month.
- Special Meeting – The Mayor or three (3) members of council may call a special meeting.
- Holiday - If a regular meeting falls on a holiday then the Board will meet on the following day at the same time and location.

D. Mayor-Council Form of Government – MCA § 21-8-11(2)

- Regular Meeting – First Tuesday after the first Monday in July after an election and then at least monthly on the first Tuesday after the first Monday each month or at such other time as set by council order.
- Special Meeting – The Mayor or a majority of the members of council may call a special meeting.

E. Council-Manager Form of Government – MCA § 21-9-39

- Regular Meeting – First Tuesday of the month at a time and place provided by council.
- Special Meeting – The Mayor or two (2) councilmen may call a special meeting with at least two (2) days' notice given to the Mayor and each Council Member. A special meeting may also be held at any time by written consent of the Mayor and all members of the Council.
- Holiday - If a regular meeting falls on a holiday then the Board will meet on the following day at the same time and location.

Role of the Clerk at Meetings

The City Clerk or his deputy is required to be present at all meetings and is required to take notes on everything which occurs. There are several ways that this can be done:

1. Assistant – An assistant may attend the meeting and take notes for transcription later.
 2. Video/Tape Recorder – Use of a video or audio (when meeting is conducted via telephone) recorder from which the minutes can be transcribed and filed for future reference.
- When utilizing any of the recordation methods above the requirements that must be met are as follows:
 - The minutes must be recorded within a reasonable time, no more than thirty days after recess or adjournment of a meeting and that recording must be made available to the public for inspection during normal business hours. (MCA § 25-41-11)
 - If utilizing video or tape recording methods for recording a meeting the recording must be made available for public review for a minimum of 3 years from the date of the meeting. [MCA § 25-41-5(4)]

The Clerk should be courteous and helpful not only to the members of the Board, but to the public in securing information about agenda items. The Clerk should not enter into the discussions unless specifically called upon to do so. Careful attention should be given in recording individual motions and the names of the persons who make them.

MINUTES

Minutes are the official record, the historical voice of government. They must be accurate, and they must record all of the transactions of government business that occur during the meeting. As the Clerk, Deputy Clerk or Council Clerk charged with keeping the minutes, you must be alert, enthusiastic, accurate and industrious to do your job well. Doing your job well means compiling a truthful, complete account of the meeting for the official record. Quite often, the minutes will be requested by attorneys for court and at that point, will be needed to support your city's case.

Minutes are usually typed on special minute paper. These minutes are then retained in a loose-leaf book with an index in front or back. A marginal index may be used to state briefly the context of the article. The minute books contain condensed summaries of official action taken by the governing Board. It is important that these minutes be accurate and complete for obvious reasons of legality involving the city, the Clerk, or the Board members.

MCA § 21-15-17, gives municipal clerks the duty of keeping municipal minutes that record the proceedings and all orders and judgments of the governing authority. The law requires that these minutes be indexed. This same section provides that the clerk shall be the custodian of the municipal seal, and that each municipality shall adopt and provide a seal.

Content

The minutes must be clear, concise and precise. The idea is to show exactly what actions were taken and what decisions were made, not necessarily everything that was said. There are times that it is worthwhile to include remarks that clarify the board or council's intent in its decisions.

This is not a comprehensive list, but minutes should include:

- Date of meeting
- Location of meeting
- Type of meeting (Regular, Recessed, Special Called, Public Hearing, Public Meeting)
- Time of meeting
- Board members, officials and staff members who are present (if someone leaves, note times of departure and return, if applicable)
- Topics of business
- Actions taken on each business matter
- Record of motions
- Record of voting
- Time of adjournment
- Signature blocks for the presiding officer (Mayor or President of the Council), the clerk and any others who approve the minutes

Suggestions for Preparing the Minutes (from IIMC)

1. Single space the text.

2. Double space between paragraphs; triple space between each item in the order of business.
3. The left margin should be an inch and a half.
4. Use block style.
5. Type captions (subject and abbreviated action) in the left margin to help locate and identify specific matters of business later.
6. Capitalize and center the heading designation the meeting, time, date and place.
7. Be consistent when capitalizing titles, proper names, proper nouns, or the names of organizations, districts and companies.
8. Refer to an official document by its assigned number whenever possible (Ex. Ordinance 2797, Resolution 2013-79).
9. Use item numbering as a means of locating and indexing items.
10. Identify names and addresses of businesses, applicants and property-people, places and things.
11. For the record, get the names, addresses and affiliations of people who address the Council or Board.
12. Use past tense.
13. Avoid using gender. Instead of Councilman or Councilwoman, use Council member or Councilor.
14. Do not use first names as a reference. Use Mr./Mrs./Ms. with a last name, unless two people have the same surname; in that case, use first name or initial with the surname to identify them.
15. After the minutes are prepared, have someone else check them for spelling, grammar and other errors.
16. Before the meeting, read through the agenda and supporting material when possible, both to become familiar with potential action and to help with minutes preparation.
17. Take notes as the meeting proceeds, and if needed, note the time each item begins.
18. If the meeting is being audio recorded, note the odometer reading of any statements or motions that are unclear; this will save time later when you are preparing the minutes.
19. Avoid using adjectives and adverbs-stick with objective language.
20. Cities elsewhere create a policy on uniform minute taking. Basically, this means that the same format is used for all boards, councils, commissions and committees; the policy literally dictates what information is to be contained in each paragraph.

Motions

There are various ways to report motions and votes. The minutes should reflect who made the motion and who seconded it, and the actual vote. If the vote is not unanimous, then the minutes should reflect how each board member voted.

Motions for an ordinance require the vote to be listed by individual name and vote.

Corrections to Minutes

If there are corrections to the minutes, the corrections should be recorded as part of the minutes of the meeting when they are approved and amended. After the meeting, correct the draft minutes to include the amendments before placing the final, executed minutes in the Minute Book.

Here's an example of corrections from IIMC:

Approval of Minutes:

Motion by Council member _____ seconded by Council member _____ to approve the Minutes of the Regular Meeting of ____ 20__, as submitted, and the Special Meeting of ____ 20__, as amended, as follows:

Page 5, paragraph 6, to read, "...to be reviewed by the Design Review Committee."

Page 6, new paragraph 9, to read, "Alfred Brown, 395 Rosa Avenue, expressed opposition to the proposed zoning amendment."

AYES: Council members -----

NAYES: None

Signatures on Minutes

Generally, the presiding officer (Mayor or President of the Council) signs the minutes and the Clerk attests them. This approval can be addressed in your local ordinance. In code charter municipalities the minutes are signed by the Mayor and attested by the City Clerk.

MCA § 21-15-33 requires the minutes of each municipality to be adopted and approved by a majority of all members of the governing body of the municipality at the next regular meeting or within 30 days of the meeting, whichever occurs first.

Certified Copies of Minutes

From time to time, you will receive requests for certified copies of the minutes, or of an excerpt from the minutes. Example of Certification Form is as follows:

STATE OF MISSISSIPPI
COUNTY OF _____

I, _____, City Clerk of the City of _____, Mississippi, do hereby certify that the foregoing is a true and correct copy of the (month, day year), City Council minutes, as appears for record in my office.

Witness my signature and the official seal of said City on this, the ____ day of (month), A.D., year.

CITY CLERK

This format can be used also to provide certified copies of resolutions, ordinances, and any other documents processed through the clerk's office.

Preserving the Minutes

Your city's minutes are a permanent record. Use special attention, care and security measures to protect them. MCA § 21-15-35 grants municipalities authorization to preserve records and empowers them to protect the official record from damage or destruction due to disaster caused by nature or man. MCA § 21-15-37 gives governing authorities the power to reproduce municipal records and destroy originals in accordance with the records control schedule of the Department of Archives and History. (See the Public Records and Records Management Chapters for additional information)

ORDINANCES, RESOLUTIONS, AND ORDERS

MCA § 21-17-5 gives municipalities the authority to adopt, implement and enforce any orders, resolutions and ordinances with respect to such municipal affairs, property and finances and have the power to alter, modify and repeal such orders, resolutions or ordinances.

ORDINANCES

An ordinance is an act of law and is the highest form of City action. An ordinance is a permanent rule of government and remains in force until repealed.

MCA § 21-13-1 gives municipalities the power to pass ordinances and to enforce them by a fine not to exceed One Thousand Dollars (\$1,000) or imprisonment not to exceed ninety (90) days or both.

The authority of all municipalities, regardless of the form of government, to adopt and amend ordinances is covered in 21-13-1 et seq. of the Mississippi Code of 1972. Note that MCA § 21-13-13 requires the municipal clerk to keep a permanent indexed record of all ordinances, with the date of passage for each and a reference to the minute book and page number in which each is recorded. Section MCA § 21-13-15 provides for the arranging, classifying and codifying of ordinances for the adoption as the official code of ordinances of the municipality.

When an Ordinance is Required:

Always use an ordinance to amend or repeal an ordinance. This is called the Rule of Equal Dignity. Actions of the Board or Council that require an ordinance can include:

- Zoning
- Setting fees for services such as water and sewer or sanitation
- Setting laws governing citizen conduct, such as noise or smoking or maintaining property
- Annexing property
- Amending the Land Code
- Closing or vacating streets or alleys
- Renaming streets
- Transient Vendors

Drafting Ordinances

Once you know that an ordinance is needed, the first step is to draft it. At this point, determine whether the ordinance amends, affects or repeals an existing ordinance. If it amends or repeals, you will need to cite any applicable municipal code section and the number of the ordinance being amended. When citing the ordinance number, the recommended procedure is to use the original ordinance number as the reference point; some cities use only the original ordinance number, but others list amended versions also.

Following are some miscellaneous tips from IIMC:

- A well-written draft requires little punctuation.
- Short sentences help eliminate excessive punctuation.
- Use definitions sparingly and make use of existing definitions.
- Be as specific as possible when establishing penalties.
- Do not use severability clauses unless absolutely necessary.
- Be consistent by following procedural rules relating to amendments, additions and repeals.
- When it comes to language, less is more.
- Limit ordinances and resolutions to one subject.
- Keep the title short and succinct.
- Try to use gender-free language.

Forms and Parts of an Ordinance

1. Title and Subject - The title must accurately and concisely state the action the ordinance will take. The title does not include details and does not serve as an index of the ordinance contents; rather, it provides a brief, general statement of the subject. The title should contain the words "amend," "authorize" and "repeal" when appropriate, and should contain specific language, for example, "Amending Section 3, relating to "
2. Preamble -This is optional, but is very often included to explain the reason for the ordinance and its legislative objective. The preamble is contained in a series of "Whereas" clauses.

3. Ordaining or Enacting Clause - This is mandatory and states "Be it Ordained by the Council of the City of that"
4. Special Clauses -These are optional. The most common special clauses are:
 - The penalty section - establishes the punishment for violating the ordinance.
 - The severability clause - provides that - should a phrase or sentence or clause of the ordinance be declared invalid or unconstitutional by a judge - the other sections of the ordinance remain in effect.
 - The repealer clause - resolves issues with previous or existing ordinances that may be in conflict with the current ordinance.
5. Body of the Ordinance - This is the most important part because it contains the command or law ordained by the Council or Board.
6. Effective Date - Ordinances may include a clause setting the date for when an ordinance goes into effect. MCA § 21-13-11 states that no ordinance shall be in force for one month after its passage, except to preserve the public peace, health or safety or for other good cause, as adopted by unanimous vote of all members of the governing body. However, in such cases, the ordinance shall contain the reason that it is necessary that the ordinance become effective immediately.
7. Publishing Requirements - This section describes the publishing or posting requirements. MCA § 21-13-11 requires every ordinance be published at least one time in some newspaper published in the municipality, or if there is no such newspaper, then in a newspaper within the county that has general circulation in the municipality, or if there is no such newspaper, then in any newspaper published in Mississippi that has a general circulation in that community. The publishing must occur before the ordinance becomes effective, unless the ordinance is effective immediately.
8. Signature and Attestation - All ordinances must be signed and sealed in accordance with your city's law.
9. The Ordinance Number - Assigned by the City Clerk or Council Clerk after the ordinance is enacted.

Statutory Requirements

MCA § 21-13-3 provides the guidelines for the adoption of ordinances.

- Shall be introduced in writing at a regular meeting of the governing body
- Shall remain on file for at least two (2) weeks before the final passage or adoption
- Shall, upon request of one or more members of the governing authority, be read by the clerk before a vote is taken
- Vote on final passage shall be taken by both "yeas" and "nays, which shall be entered on the minutes by the clerk

Upon adoption of an ordinance, it shall be signed by the mayor or presiding officer of the governing authority and attested by the city clerk, recorded in the ordinance book, and

published at least one (1) time in a newspaper either published or having a general circulation in the municipality. MCA § 21-13-11.

RESOLUTIONS

Resolutions, like ordinances, are the formal written record of an action taken by the City Council or the Board. They must reflect the action that is taken precisely; no additions or deletions are permitted.

When a Resolution is Required:

Always use a resolution to amend or rescind an existing resolution. This is called the Rule of Equal Dignity.

Actions of the Board or Council that require a resolution can include:

- Adopting the budget
- Levy of taxes
- Authorize expenditures
- Establish new funds
- Amend the budget
- Set public hearings
- Declare unsafe properties
- Issue or sell bonds
- Declare surplus properties
- Authorize interlocal agreements
- Approve development agreements

Drafting Resolutions

Once you know a resolution is necessary, the first step is to draft it. As with ordinances, you must determine whether the proposed resolution amends, affects or rescinds an existing resolution; if so, the new resolution must cite the resolution that is being amended or rescinded. A properly drafted resolution saves time and money for your city. Needless to say, an improperly drafted resolution wastes time and money.

Following are some miscellaneous tips from IIMC:

1. A well-written draft requires little punctuation.
2. Short sentences help eliminate excessive punctuation.
3. Be consistent with the way you handle amendments, additions and repeals.
4. When it comes to language, less is more.
5. Try to limit resolutions to one subject. Keep the title short and succinct.
6. Try to use gender-free language.

Forms and Parts of a Resolution

1. Title and Subject - The resolution should be confined to one subject, which must be clearly and concisely stated in the title.
2. Preamble - This is not a requirement, but is often found in resolutions. The preamble provides an explanation or legislative history, and should be contained in a series of clauses beginning with "Whereas."
3. Enacting Clause - The enacting clause in a resolution begins "BE IT RESOLVED" and then specifies the action to be taken.
4. Body of the Resolution - This is the part of the resolution that describes the action to be taken. Unless the resolution is a very simple one, organize the paragraphs into sections that are identified by number. Numbering will simplify things if changes have to be made in the future.
 - If the resolution authorizes a contract or bond issue, etc., always include the phrase, "Copy of which is on file in the City Clerk's Office."
 - State the precise action to be taken.
 - If the resolution is rescinding a prior resolution, cite the section numbers to be rescinded. Be very specific.
 - To add sections to an existing resolution, state "Add Section , to read as follows:" (state the new language for the section in its entirety.)
 - If amend the wording of an existing resolution, specifically identify each section to be amended and state the new language exactly.
5. Effective Date - If the effective date is different from the date the City Council or Board will adopt the resolution, this must be specifically stated. Usually, the effective date is the final paragraph or section of the resolution.
6. Posting -This describes the posting or publication requirements, and is not always necessary.
7. Signature and attestation - All resolutions must be signed and sealed in accordance with your city's law.
8. Resolution Number - Assigned by the City Clerk or Council Clerk after the resolution is enacted if applicable for your municipality.

ORDERS

Orders are the actions of the governing authority that deal with matters of a temporary character. Orders will be used for any action that doesn't require an ordinance or resolution.

VETO OF ORDINANCE, RESOLUTION OR ORDER

The Mayor of a code charter or mayor/council form of government has the authority to veto any ordinance, resolution or order passed by the board or council.

Code Charter Municipality - MCA § 21-3-15

- Ordinances (Resolutions & Orders) adopted by the board of aldermen shall be submitted to the mayor.
- Mayor shall, within ten (10) days after receiving any ordinance, either approve by affixing his signature thereto, or return it to the board by
 - Delivering a written statement setting forth the objections to the City Clerk
 - Clerk should mark the date and time received on the written statement
 - Clerk shall deliver copies of the written statement to the board
- Board of Aldermen shall reconsider the ordinance on or after the third day following its return by the mayor or not more than 15 days.
 - A vote of two-thirds (2/3) of the members of the board is required to override the veto.
 - The two-thirds (2/3) requirement is based on the total number of board members and not the members present and voting. See AG Opinion Dye (11/30/09); Whitten (6/4/10); Austin (5/21/12)
 - Line item veto is not allowed. See AG Opinion Cockerham (6/11/12)

Mayor/Council Municipality – MCA § 21-8-17

- Ordinances (Resolutions & Orders) adopted by the board of aldermen shall be submitted to the mayor.
- Mayor shall, within ten (10) days (not including Saturdays, Sundays or holidays) after receiving any ordinance, either approve by affixing his signature thereto, or return it to the board by
 - Delivering a written statement setting forth the objections to the Clerk of Council.
 - Clerk should mark the date and time received on the written statement
 - Clerk shall deliver copies of the written statement to the board
- Council shall reconsider the ordinance not later than the tenth day (not including Saturdays, Sundays or holidays) following its return by the mayor
 - A vote of two-thirds (2/3) of the members of the board present and voting is required to override the veto. See AG Opinion Dye (11/30/09)

Council/Manger Municipality – MCA § 21-9-37

- The mayor has no veto power

MISSISSIPPI ETHICS LAWS

The Mississippi Ethics Commission administers Title 25, Chapter 4, Mississippi Code of 1972 (MCA), known as the Ethics in Government Law: Article 1, Mississippi Ethics Commission and Article 3, Conflict of Interest and Improper Use of Office. The Commission also enforces Section 109, Miss. Constitution of 1890, which forms the historic foundation of Mississippi's Ethics in Government Laws.

There are eight basic prohibitions contained in Mississippi's Ethics in Government Laws:

- Board Member Contracts - Section 109, Miss. Const. of 1890, and MCA § 25-4-105(2)
- Use of Office - MCA § 25-4-105(1)
- Contracting - MCA § 25-4-105(3)(a)
- Purchasing Goods and Services - MCA § 25-4-105(3)(b)
- Purchasing Securities - MCA § 25-4-105(3)(c)
- Insider Lobbying - MCA § 25-4-105(3)(d)
- Post Government Employment - MCA § 25-4-105(3)(e)
- Insider Information - MCA § 25-4-105(5)

Section 109, Miss. Constitution of 1890

No public officer or member of the legislature shall be interested, directly or indirectly, in any:

- contract with the state, or any district, county, city, or town thereof,
- authorized by any law passed or order made by any board of which he may be or may have been a member,
- **during the term** for which he shall have been chosen, **or within one year** after the expiration of such term.

NOTES

- Section 109 only applies to members of boards and the Legislature.
- Notice the prohibition is against an interest, not against an act.
- There must be some sort of contract. It need not be a written contract.
- The conflict arises when the board funds or otherwise authorizes the contract. Even if the individual member does not vote, he or she may be in violation.
- The prohibition continues until a former official has been out of office for one year.

OPINIONS

10-074-E While the spouse of a member of the municipal governing authorities may not be employed by the municipality, other relatives may be employed if they are financially independent from the public official and the public official fully recuses himself or herself from any action which results in a pecuniary benefit to the relative, pursuant to Section 109, Miss. Const. of 1890, MCA § 25-4-105(2) and MCA § 25-4-105(1).

- 10-105-E A city may do business with various local businesses owned by or employing the financially independent children of city council members. When the council members and their children are totally, financially independent from each other and the council members fully recuse themselves from any action benefiting the children of the businesses, then there is no violation of Section 109, Miss. Const. of 1890, MCA § 25-4-105(2) or MCA § 25-4-105(1).
- 10-019-E A mayor may not serve as a paid consultant on a real estate development which is contingent upon infrastructure improvements requiring approval by the city council. The mayor would have an interest in an agreement authorized by the city council, which is prohibited under Section 109, Miss. Const. of 1890, and MCA § 25-4-105(2).
- 10-033-E An employee of a transportation business may not serve on a board of alderman which has a contract with the transportation business. The alderman has a direct interest in the contract between the town and the business, as prohibited in Section 109, Miss Const. of 1890, and MCA § 25-4-105(2).
- 10-046-E A town may not hire the mayor's teenage daughter as a summer lifeguard at the town pool. Pursuant to Section 109, Miss. Const. of 1890, and MCA § 25-4-105(2), the town may only employ the mayor's child if the mayor and the child are totally, financially independent from each other. A parent and child are not financially independent when the child is a minor who lives in the parent's home or can be claimed as a dependent on the parent's income tax return.

MCA § 25-4-105(1)

No public servant shall use his official position to obtain, or attempt to obtain, pecuniary benefit for himself other than that compensation provided for by law, or to obtain, or attempt to obtain, pecuniary benefit for any relative or any business with which he is associated.

NOTES

- The statute does not require a public servant to misuse his or her position.
- To avoid a violation, a public servant must totally and completely *recuse* himself or herself from the matter giving rise to the conflict.
- A board member must leave the board meeting before the matter comes up for discussion, may only return after the matter is concluded, and must not discuss the matter with anyone.
- An abstention is considered a vote with the majority and is not a recusal. The minutes of the meeting should accurately reflect the recusal.
- Recusal *does not* prevent other violations.

‘Business with which he is associated’ means public servant or his relative is

- officer, director, owner, partner, employee or
- holder of more than ten percent (10%) of the fair market value or
- from which he or his relative derives more than \$2,500 in annual income or
- over which such public servant or his relative exercises control.

OPINIONS

- 12-022-E A city council member may not participate in zoning or planning actions which affect the council member’s employer. MCA § 25-4-105(1) prohibits a public servant such as a city council member from using his or her position to obtain or attempt to obtain a pecuniary benefit for a “business with which he is associated.” Therefore, the council member must fully recuse himself or herself from any action by the city council which would result in a monetary benefit to the non-profit corporation, such as a variance or other planning or zoning action affecting a construction project in which the non-profit corporation is involved.
- 10-002-E The owner of the only local fire extinguisher servicing business may not serve as fire chief and be responsible for inspecting local fire extinguishers. This situation could easily lead to a violation of MCA § 25-4-105(1), and creates an appearance of impropriety under MCA § 25-4-101.
- 10-025-E The head of a city gas and water department may not contract with private citizens who wish to connect to the city natural gas system. The city employee is in a position to know which residents are in need of private services and could easily solicit those services for himself. Due to the potential for a violation of MCA § 25-4-105(1), and the public policy codified in MCA § 25-4-101, the city employee should refrain from working in his private capacity to connect customers to the city gas system.
- 10-064-E An alderman who owns an auto dealership may not propose an ordinance to prohibit parking automobiles for sale in public lots. The alderman may not use his position to obtain or attempt to obtain any pecuniary benefit for himself or his auto dealership, as proscribed in MCA § 25-4-105(1). It appears the alderman’s business will benefit if the proposed ordinance is adopted.

“Relative” is the public servant’s:

- spouse,
- child,
- parent,
- sibling (brothers and sisters) or
- spouse of a relative (in-laws).

OPINIONS

- 12-016-E A city may purchase real property from a limited liability company in which the mayor's distant cousin is a member. A cousin is not a "relative" for purposes of the Ethics in Government Laws. Therefore, no violation of MCA § 25-4-105(1) will result if the city purchases real property from an LLC in which the mayor's distant cousin is a member.
- 12-032-E The city board may make appointments to the board of the municipal school district when two city board members have relatives who are employed by the district. However, the city board members whose relatives are employed with the school district should fully recuse themselves from all matters involving the municipal separate school district in order to fully comply with MCA § 25-4-101 and should vote on appointments to the school board only when their recusal would result in the loss of a quorum.
- 10-044-E The child of an alderwoman may accept employment with the city attorney's law firm. If the alderwoman and her child are totally, financially independent, no violation of Section 109, Miss. Const. of 1890, or MCA § 25-4-105(2), should occur under these facts, and the alderwoman's recusal should prevent a violation of MCA § 25-4-105(1).
- 10-066-E The chief of police may not send police cars to an auto repair shop owned by his son-in-law. MCA § 25-4-105(1), prohibits the chief from using his position to obtain or attempt to obtain any pecuniary benefit for his son-in-law or his son-in-law's business.
- 10-070-E City employees may not refer local residents to another city employee for private work. A city employee is in a position to know which residents are in need of private services and could easily solicit those services for himself. Due to the potential for a violation of MCA § 25-4-105(1), and the public policy codified in MCA § 25-4-101, all city employees should refrain from referring residents to another city employee for private work.

The Contractor Prohibition - Subsection (3)(a)

No public servant shall: be a contractor, subcontractor or vendor with the governmental entity of which he is a member, officer, employee or agent, other than in his contract of employment, or have a material financial interest in any business which is a contractor, subcontractor or vendor with the governmental entity of which he is a member, officer, employee or agent.

- "The term contractor is generally used in the strict sense of one who contracts to perform a service for another and not in the broad sense of one who is a party to a contract." Moore, ex rel. City of Aberdeen v. Byars, 757 So.2d 243, 248 (¶ 15) (Miss. 2000).

‘Material financial interest’ means a personal and pecuniary interest, direct or indirect, accruing to a public servant or spouse, either individually or in combination with each other.

Exceptions for ‘Material Financial Interest’:

- Ownership of less than 10% in a business with aggregate annual net income to the public servant less than \$1,000.00;
- Ownership of less than 2% in a business with aggregate annual net income to the public servant less than \$5,000.00;
- Income as an employee of a relative if neither the public servant or relative is an officer, director or partner and any ownership interest would not be material under subparagraph 1 or 2; or
- Income of the spouse of a public servant when the spouse is a contractor, subcontractor or vendor and the public servant exercises no control, direct or indirect, over the contract.

OPINIONS

- 10-007-E An Alderman’s employer may not be a subcontractor to the city. Pursuant to MCA § 25-4-105(3)(a), no public servant of the city may have a material financial interest in a business which is a contractor, subcontractor or vendor to the city.
- 10-040-E Members of a town Park Advisory Committee may not sell products to the town park or be compensated for working as an umpire for the park. Pursuant to MCA § 25-4-105(3)(a), no public servant of the town may be a contractor or vendor to the town.
- 10-085-E A police chief, who is a veterinarian, may not provide services to the city in the form of boarding and disposing of stray animals pursuant to MCA § 25-4-105(3)(a), if other reasonably available contractors can be found in the area after a diligent search. Under no circumstances may the police chief use his position to obtain or attempt to obtain any monetary benefit for himself or his business, under MCA § 25-4-105(1).

Purchasing Goods or Services - Subsection (3)(b)

No public servant shall: be a purchaser, direct or indirect, at any sale made by him in his official capacity or by the governmental entity of which he is an officer or employee, except in respect of the sale of goods or services when provided as public utilities or offered to the general public on a uniform price schedule.

- For example, this subsection prohibits a government employee or official from purchasing anything at an auction or other sale conducted on behalf of his or her governmental entity.

Purchasing Securities - Subsection (3)(c)

No public servant shall: be a purchaser, direct or indirect, of any claim, certificate, warrant or other security issued by or to be paid out of the treasury of the governmental entity of which he is an officer or employee.

Inside Lobbying - Subsection (3)(d)

No public servant shall: perform any service for any compensation during his term of office or employment by which he attempts to influence a decision of the authority of the governmental entity of which he is a member.

Post Government Employment - Subsection (3)(e)

No public servant shall: perform any service for any compensation for any person or business after termination of his office or employment in relation to any case, decision, proceeding or application with respect to which he was directly concerned or in which he personally participated during the period of his service or employment.

- Applies after someone leaves government.
- If you worked on a matter while you were in government, you cannot work on that same matter in the private sector.
- But a former government employee can work for a government contractor on other matters.

OPINIONS

10-043-E A city employee may retire and begin working for a private company which may do business with the city in the future but has not done so in the past. Because the future employer has done no business with the city in the past and will not engage in any outgoing contracts or projects, no violation of MCA § 25-4-105(3)(e), should occur if the city employee retires, begins working for the company and then sells merchandise to the city. Pursuant to MCA § 25-4-105(3)(a), the company should do no business with the city until the city employee is no longer employed by the city.

Exceptions to Subsection (3) - MCA § 25-4-105(4)

- These exceptions only apply to Subsection (3) and not to any other provisions of law.
- Can apply to a government employee but does not protect a board member from a violation of Section 109 or MCA § 25-4-105(2). The employee would still have to recuse himself or herself from any action which might otherwise violate MCA § 25-4-105(1).

Insider Information - MCA § 25-4-105(5)

No person may intentionally use or disclose information gained in the course of or by reason of his official position or employment as a public servant in any way that could result in pecuniary benefit for himself, any relative, or any other person, if the information has not been communicated to the public or is not public information.

- Comes up most often in connection with economic development.
- Non-public information may not be revealed if it might result in a monetary benefit to anyone.
- Could apply to a former public servant.

ADVISORY OPINIONS

- Commission issues anonymous advisory opinions every month to public servants who need advice about complying with the Ethics Law.
- Opinion must be requested in writing by a public servant or candidate for elected office.
- If you get an opinion from the Ethics Commission and you follow it, you are immune from liability under the Ethics Law.
- Commission staff gives informal guidance based on past opinions, but the only way to be protected from liability is to obtain an official written opinion.

THE COMPLAINT PROCEDURE

General

The scope of the Commission's authority to conduct investigations is limited to:

- Violations of state law by public servants, including persons elected, appointed or employed by the State of Mississippi or local governments; and
- Failure to file or failure to file completely and accurately all financial disclosure information required in the Ethics in Government Laws.

Basics

- Sworn complaint must be filed alleging a violation by a public servant before an investigation can be conducted.
- If investigation is authorized by Commission, it is conducted before respondent is notified.
- Respondent has 30 days to file a response.
- All investigative proceedings and records are strictly confidential, and breach of confidentiality constitutes a crime.

Enforcement

- Commission may hold hearings to determine guilt and to impose penalties.
- Appeals go to Hinds County Circuit Court.
- Commission may impose fine up to \$10,000, censures and equitable remedies on all public servants.
- Commission can only recommend that Hinds County Circuit Court remove an official or suspend or demote an employee.

CONFIDENTIAL RECORDS

The Ethics Law provides that “all commission proceedings relating to any investigation shall be kept confidential.” The complaint and investigation records are strictly confidential.

All advisory opinions are public except that the request for an advisory opinion shall be confidential as to the identity of the individual making the request. The Commission, before making an advisory opinion public, must make such deletions and changes thereto as may be necessary to ensure the anonymity of the public official and any other person named in the opinion.

THE STATEMENT OF ECONOMIC INTEREST

The Statement of Economic Interest is a financial disclosure form filed annually by certain elected and appointed officials in state and local government. It is intended to disclose the sources of a public servant’s income so that members of the public know where a public servant’s personal financial interests lie. It does not disclose the amount of income a public servant receives. The Statement of Economic Interest promotes compliance with the Ethics in Government Law disclosing potential conflicts of interest. All information disclosed is for the previous calendar year. The form **must** be filed electronically at the Ethics Commission web site, www.ethics.state.ms.us.

Persons Required to File – MCA § 25-4-25

- Persons elected by popular vote, excluding United States Senators and United States Representatives, to any office, whether it be legislative, executive, or judicial, and whether it be statewide, district, county, municipal, or any other political subdivision, with the exception of members of boards of levee commissioners and election commissioners;
- Members of local school boards that administer public funds, regardless of whether such members are elected or appointed;
- Persons who are candidates for public office or who are appointed to fill a vacancy in an office who, if elected, would be required to file a statement of economic interest;

- Executive directors or heads of state agencies, by whatever name they are designated, who are paid in part or in whole, directly or indirectly, from funds appropriated or authorized to be expended by the Legislature, and the presidents and trustees of all state-supported colleges, universities, and junior colleges; and
- Members of any state board, commission, or agency, including the Mississippi Ethics Commission, charged with the administration or expenditure of public funds, with the exception of advisory boards or commissions; provided, however, in order to fulfill the legislative purposes of the chapter, the commission may require, upon a majority vote, the filing of a statement of economic interest by members of an advisory board or commission.
- Executive directors or board members of certain economic development entities (EDDs, REDAs, CDCs, Industrial Council) and airport authorities

Contents – MCA § 25-4-27

The statement must include the following information for the preceding calendar year:

- The full name and mailing address of the filer;
- The filer's title, position and offices in government;
- All other occupations of the filer, the filer's spouse or any person over the age of twenty-one (21) who resided in the filer's household during the entire preceding calendar year;
- The names and addresses of all businesses in which the filer, the filer's spouse or any person over the age of twenty-one (21) who resided in the filer's household during the entire preceding calendar year held a position, and the name of the position, if the person: (i) Receives more than Two Thousand Five Hundred Dollars (\$2,500.00) per year in income from the business; (ii) Owns ten percent (10%) or more of the fair market value in the business; (iii) Owns an ownership interest in the business, the fair market value of which exceeds Five Thousand Dollars (\$5,000.00); or (iv) Is an employee, director or officer of the business;
- The identity of the person represented and the nature of the business involved in any representation or intervention for compensation for any person or business before any authority of state or local government, excluding the courts, on any matter other than uncontested or routine matters. (Applies only to (1) an elected official, (2) an executive director or head of a state agency or (3) a president or trustee of a state-supported college, university or community or junior college, including members of the State Board for Community and Junior Colleges and the State Board of Institutions of Higher Learning.)
- All public bodies, whether federal, state or local government, from which the filer, the filer's spouse or any person over the age of twenty-one (21) who resided in the filer's household during the entire preceding calendar year received compensation in excess of One Thousand Dollars (\$1,000.00) during the preceding calendar year, whether the compensation was paid directly or indirectly through another person or business.

Required Filings

No person by reason of successful candidacy or assuming additional offices shall be required to file more than one disclosure form in any calendar year, except such official shall notify the commission of such additional offices previously not reported.

Filing Dates – MCA § 25-4-29

- Incumbent office holders must file on or before May 1 of each year.
- Candidates for office in primary, special, or general elections must file within 15 days after deadline for qualification for that office.
- Appointees to offices required to file must submit a disclosure form within 30 days of their appointment.

Enforcement Procedures – MCA § 25-4-29(2)

- Any person who fails to file a statement of economic interest within thirty (30) days of the date the statement is due shall be deemed delinquent by the commission.
- Commission shall give written notice to the person
- Person that is delinquent shall have 15 days of receiving the written notice to file the statement
- Fine of \$50.00 per day, not to exceed a total fine of \$1,000.00 shall be assessed for each day in which the statement of economic interest is not properly filed.

MISSISSIPPI ETHICS COMMISSION

Established: November 15, 1979.

Composition: Eight (8) members.

Term: Members are appointed to serve a four (4) - year term and upon expiration of that term a member may be reappointed to serve.

Method of Selection: Two (2) members of the Commission shall be appointed by each of the following officers: Governor, Lieutenant Governor, Speaker of the House of Representatives, and Chief Justice of the State Supreme Court.

Qualifications: The member must be a qualified elector of the State of Mississippi of good moral character and integrity. Not more than one (1) person appointed by each appointing authority shall be an elected official.

Responsibility: To see that the legislative purpose is satisfied by exercising all duties and powers contained in the enabling legislation.

Staff: The Commission employs a full time staff supervised by an executive director who serves at the Commission's will and pleasure.

Office/Address:	660 North St., Suite 100-C Jackson, Mississippi 39202	P.O. Box 22746 Jackson, MS 39225-2746
Telephone/Fax:	601-359-1285	601-359-1292 (fax)
E-mail/Web	info@ethics.state.ms.us	www.ethics.state.ms.us

OPEN MEETINGS

MS Ethics Commission

The Mississippi Open Meetings Act was adopted in 1975 and is recorded in Title 25, Chapter 41 of the Mississippi Code of 1972, Annotated (MCA). MCA § 25-41-1 states “It being essential to the fundamental philosophy of the American constitutional form of representative government and to the maintenance of a democratic society that public business be performed in an open and public manner, and that citizens be advised of and be aware of the performance of public officials and the deliberations and decisions that go into the making of public policy, it is hereby declared to be the policy of the State of Mississippi that the formation and determination of public policy is public business and shall be conducted at open meetings except as otherwise provided herein.” The Ethics Commission enforces the Open Meetings Act.

The Basics

- Public meetings must be open to the public.
 - Board Meetings
 - Work Sessions
 - Board Retreats
 - Committee Meetings if members are appointed by the board and serve in an advisory capacity
- Executive session must follow specific procedure and only for 12 reasons.
- Notice of meeting must be given, and minutes must be kept.
- Social gatherings are not “meetings” unless official business is discussed.
- Act never requires executive session.

Definitions

- “Public body” is any board, commission, authority, council, departmental agency, bureau or other entity or committee of the state, political subdivision or municipality.
- “Meeting” is any gathering of a quorum of the public body, whether in person or by phone, to discuss a matter under the authority of the public body.

Types of Meetings:

A. Code Charter Form of Government - MCA § 21-3-19

- Regular Meeting – First Tuesday of month with time and place set by ordinance. May also have a second Regular Meeting not less than 2 weeks and not more than 3 weeks after first meeting.
- Recessed Meeting – A day fixed by order and entered on the minutes in which the board may conduct any business. The recessed meeting must be prior to the next regularly scheduled meeting.
- Special Meeting – The Mayor or any two (2) aldermen may call a special meeting in which the time and the specific subject matters to be acted upon are included. The

notice must be given to Board members at least three (3) hours before the meeting and must be posted at City Hall. The notice is to be included in the minutes.

- Holiday – If a regular meeting falls on a holiday then the Board will meet on the following day at the same time and location.

B. Commission Form of Government - MCA § 21-5-13

- Regular Meeting – First Monday in July after an election and thereafter twice each month with the time and place set by the Council.
- Special Meeting – The Mayor or any two (2) aldermen may call a special meeting.
- Holiday - If a regular meeting falls on a holiday then the Board will meet on the following day at the same time and location.

C. Council Form of Government – MCA § 21-7-9

- Regular Meeting – First Tuesday after the first Monday in January after an election and monthly thereafter on the first Tuesday in each month.
- Special Meeting – The Mayor or three (3) members of council may call a special meeting.
- Holiday - If a regular meeting falls on a holiday then the Board will meet on the following day at the same time and location.

D. Mayor-Council Form of Government – MCA § 21-8-11(2)

- Regular Meeting – First Tuesday after the first Monday in July after an election and then at least monthly on the first Tuesday after the first Monday each month or at such other time as set by council order.
- Special Meeting – The Mayor or a majority of the members of council may call a special meeting.

E. Council-Manager Form of Government – MCA § 21-9-39

- Regular Meeting – First Tuesday of the month at a time and place provided by council.
- Special Meeting – The Mayor or two (2) councilmen may call a special meeting with at least two (2) days' notice given to the Mayor and each Council Member. A special meeting may also be held at any time by written consent of the Mayor and all members of the Council.
- Holiday - If a regular meeting falls on a holiday then the Board will meet on the following day at the same time and location.

Notice

- Regular meetings of some public bodies are set in statute. (depends on form of municipal government) SEE ABOVE

- For recess, adjourned, interim or special meetings, notice must be posted in city hall (building where meeting is held) within one hour of calling the meeting. This is in addition to the requirement for the special meeting of a Code Charter municipality.
- Copy of the notice must be placed in the minutes.

Minutes

- Minutes must be kept for all meetings, whether in open or executive session, and whether any business was transacted.
- Minutes must be recorded within 30 days after meeting. MCA § 21-15-33
- Minutes must be available for public inspection.
- Minutes must show:
 - Members present and absent;
 - Date, time and place of meeting;
 - Accurate recording of any final actions;
 - Record, by individual member, of all votes taken;
 - Any other information requested by the public body.

Telephonic Meetings

- All members can participate by phone or video conference.
- They can be in different locations, so long as one location is open to the public.
- Notice of telephonic meetings must be given 5 days in advance, except in emergency, and must include the public location.
- Meeting must be suspended if phone service is interrupted.
- Roll call votes are required.
- Meeting must be recorded by audio (when using telephone) or video (when using video conference), and recording must be kept 3 years.

Executive Session Procedure

- By majority vote, public body may enter closed session to discuss whether to declare executive session. A member must make a motion for a closed determination, but the motion does not require a second.
- A 3/5ths vote of the public body is required to declare executive session.
- Public body must return to open session and announce the reason for entering executive session. That reason and the vote must be recorded in minutes.
- Enter into executive session – minutes to be taken.

- Upon coming out of executive session, return to open session and announce the action taken, if any, during executive session.
- Continue open session business or adjourn meeting after announcing the action taken during executive session.

Executive Session Reasons

Executive session may be held for 12 reasons only:

- Personnel matters relating to job performance, character, professional competence, or physical or mental health of a person holding a specific position - The Mississippi Supreme Court has held that personnel matters are restricted to employees hired by the board and not the officials themselves. *Hinds County Board of Supervisors v. Common Cause*, op. cit.
- Litigation, prospective litigation or issuance of an appealable order
- Security personnel, plans or devices
- Investigations
- Cases of extraordinary emergency
- Prospective purchase, sale or leasing of lands
- Preparation of professional licensing exams
- Location, relocation or expansion of a business
- Budget matter which may lead to termination of employee
- Discussions between a school board and individual students who attend a school within the jurisdiction of such school board or the parents or teachers of such students regarding problems of such students or their parents or teachers.
- Certain PERS board investments
- The Legislature may enter executive session for any reason.

Enforcement Procedure for Open Meetings Act

MCA § 25-41-15 empowers the Ethics Commission to enforce the Open Meetings Act as follows.

- Complaint is filed with Commission. Complaint is sent to public body, which shall respond. Commission can dismiss complaint or hold a hearing.
- Ethics Commission may order public body to comply with law.
- Ethics Commission may impose a civil penalty upon the individual members of the public body found to be in violation of the “Open Meetings Act” in a sum not to exceed \$500.00 for a first offense and \$1,000.00 for a second or subsequent offense.
- Ethics Commission can mediate Open Meetings disputes.

- Either party may appeal *de novo* or enforce Ethics Commission order in local chancery court.

Open Meetings Cases

Case No. M-12-005 & M-12-006

Harding vs. City of Bay Saint Louis

- An independent contractor is not an employee of the city.
- Discussion of his job performance must be discussed in an open meeting and cannot be entertained in executive session.

Case No. M-12-002

Hood vs. City of Belzoni

- Public bodies shall keep accurate minutes of all meetings. The minutes shall be adopted and approved by a majority of all members of the board and shall become the legal procedures of the board. Any action that has been taken in the absence of properly approved minutes is not considered an official action of the governing authority.
- Board must properly follow the mandatory requirements for an executive session. MCA § 25-41-7
- Board must provide the public with a “meaningful reason” for entering executive session, and state that reason with “sufficient specificity”. “Personnel Matters or Legal Matters” is not a meaningful reason.

Case No. M-12-020

McGovern vs. City of Starkville

- Board Retreats are called special public meetings requiring notice to be given and minutes to be taken
- Planning Committee and Budget Committee are public bodies whose meetings are subject to the Open Meeting Act. Committees established to perform the work of the board, even in an advisory capacity, are required to post notice and maintain minutes.

Case No. M-10-007

Townes vs. Leflore Co. Sch. Bd.

- Public body may make and enforce reasonable rules for conduct of persons attending meetings.
- Public body is not required to allow members of the public to speak at meetings.

Case No. M-10-005

Madison vs. Aberdeen Bd. Of Ald.

- Law requires public bodies to take all reasonable means within their powers and resources to ensure all members of the public who attend are able to “see and hear everything that is going on” at an open public meeting.
- Law does not contain any specific requirements regarding acoustics or amplification.

Case No. M-10-002

Gates vs. New Augusta Bd. Of Ald.

- Board must make “closed determination” before voting on executive session.
- Minutes must record votes by “individual member.”
- When vote is not unanimous, minutes must name each individual member and list how each voted.

Case No. M-09-009

Hood vs. Belzoni Bd. Of Ald.

- Board may never discuss pay raises for themselves in executive session as elected officials are not “personnel.”
- Board must publicly state a meaningful reason with sufficient specificity before entering executive session.
- Reason for executive session must be recorded in the minutes.

Case No. M-09-008

Goodman vs. Lena Bd. Of Ald.

- Public notice must be posted within one hour of calling a meeting other than a regularly scheduled meeting.
- Notice must be posted in a prominent place in building where board meets.
- Notice must be included in the minutes of that meeting.

Case No. M-09-007

Hall vs. Miss. Trans. Comm.

- When a quorum of a public body assembles and discusses a matter under their jurisdiction, a “meeting” has taken place.
- Does not matter that they took no action.
- Must provide notice and take minutes.

Case No. M-09-005

Cooper vs. Adams Co. Bd. Of Supv.

- “Personnel matters” exception does not apply to issue of funding agency simply because board members disapprove of agency employees.
- Board may not simply announce “personnel” as reason for entering executive session.
- Board must announce which exception applies to each individual matter discussed in executive session.

PUBLIC RECORDS

MS Ethics Commission

2016 Supplement

The Mississippi Public Records Act was adopted in 1983 and is recorded in Title 25, Chapter 61 of the Mississippi Code of 1972, Annotated (MCA). MCA § 25-61-1 states “It is the policy of the Legislature that public records must be available for inspection by any person unless otherwise provided by this act. Furthermore, providing access to public records is a duty of each public body and automation of public records must not erode the right to access to those records. As each agency increases its use of and dependence on electronic record keeping, each agency must ensure reasonable access to records electronically maintained, subject to the rules of records retention.” The MS Ethics Commission administers Title 25, Chapter 61, MS Code of 1972, known as the “Public Records Act.”

The Basics

- All documents and other records, including electronic records, related to government business are public records.
- Everyone has the right to inspect or copy.
- Government can recoup actual cost of retrieving and/or copying public records.
- Many records are exempted.
- If record contains exempt material, government may have to redact and copy.

Definitions - MCA § 25-61-3

- **"Public body"** shall mean any department, bureau, division, council, commission, committee, subcommittee, board, agency and any other entity of the state or a political subdivision thereof, and any municipal corporation and any other entity created by the Constitution or by law, executive order, ordinance or resolution. The term "public body" includes the governing board of a charter school authorized by the Mississippi Charter School Authorizer Board. Within the meaning of this chapter, the term "entity" shall not be construed to include individuals employed by a public body or any appointed or elected public official.
- **"Public records"** shall mean all books, records, papers, accounts, letters, maps, photographs, films, cards, tapes, recordings or reproductions thereof, and any other documentary materials, regardless of physical form or characteristics, having been used, being in use, or prepared, possessed or retained for use in the conduct, transaction or performance of any business, transaction, work, duty or function of any public body, or required to be maintained by any public body.
- **"Data processing software"** means the programs and routines used to employ and control the capabilities of data processing hardware, including, but not limited to, operating systems, compilers, assemblers, utilities, library routines, maintenance routines, applications and computer networking programs.

- **"Proprietary software"** means data processing software that is obtained under a licensing agreement and is protected by copyright or trade secret laws.
- **"Incident report"** means a narrative description, if such narrative description exists and if such narrative description does not contain investigative information, of an alleged offense, and at a minimum shall include the name and identification of each person charged with and arrested for the alleged offense, the time, date and location of the alleged offense, and the property involved, to the extent this information is known.
- **"Investigative report"** means records of a law enforcement agency containing information beyond the scope of the matters contained in an incident report, and generally will include, but not be limited to, the following matters if beyond the scope of the matters contained in an incident report:
 - a. Records that are compiled in the process of detecting and investigating any unlawful activity or alleged unlawful activity, the disclosure of which would harm the investigation which may include crime scene reports and demonstrative evidence;
 - b. Records that would reveal the identity of informants and/or witnesses;
 - c. Records that would prematurely release information that would impede the public body's enforcement, investigative or detection efforts;
 - d. Records that would disclose investigatory techniques and/or results of investigative techniques;
 - e. Records that would deprive a person of a right to a fair trial or an impartial adjudication;
 - f. Records that would endanger the life or safety of a public official or law enforcement personnel, or confidential informants or witnesses;
 - g. Records pertaining to quality control or PEER review activities; or
 - h. Records that would impede or jeopardize a prosecutor's ability to prosecute the alleged offense.
- **"Law enforcement agency"** means a public body that performs as one (1) of its principal functions activities pertaining to the enforcement of criminal laws, the apprehension and investigation of criminal offenders, or the investigation of criminal activities.

Response - MCA § 25-61-5

- Public body must respond to public records request within 1 working day, if no policy is in place.
- Public body may adopt a policy allowing up to 7 working days to respond to a request.

- Unless there is mutual agreement of parties, or the information requested is part of ongoing negotiations related to a request for competitive sealed proposals, in no event shall the date of reproduction be any later than fourteen (14) working days from the receipt of the original request.
- Production of competitive sealed proposals shall be no later than seven (7) working days after **the notice of intent to award is issued to the winning proposer**. The person requesting the sealed proposals shall have a reasonable amount of time, but in no event less than seven (7) working days after the production of the competitive sealed proposals, to protest the procurement or intended award prior to contract execution.
- If public body is unable to produce a public record in 7 working days, they must provide a written explanation stating that the record will be produced and specifying why the records can't be produced within the 7 days.
- Denial of request must be in writing. A file of all denials shall be required and preserved for three (3) years from the date of the denial.

Cost of Reproduction of Records - MCA § 25-61-7

- Public body may establish and collect fees reasonably calculated to reimburse it for the actual cost of searching, reviewing, redacting, duplicating and mailing public records.
- Any staff time or contractual services included in actual costs shall be at the pay scale of the lowest level employee or contractor competent to respond to the request.
- Fees shall be collected in advance of complying with the request.
- Public body may establish a standard fee scale to reimburse for costs of creating, acquiring and maintaining a geographic information system, or multipurpose cadaster, or any other electronically accessible data.

Confidential Business Information - MCA § 25-61-9

- Public records furnished by third parties which contain trade secrets or confidential commercial or financial information are exempt from disclosure.
- Public body must give notice to third party.
- The records shall be released twenty-one (21) days from the date the third parties are given notice by the public body unless the third parties have filed in chancery clerk a petition seeking a protective order on or before the expiration of the twenty-one (21) day time period.
- Any party seeking the protective order shall give notice to the party requesting the information in accordance with the Mississippi Rules of Civil Procedure.

Law Enforcement Information and Reports - MCA § 25-61-12.

- The home address, any telephone number of a privately paid account or other private information of any law enforcement officer, criminal investigator, judge or district attorney or the spouse or child of such law enforcement officer, criminal investigator, judge or district attorney **shall be exempt**. This exemption does not apply to any court transcript or recording if given under oath and not otherwise excluded by law.
- When in the possession of a law enforcement agency, **investigative reports shall be exempt**; however, a law enforcement agency, in its discretion, may choose to make public all or any part of any investigative report.
- An **incident report shall be a public record**. A law enforcement agency may release information in addition to the information contained in the incident report.
- Nothing in this chapter shall be construed to require the disclosure of information that would reveal the identity of the victim.
- Personal information of victims, including victim impact statements and letters of support on behalf of victims that are contained in records on file with the Mississippi Department of Corrections and State Parole Board shall be exempt from the provisions of this chapter.

Other Exemptions

1. Academic records exempt from public access, MCA § 37-11-51.
2. Appraisal records exempt from access, MCA § 31-1-27.
3. Archaeological records exempt from public access, MCA § 39-7-41.
4. Attorney work product exemption, MCA § 25-1-102.
5. Birth Defects Registry, MCA § 41-21-205.
6. Bureau of vital statistics, access to records, MCA § 41-57-2.
7. Charitable organizations, registration information, exemption from public access, MCA § 79-11-527.
8. Concealed pistols or revolvers, licenses to carry, records, exemption, MCA § 45-9-10
9. Confidentiality, ambulatory surgical facilities, MCA § 41-75-19.
10. Defendants likely to flee or physically harm themselves or others, MCA § 41-32-7.
11. Environmental self-evaluation reports, public records act, exemption, MCA § 49-2-71.
12. Hospital records, Mississippi Public Records Act exemption, MCA § 41-9-68.
13. Individual tax records in possession of public body, exemption from public access requirements, MCA § 27-3-77.

14. Insurance and insurance companies, risk based capital level requirements, reports, MCA § 83-5-415.
15. Judicial records, public access, exemption, MCA § 9-1-38.
16. Jury records, exempt from public records provisions, MCA § 13-5-97.
17. Licensure application and examination records, exemption from Public Records Act, MCA § 73-52-1.
18. Medical examiner, records and reports, MCA § 41-61-63.
19. Name, home address, any telephone number or other private information of any person who possesses a weapon permit issued under MCA § 45-9-101 or MCA § 97-37-7.
20. Personnel files exempt from examination, MCA § 25-1-100.
21. Public records and trade secrets, proprietary commercial and financial information, exemption from public access, MCA § 79-23-1.
22. Workers' compensation, access to records, MCA § 71-3-66.

Model Public Records Rules And Comments

- Nonbinding unless you adopt them
- Designed for use by all state and local agencies
- Can be modified to suit your needs
- Provide guidance on questions which are not answered in the law and have not been addressed by courts
- Posted on Ethics Commission web site.

Enforcement Procedure in Public Records Act Sections - MCA § 25-61-13 & 15

MCA §§ 25-61-13 and 25-61-15 provides the procedure for failure to comply with the Public Records Act.

- Ethics Commission shall have the authority to enforce the provisions of this Act.
- Person denied access may request an opinion by the Ethics Commission.
- Upon receiving a complaint, the commission shall forward a copy of the complaint to the head of the public body involved.
- Public body shall have fourteen (14) days from receipt to file a response with the commission.
- After receiving the response or, if no response is received after fourteen (14) days, the commission, in its discretion, may dismiss the complaint or proceed by setting a hearing.

- The Ethics Commission may order the public body and any individual employees or officials to produce records or take other reasonable measures necessary.
- The Commission may also impose penalties.
- The Commission may order a public body to produce records for private review by the commission, its staff or designee.
- The Commission shall complete its private review of the records within thirty (30) days after receipt of the records from the public body.
- Records produced to the commission for private review shall remain exempt from disclosure while in the custody of the commission.
- Any party may petition the chancery court of the county in which the public body is located to enforce or appeal any order of the Ethics Commission.
- Nothing shall be construed to prohibit any party from filing a complaint in any chancery court having jurisdiction, nor shall a party be obligated to exhaust administrative remedies before filing a complaint.
- Any party filing a complaint in chancery court shall serve written notice upon the Ethics Commission at the time of filing the complaint. The written notice is for information only and doesn't make the Ethics Commission a party to the case.
- A civil penalty of \$100.00 per violation shall be made upon the individual found to have denied access to any public record which is not exempt or who charges an unreasonable fee for providing a public record.

Public Records Opinions

- R-13-022 & 023: Ward vs. City of Tupelo
Text Messages and Emails sent from personal cellphones and/or computers in which official municipal business is discussed are public records and are required to be made available for inspection by the public.
- R-10-001: Webster vs. Southaven Police Dept.
Police department policy and procedure manuals are generally not exempt "investigative reports." Internal affairs complaints may be exempted "personnel records."
- R-10-013: Thomas vs. City of Gulfport
A requestor must request an "identifiable record" and not simply ask questions or request information. Moreover, a public body is not required to create a public record which does not exist in response to a request.
- R-09-007: Garner vs. Office of the State Treasurer
State agency fulfilled its obligation to provide "reasonable access" to public records by posting a searchable electronic version of public records on the agency's web site.

- R-08-002: Hendrix vs. Jackson Police Dept.
When a police “investigative report” contains information which should have been contained in an “incident report,” the exempt information must be redacted, and the redacted report must be produced.

Local Government Records – MCA § 25-60-1

In 1996 a Local Government Records Committee was created within the Department of Archives and History. The duty of the committee is review, approve, disapprove, amend or modify records control schedules submitted by the Local Government Records Office, municipalities, municipal courts and counties for the disposition of records based on administrative, legal, fiscal or historical value.

Document Filing Fee – MCA § 25-60-5

- Any municipal official or employee who accepts documents for filing as public records shall collect a fee of One Dollar (\$1.00) for each document so filed.
- Municipalities that collect Three Hundred Dollars (\$300.00) or more per month from the filing fee, on or before the last day of the month, deposit the avails of Fifty Cents (\$0.50) of the fee into the general fund of the municipality and remit the remainder to the State Treasurer for the local government records management fund.
- Municipalities that collect less than Three Hundred Dollars (\$300.00) per month from the filing fee shall submit the Fifty Cents (\$0.50) to the State Treasurer on a quarterly basis.
- Municipalities shall expend their portion of the fee to support proper management of their official records in accordance with records management standards established by the Department of Archives and History.

Local Government Retention Schedules

The schedules for the Records Retention Schedules for Municipalities can be found on the Department of Archives and History website: <http://mdah.ms.gov>

RECORDS MANAGEMENT

Tim Barnard

MS Department of Archives and History

Municipal governments generate numerous records in the process of carrying out their functions. The duties of municipal clerks include managing and maintaining many of these records. Often the volume of records amassed seems overwhelming. Clerks often ask, “Do we have to keep everything?” For years, a single section of the *Mississippi Code* (§ 9-5-171) was the primary authorization for counties to dispose of records, but it covered only a handful of record series. There was no equivalent statute for municipalities.

In 1996, the Mississippi Legislature passed the Local Government Records Act, (MCA § 25-60-1, et seq.) creating an office within the Mississippi Department of Archives & History (MDAH) and a committee to establish procedures for local governments to better manage their records. The Local Government Records Office was charged with the following duties: (MCA § 39-5-9)

- Provide and coordinate education and training for counties and municipalities on records management issues.
- Establish records management standards to guide counties and municipalities, such standards to include, but not be limited to, guidelines for microfilm production and storage, electronic records security and migration, records preservation, imaging and records storage.
- Prepare records control schedules for adoption or amendment by the Local Government Records Committee established in MCA § 25-60-1. In the preparation of the schedules and amendments thereto, the office shall seek input from interested citizens and organizations.
- Establish standards for records storage areas of local governmental bodies, such standards to include, but not be limited to, guidelines for the selection of an off-site storage facility for records of enduring or archival value.

The Local Government Records Committee meets quarterly to review and approve records control schedules for local government offices. Approved records control schedules, or records retention schedules, have the force of law. These schedules allow local governments to dispose of a variety of records, while protecting other records not otherwise covered by statute. While the original law included all municipalities, counties had the option to exempt themselves from the program. A 2006 change authorized all counties to use the retention schedules.

BASICS OF RECORDS MANAGEMENT

Of course, there is more to records management than just being able to legally dispose of records. There are several benefits to implementing a records management program. An ongoing program makes it easier to find needed records, frees up storage space, reduces costs, increases efficiency, reduces liability, and helps identify and preserve essential records.

Records management can be defined as “a systematic approach to the creation, use, maintenance, storage and ultimate disposition of records throughout the information life cycle.” “Ultimate disposition” may mean either destruction or permanent archiving of a record. Records management answers the “*what, why, who, how, where, and how long*” questions about records.

What is a record? The simple answer is “documentation of an activity.” Mississippi’s statutory definition is:

“*Public records* shall mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings or other materials regardless of physical form or characteristics made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency or by any appointed or elected official.” MCA § 25-59-3(b)

Records can be in any format, not just written or printed words on paper. Whether it is paper, electronic, film, or some other media, it is the information content, not its’ format, that determines it is a record. Convenience copies, published matter from other sources, personal or bulk e-mail are usually *not* records, or at least YOUR records, and can be disposed once their purpose have been served.

Why do records matter? Records protect life, property, and rights. They also provide information needed for a local government to restore order and resume operations after a disaster.

Who should learn about records management? While anyone whose duties include handling records at any point in their life cycle should learn the fundamentals, each office should designate one “records liaison” familiar with that particular office’s records. The municipality should designate and train someone to oversee retention and storage of all municipal records. Since so many records are now created and maintained electronically, information technology staff (in-house or contract) should also be familiar with basic records management principles.

How are records kept? While most new records are created electronically, many records still exist only in paper format. Others may have been microfilmed or scanned, or they may exist in more than one format. How records are kept depends on several factors –how many will be using them, how often, and how long they need to be available. Before an office decides to scan paper records, these factors should be considered, along with initial costs and hardware/software costs associated with migration of long-term records. If a record exists only in electronic format, there should be a backup copy in another location; if it’s a long-term record, it is wise to maintain a backup copy in another format.

Where should records be kept? That depends on where they are in the information life cycle. Records currently in use should be readily available, in the office or on an easily accessible computer drive. Once activity drops below a certain threshold, paper-based records can be moved to a storage area within the building or off-site, while electronic records can be moved to secondary storage, such as a removable disk or auxiliary hard drive. Older records that must be preserved long-term may be moved to an archive, which may be operated by the government entity, a library or a non-profit organization. Long-term records, no matter where they are kept, should be

maintained in a climate-controlled facility, to minimize deterioration from heat, cold, and humidity. Standards for both off-site storage and archives that hold public records are available on the MDAH Web site, under “Records Management for Local Government Officials.”

How long should a record be kept? This is determined by a records retention schedule. The retention period is determined by consideration of the administrative, fiscal, legal, regulatory, and historic value of the record series. Records retention schedules approved by the Local Government Records Committee, available on the MDAH Web site mentioned above, determine the *minimum* time a record must be kept. Records may not be disposed before a corresponding retention schedule allows, or without specific approval from MDAH or the Local Government Records Committee. (MCA § 25-59-23) Contact the Local Government Records Office with questions about schedules, to request disposal of unscheduled records or to propose new schedules.

When records reach the end of their retention period, the City Council, Board of Aldermen, or other local government entity should authorize their disposal through action recorded in its official minutes. These can be listed simply as “all (record series) between (start date) and (end date);” in this way, records found later that fit the authorized time period may be disposed without further action. However, the official charged with managing these records should retain a more specific inventory of all records disposed. Records involved in audit, investigation, or litigation *should not* be disposed until at least 12 months after the action is settled. [MCA § 9-5-171(2)] Disposal of records dated 1940 or earlier must be approved by MDAH or the Local Government Records Committee. Confidential records or those containing “personally identifiable information” such as social security numbers should be disposed in a secure manner, such as shredding or incineration.

IMPLEMENTING A RECORDS MANAGEMENT PROGRAM

Now that it has been determined that records management is a beneficial program, how does a municipality go about implementing it? Here is a brief outline of the steps involved.

- The City Council/Board of Aldermen appoints someone to be in charge of records management. This gives that person authority to implement the program. While this person should be an elected or appointed official to act as a “champion for the cause,” the day-to-day duties will often fall to a subordinate.
- The Council/Board votes to adopt the Records Management Fee required in § 25-60-5. For any document filed (or generated) for which a fee is charged, \$1.00 may be added to that fee for records management. Half of the money collected goes to MDAH to operate the Local Government Records Office, while the municipality keeps the other half to use for records management purposes, such as purchasing storage boxes, shelving, and scanning equipment; contract services such as shredding; and other expenses directly related to the management of municipal records. While the fee may not generate large sums of money, it is additional revenue outside the general tax collections, and it shows the public that their government is interested in managing its records.
- The records management officer conducts an inventory of all the records in the municipality, by a physical inventory, a survey of each department, interviews with other employees, or a combination of these. This may be done all at once or in stages, depending

on the volume of records and time allotted. The inventory should include each record series, date range, format, volume, location, growth rate, and other information as necessary. Then retention schedules are applied to each record series, in order to determine which records in each series are eligible for disposal. With Council/Board approval, eligible records can then be disposed. Other inactive records may be moved to secondary storage locations within city hall, in other government buildings, or to an off-site storage location. The general rule-of-thumb for an initial “purge” is that one-third of the records can be disposed, while another third can be moved out of primary office space. Through this process, the municipality can also develop a file plan that identifies where records are located, and which ones are essential records.

- The Council/Board develops policies and procedures for managing records. These can include an overall records management policy, a policy for handling open records requests, a policy for imaging paper records, policies for managing electronic records and e-mail, procedures for records storage (which should include the use of standard letter/legal records storage boxes and standardized names for record series), and procedures for records disposal. Guidelines for managing email are available on MDAH Website under “Records Management for Local Government Officials: Standards: EMAIL.
- Employees are trained in basic records procedures. An initial workshop will familiarize all employees with the new program. Basic records training should be included in new employees’ orientation, while records liaisons need more in-depth training. The Local Government Records Office periodically holds workshops on records management topics. A 90-minute interactive course, “Introduction to Records and Information Management,” developed by the Council of State Archivists (CoSA), is also available on the MDAH Local Government Records Web page under Training.
- The municipality incorporates essential records into its disaster recovery or Continuity of Operations (COOP) Plan. Many municipalities have a COOP Plan through their Emergency Management office, but few consider records in the plan. Yet certain records are needed when responding to a disaster, while others are needed to resume normal business afterward. (MCA § 21-15-35) CoSA has developed a two-course series on Intergovernmental Preparedness for Essential Records, available through MDAH. These courses will help the municipality identify which records are essential to its ongoing operation and plan for their safety and accessibility in the event of a disaster.

A goal frequently quoted by records managers is, “Get the right information to the right person at the right time.” Implementing and maintaining a records management program can help a municipal government achieve that goal. While the initial implementation may be time-consuming, the money and time *saved* in properly managing records will pay off. The MDAH Local Government Records Office is available for advice and assistance in managing municipal records. Contact them by phone at 601-576-6894 or by email at logov@mdah.ms.gov

NEPOTISM

MS Attorney General's Office

Miss. Code Ann (MCA) Section 25-1-53

It shall be unlawful for any person **elected, appointed or selected** in any manner whatsoever to any state, county, district or municipal office, or for any board of trustees of any state institution, **to appoint or employ, as an officer, clerk, stenographer, deputy or assistant who is to be paid out of the public funds, any person related by blood or marriage within the third degree,** computed by the rule of the civil law, **to the person or any member of the board of trustees having the authority to make such appointment or contract such employment as employer.** This section shall not apply to any employee who shall have been in said department or institution prior to the time his or her kinsman, within the third degree, became the head of said department or institution or member of said board of trustees; and this section shall not apply to any person seeking appointment as an election worker who has served as an election worker in the election immediately preceding the commencement of a term of office as an election commissioner by his kinsman within the third degree. The provision herein contained shall not apply in the instance of the employment of physicians, nurses or medical technicians by governing boards of charity hospitals or other public hospitals.

MCA § 25-1-55 (Penalty)

Any person violating the provisions of MCA § 25-1-53 shall forfeit to the State of Mississippi, and shall be liable on his official bond for, an amount equal to the sum of all monies paid to any person appointed or employed in violation of the provisions aforesaid.

What is prohibited?

- A. Appointing Authority - Who has the power to hire and fire employees? Or, more importantly, who has the authority to hire and fire **this** employee?
- B. One of five specific positions:
 - 1. Officer
 - 2. Clerk
 - 3. Stenographer
 - 4. Deputy
 - 5. Assistant

Previous Attorney General opinions regarding positions covered under the nepotism statute:

- The mayor and aldermen may appoint the son of the fire chief as a firefighter in the municipal fire department. MS AG Op., Mitchell (August 2, 1999)
- The position of maintenance technician is not one of the positions listed and prohibited by MCA § 25-1-53. MS AG Op., Gillespie (December 21, 1989)

- Heavy equipment operator is not one of the prohibited positions. MS AG Op., Nations (May 31, 1996)
- Department head, public works director and water superintendent are not prohibited positions. MS AG Op., Snowden (September 19, 1997)
(However, if superintendent/director of public works is serving or acting in capacity of street commissioner, separation of powers violation will result)(MS AG Op., Figgs (January 17, 2014)
- Commissioner of municipal public utility commission is a municipal officer. MS AG Op., Twiford (December 23, 1998)
- Member of election commission is a municipal officer. MS AG Op., Navarro (September 16, 1992)

C. Related within Third Degree (Rule of Civil Law**)**

- a. Spouse (same as you)
- b. Parent (1st degree)
- c. Child (1st degree)
- d. Sister/Brother (2nd degree)
- e. Grandparent (2nd degree)
- f. Grandchild (2nd degree)
- g. Aunt/Uncle (3rd degree)
- h. Niece/Nephew (3rd degree)

Relations by marriage are treated the same as those by blood. A cousin is a relation in the 4th degree

II. Exemptions

While MCA § 25-1-53 allows someone already employed or appointed to an otherwise prohibited position to continue in that position when his/her relative subsequently becomes a member of the appointing authority, the employed or appointed person may not be transferred or promoted to another prohibited position after the relative has become a member of that authority. MS AG Op., Williams (December 21, 1989)

Service in an otherwise prohibited position by a person related within the third degree to a member of the appointing authority is not a violation, if such service is without compensation. MS AG Op., Ponthieux (April 11, 2003)

III. Conflict of Interest – Ethics Law

The Nepotism Law is in addition to the Conflict of Interest violations in the Ethics Law. (See the Ethics Law Chapter)

SEPARATION OF POWERS

MS Attorney General's Office

I. MS Constitution of 1890, Article 1, Sections 1 and 2

Section 1: The powers of the government of the State of Mississippi shall be divided into three distinct departments, and each of them confided to a separate magistracy, to-wit: those which are legislative to one, those which are judiciary to another, and those which are executive to another.

Section 2: No person or collection of persons, being one or belonging to one of these departments, shall exercise any power properly belonging to either of the others. The acceptance of an office in either of said departments shall, of itself, and at once, vacate any and all offices held by the person so accepting in either of the other departments.

II. Who is in each branch?

- A. Executive Branch: mayor, police chief and police officers, fire chief and firefighters, municipal department directors and employees, municipal attorney, municipal clerk, sheriff, deputy sheriff, hospital trustees, school board trustees, housing authority commissioner, airport authority commissioners, prosecutors and/or district attorneys
- B. Legislative Branch: members of board of aldermen, members of city council, state legislators
- C. Judicial Branch: municipal court judge, justice court judge, circuit and chancery judges, county supervisor

III. Core Powers

Article 1, Section 2 of the Mississippi Constitution of 1890 prohibits an individual from holding an office which requires him/her to exercise core powers in one department of government while simultaneously exercising any core power properly belonging to another department.

Examples:

An individual is serving as an alderman while simultaneously working as an employee of a utility commission.

An alderman is an officer in the legislative branch while an employee of a utility commission is in the executive branch of government. The Mississippi Supreme Court in *Dye v. State*, 507 So.2d 332 (Miss.1987) held that "core powers" are exercised only "where the acts are ongoing and are in the upper level of governmental affairs and have a substantial policy-making character." In *Ball v. Fitzpatrick*, 602 So.2d 873 (Miss.1992), the Supreme Court said there is no separation of powers violation, unless a person exercises substantial policy making powers at the core of two or more branches of government.

ATTORNEY GENERAL OPINION PROCEDURES

The Opinions Division is the primary division that gives advice to public officials in state and local government relating to the duties and responsibilities of their respective offices. This advice may take the form of official opinions in writing pursuant to Section 7-5-25 of the Mississippi Code of 1972, Annotated (MCA) (state laws) or informal opinions by telephone, general correspondence, and email. Unlike official opinions, informal opinions do not provide statutory protection from civil or criminal liability.

Statutory Authority for Official Opinions

The Attorney General is required by MCA § 7-5-25 to provide an opinion in writing to certain public officials and agencies “when requested in writing, upon any question of law relating to their respective offices.”

MCA § 7-5-25 limits the Attorney General’s responsibility and authority to provide official opinions in several respects:

1. Official opinions are provided only to the public officials or boards or agencies designated by statute.
2. The Attorney General may only address questions of law related the office of the requestor, not questions of law which relate to other officials or their offices.
3. The question of law must relate to future action.
4. The matter which is the subject of the request must not be in litigation.

Who May Request an Official Opinion

- A. State Officers: Official opinions are provided to certain enumerated state officers and “any other state officer.”
- B. Legislators: MCA § 7-5-25 states that official opinions shall be provided “to the Legislature, or either House or any committee thereof.” This language has been interpreted to include individual legislators.
- C. State agencies: MCA § 7-5-25 enumerates specific state agencies entitled to official opinions as well as “any other state officer, department or commission operating under the law, or which may be hereafter be created.”
- D. Judges: Although judges are not specifically listed in MCA § 7-5-25, judges have traditionally received opinions as state or county officers.
- E. District Attorneys, County Attorneys, Attorneys for Boards of Supervisors, City Attorneys: MCA § 7-5-25 specifically provides that district attorneys, county attorneys, and attorneys for the board of supervisors are entitled to official opinions. It also provides that official opinions shall be provided to attorneys for the mayor or council or board of aldermen of any municipality.

- F. Municipal Officers: mayors, council members or aldermen, city clerks, and chiefs of police have traditionally received official opinions.
- G. County Officers: MCA § 7-5-25 specifically provides that “the boards of supervisors of the several counties, the sheriffs, the chancery clerks, the circuit clerks, the superintendents of education, the tax assessors, county surveyors...and all other officers (and no others).” This category has traditionally included justice court judges and justice court clerks.

How to Request an Official Opinion

- A. Any public official or agency referenced above may seek an official opinion by making a written request in the form of a letter to Attorney General Jim Hood, P. O. Box 220, Jackson, MS 39205 or 550 High Street, Jackson, MS 39201. The letter should be on official letterhead and must be signed by the requestor.
- B. The letter should succinctly state the question being asked and the relevant facts necessary to respond to the request. The facts should relate to a real issue under consideration and not theoretical or hypothetical matters.
- C. Although not required, this office invites the submission of any legal memoranda which may have been prepared by the requestor’s legal counsel regarding the subject of the opinion request.

How Requests Are Processed

- A. A request for an opinion, upon receipt, is directed to the Opinions Division. The request is docketed, assigned to an attorney, and acknowledged. Copies of the request may be distributed to related parties for input. For example, a request from a county supervisor may be sent to the Mississippi Association of Supervisors.
- B. The special assistant attorney general assigned to handle the request will research the inquiry and draft a proposed response. The proposed response will be a proposed opinion or a statement as to the reason no opinion can be issued, e.g., the request concerns past actions.
- C. The opinion draft is then submitted to the Opinion Committee. This committee usually meets once a week to consider all opinion drafts submitted to it. The committee will return the draft to the special assistant attorney general with instructions to release (pending further review) or for additional research and editing and resubmission to the committee for further consideration.
- D. Once approved by the committee, the approved draft is transferred to a special internal computer drive for review by all section heads. Each section head is responsible for reviewing the draft for content and to determine if there is a reason, e.g., litigation, which would affect the release of the opinion. All opinions are then reviewed by the Chief of Staff and the Deputy Attorneys General who may refer same to the Attorney General, if necessary.

- E. Upon completion of this process, the opinion is printed in final form on Official Opinion letterhead, signed, and mailed to the requestor. A copy of same is then posted on the web site. Most requests for official opinions are responded to within 30 days or less.

Effect of an Official Opinion

- A. Pursuant to MCA § 7-5-25, a requestor who acts in good faith and in accordance with the advice given in the opinion, will not be civilly or criminally liable as a result of such acts, unless the opinion is manifestly wrong and without any substantial support.
- B. An official opinion is formal advice. It is not a ruling or order and does not require a particular action be taken. An official opinion provides protection from civil and criminal liability to those officials who act in accordance with the opinion.
- C. The Mississippi Supreme Court views official opinions to be persuasive authority, but is not bound by them. *Poppenheimer v. Estate of Coyle*, 98 So.3d 1059, 1066 (Miss. 2012).

When Official Opinions Will Not Be Issued

- A. MCA § 7-5-25 does not authorize the Attorney General to issue official opinions to private individuals or entities.
- B. The purpose of an official opinion is to offer advice regarding future actions to be taken. Opinions will not be issued addressing past actions. The validity of past actions can only be determined by a court of competent jurisdiction.
- C. MCA § 7-5-25 prohibits the Attorney General from issuing opinions on matters in litigation.
- D. Unless necessary to respond to a question of state law, opinions will generally not be issued on questions of federal law.
- E. Opinions will not be issued on questions of interpretation of a requestor's rules, regulations, ordinances or procedures.
- F. Opinions will not be issued interpreting contracts.
- G. Opinions will generally not be issued on matters relating to conflicts of interest under MCA § 25-4-101 et seq. Such questions should be submitted to the [Mississippi Ethics Commission](#).

How to Find Opinions Which Have Been Issued

Opinions can be found through the Attorney General's searchable website: <http://government.westlaw.com/msag>. When using the searchable database, keep in mind that older opinions may not reflect current statutes or case law.

Other Matters Relating to Official Opinions

- A. Emergency Requests: If, due to unavoidable circumstances, an official opinion is needed on short notice, every reasonable effort will be made to accommodate this need.
- B. Reconsideration of an Opinion Already Issued: A requestor or an interested party may request that an opinion be reconsidered. Such a request must be in writing and must set forth the reasons for which the opinion should be reconsidered.

COURT PROCEDURES

MS Municipal Audit and Accounting Guide, 2010 Edition

Office of the State Auditor

Title 21, Chapter 23 of the MS Code of 1972, Annotated (MCA) requires court personnel to receive regular training organized and certified by the Mississippi Judicial College at the University of Mississippi. In addition to the procedures presented in this guide the State Auditor's Office participates in judicial college training to present updated and detailed procedures. For information in addition to this guide on the proper conduct of the municipal court, guidance should be solicited from the Mississippi Judicial College.

The Mississippi Judicial College provides a Manual for Municipal Court on their website:
<http://mjc.olemiss.edu/wp-content/uploads/sites/134/2016/06/Manual-for-Mississippi-Municipal-Courts-2016.pdf>

Mississippi law requires the State Auditor to prescribe procedures for the handling of certain court funds. The following procedures have been issued for this purpose.

Accounting system

MCA § 21-23-11 states that the municipal court clerk shall administer the collection and settlement of collections.

- Separate accounting records must be maintained for the municipal court. This means these records may not be combined with those of other municipal departments or activities; regardless of any other positions (municipal clerk, chief of police, etc.) the person serving as court clerk may hold.
- Municipal court clerks should use the accounting system presented in the Accounting System chapter. This means receipts must be issued for collections on official court receipts (only the court clerk or deputy may issue and sign a receipt) and cash journals must account for all collections.
- A municipal court clerk has no authority to disburse funds. Therefore, collections must be deposited in to the municipal treasury on a daily basis (MCA § 21-15-21). Such collections must be defined in a report to the municipal clerk at least monthly.

Partial payment accounting

Municipal Court Judges may allow defendants to pay on a partial payment basis. This means the Municipal Court Clerk will have to maintain some type of receivable record.

Accounting Record System:

An accounts receivable system must account for each receivable. The receivable record must contain the following information (if available):

- the case record creating the obligation,

- a costs bill detailing the defendant's total obligation, the name of the defendant or responsible person,
- where the defendant (or associated persons) may be found (current and official address),
- any other information relevant to collection,
- and each receipt by number, date, and amount.

A card, journal, computer or other appropriate accounting method may be used. Also, a running total account should be maintained to show the total amount due.

Each account should be balanced monthly. Periodically, analysis should be made to determine such things as the age of accounts. Reports should be made to the judge and board/council containing such information as they may require. What is important is that a record be kept to account for each defendant's charges, payments, balances due and status; and that the information be used.

Case Record:

In addition to accounting records, the case record should:

- note the judgment of the court;
- disclose the final disposition, once the receivable has been totally collected or some other disposition has been ordered by the court.

It should be noted that MCA § 15-1-51, Miss. Code and Section 100, Miss. Constitution make clear there is no statute of limitation that runs against a municipality; therefore, obligations may not be written off without specific legal authority (such as MCA § 9-1-47 and MCA § 99-19-25).

Refunds

Occasionally refunds of collections will be required. A municipal court clerk has no authority to make a disbursement; therefore, the following procedure is prescribed for refunds. This procedure is also to comply with MCA § 99-19-73 and MCA § 83-39-31.

Who Authorizes Refunds - Municipal Court Clerks - When:

- Over payments have been made due to collection error,
- Court order directs,
- Convictions have been overturned upon appeal,
- In the case of an appearance bond fees, when the prosecutor enters a nolle prosequi or retires the case to the file.

How Refunds Are Authorized - Certificates of Eligibility

- A Certificate of Eligibility is a mandatory document issued by the municipal court clerk to the defendant and municipal clerk to authorize refunds.
- A Certificate of Eligibility document must be written, signed and include the date, case number, payee, amount due and reason for the refund.
- Copies of all certificates issued must be maintained by the court clerk.
- This certificate may also be used to support claims filed with the municipal board for refunds of fines, costs, bonds, etc.

Who Must Make Refunds - Municipal Clerks

- Refunds must be authorized by “certificates of eligibility”.
- Copies of all certificates received must be maintained by the municipal clerk.

Source of Refunds

- Refunds must be made from the funds into which the original money was settled. For example, MCA § 99-19-73 uniform assessments would be refunded from the “State Assessment Clearing Fund”.
- If assessment money has already been settled to the state, refunds are made from later similar collections in the clearing fund.

Board of Aldermen/Council Responsibilities

- Municipal Board Orders are not required for the municipal clerk to refund court assessments processed through clearing funds; such as county (law library) or state (uniform assessment) assessments.
- A board order is required to authorize a refund of money placed in a municipal fund; such as court cost, fines or special municipal assessments.
- The Certificate of Eligibility shall serve as authorization for a clearing fund refund; and may also serve as a basis for the municipal board to judge a claim for refund.

Uniform Traffic Tickets - Court Procedures

MCA § 63-9-21 requires the State Auditor and Attorney General to jointly prescribe uniform traffic tickets to be used by municipal police officers. This law also requires the clerk of the municipal court to keep a record of all traffic ticket books issued and to whom issued, accounting for all books printed and issued.

Due to frequent changes in implied consent and other traffic-related laws, actual examples of prescribed tickets will not be presented in this guide. Current copies may be obtained by contacting the office of the state auditor or reviewing the State Auditor’s web site, www.osa.ms.gov.

The following procedures are provided for the issuing and accounting for uniform traffic tickets:

Uniform Traffic Ticket Statutory Requirements of MCA § 63-9-21

- Original tickets must be used.
- Tickets must be as the State Auditor and Attorney General prescribe.
- Tickets must be uniform throughout all jurisdictions.
- Tickets must show the name of issuing officer.
- Ticket must show the name of court where cause is to be heard.
- Ticket must show the date and time of required appearance.
- Ticket must show all other information which is necessary for a complaint charging the offense for which the ticket was issued (sworn to, filed with court clerk, etc.). No separate complaint is required when the ticket is properly issued under MCA § 99-19-3.
- Ticket discloses judge's acknowledgment of DUI defendant's attorney decisions.
- Tickets must be bound in book form (hard copy or electronic).
- Tickets must be consecutively numbered.
- Ticket books are issued and accounted for by the court clerk.
- Original and commissioner's copies of the ticket must be returned to the court clerk. The officer's copy of the ticket is retained by the officer.
- The ticket number must be noted on the court docket
- Tickets must be filed as specified by the State Auditor
- Filed tickets must show fine and costs as specified by the State Auditor
- Ticket copies must be retained for two years

Uniform Traffic Tickets - State Auditor's Regulations

Uniform Traffic Ticket Issuing and Log Book

- The municipal court clerk must issue the uniform traffic tickets to be used by municipal law enforcement officers and trainees.
- These pre-numbered tickets must bound in booklets and accounted for in a log book of all ticket booklets issued.
- The log book must document the name of the officer each ticket book issued to him/her; including date of issue and ticket numbers included in the booklet. Log books may be hard copy or electronic (see MCA § 75-12-13).

- Unused tickets and ticket books may be turned in to the court clerk for reissue or disposal.
- Accountability for disposition of individual traffic tickets is a matter of local policy.

Uniform Traffic Ticket Processing

- Uniform traffic tickets prescribed by the State Auditor and Attorney General must be printed to include the name of the issuing municipality and numbered as required for processing with the Department of Public Safety.
 - Other information relevant to charges and court processing may be added.
 - The violator's copy of the ticket must contain the prescribed "notice to violator" information.
- All copies of the traffic ticket must be completely filled out and signed by the issuing law enforcement officer. The officer must also swear to the statement of the original ticket when required by MCA § 63-9-21.
- All traffic tickets must contain an original with three copies.
 - Original for the court,
 - Second copy for the Commissioner of Public Safety,
 - Third copy for the issuing officer, and
 - Fourth copy for the violator.
- The commissioner's copy of traffic tickets must be filed within 45 days or in case of no judgment, within 120 days.
 - MCA § 63-11-37 requires abstracts of DUI convictions be filed within five days.
 - The Department of Public Safety may request earlier filing.
 - It is not necessary to include or send a copy for the State Auditor.

Improper Motor Vehicle Tag or Decal Procedure

MCA § 27-19-63 states a \$250 penalty shall be assessed against any person who is liable for the motor vehicle privilege license tax and who displays an out-of-state license tag on the vehicle; or displays a license tag or privilege license decal on the motor vehicle which was issued for another vehicle.

It also states that "penalties shall be assessed on the privilege license tax at the rate of 5 percent (5%) for the first fifteen (15) days of delinquency, or part thereof, and 5 percent (5%) for each additional thirty-day period of delinquency, or part thereof, not to exceed a maximum penalty of twenty-five percent (25%)."

MCA § 27-19-127 explains if a municipal law enforcement officer enforces the violation, then one-half (½) of the \$250 penalty and one-half (½) of the penalty assessed on delinquent privilege license taxes shall be paid into a special fund of the municipality and may be appropriated and expended for any lawful purpose.

Procedures for Applying Legal Provisions

A municipal law enforcement officer may issue a ticket if a Mississippi resident displays an out-of-state license tag on his or her motor vehicle or displays a license tag or privilege license decal on an inappropriate motor vehicle. If the municipal law enforcement officer issues a ticket for one of these charges, he/she should inform the offender of the \$250 penalty.

The municipal law enforcement officer must transmit a copy of the ticket to the tax collector in the county in which the offender resides.

The county tax collector must collect the \$250 penalty and any other applicable penalties when the offender pays the privilege tax. The county tax collector must send the \$250 penalty and any other applicable penalties to the chancery clerk of the county where the offender resides. These amounts are a part of the monthly settlement of the tax collector. The county tax collector must identify the municipal law enforcement officer who issued the applicable ticket.

If a municipal law enforcement officer issued a ticket resulting in the collection, the chancery clerk shall deposit one-half ($\frac{1}{2}$) of the \$250 penalty and one-half ($\frac{1}{2}$) of the delinquent penalties on the privilege license tax into the county road fund. The other one-half ($\frac{1}{2}$) of the applicable penalties shall be sent to the city clerk in the municipality for which the law enforcement officer works. When the city clerk receives the municipality's portion of the applicable penalties, the clerk shall deposit the penalties into a special fund for the police department. This money may be used for any lawful purpose. The law enforcement officer is not personally entitled to any of the penalties.

Uniform Traffic Tickets - Police Procedures

MCA § 63-9-21 requires the State Auditor and Attorney General to jointly prescribe uniform traffic tickets to be used by municipal police officers. This law requires the municipal court clerk to account for and issue these tickets; therefore, procedures for uniform traffic tickets are included in the "Municipal Court Procedures" section of this guide. These procedures should be reviewed by the municipal police chief and officers for an understanding of police officer responsibility.

MUNICIPAL ELECTIONS

2016 Supplement

This chapter will give the municipal clerk an overview of the election process. The Secretary of State's Office provides detailed training manuals and workshops for municipal officials to conduct elections. These manuals can be found on the Secretary of State's website at www.sos.ms.gov. You can also contact the elections division by phone at 601-576-2550.

The statutory law that controls the conduct of municipal elections is contained in Chapter 15, Title 23, (Volume 6) of the Mississippi Code of 1972, Annotated (MCA).

In Mississippi, we do not have a complete set of statutes specifically applicable to municipal elections. It is well established that the statutory provisions governing county, state, and federal elections are applicable to municipal elections if there is no specific municipal provision.

ELECTION OFFICIALS

Municipal Clerk

MCA § 23-15-35 provides that the municipal clerk shall be the registrar of voters. The municipal registration shall conform to the county registration which shall be a part of the official record of registered voters as contained in the Statewide Election Management Systems (SEMS). The municipal clerk shall comply with all the provisions of law regarding the registration of voters, including the use of the voter registration applications used by county registrars.

Election Commissioners

MCA § 23-15-221 provides that the governing authority elect election commissioners at the beginning of their term to conduct general and special elections during the term of office.

- Population less than twenty thousand (20,000) shall appoint three (3) election commissioners
- Population greater than twenty thousand (20,000) but less than one hundred thousand (100,000) shall appoint five (5) election commissioners
- Population greater than one hundred thousand (100,000) shall appoint seven (7) election commissioners

Duties of Election Commissioners for general and special elections.

- Prepare for and conduct general and special elections, with the assistance of the municipal clerk.
- Serve as poll managers if there is only one voting precinct in the municipality.
- MCA § 23-15-221
- Attend annual elections training seminars conducted by the Secretary of State.
- Appoint and train poll workers.
- Purge registration books and poll books

Party Executive Committee Members

A political party may conduct a primary election in a municipality to choose a party nominee for the general election.

- The political party must have a municipal party executive committee in place prior to qualifying deadlines for a primary to be held.
- Party executive committee members are required to be elected for a four-year term.
- If there is only one voting precinct, three (3) Municipal Party Executive Committee Members themselves shall act as poll managers for the primary election. MCA § 23-15-231
- MCA §23-15-313 and 23-15-315 provide the guidelines for forming a temporary party executive committee.

The members of a municipal party executive committee have the same duties and responsibilities as the municipal election commission in connection with conducting a municipal primary.

Poll Managers

Poll managers or poll workers are responsible for manning the polls on Election Day.

- For a general or special election, the municipal election commissioners appoint the poll managers.
- If there is only one voting precinct in the municipality, then the three (3) election commissioners serve as the poll managers. MCA § 23-15-221
- The poll managers for a party primary are appointed by the party executive committee.
- If there is only one voting precinct in the municipality, then three of the Municipal Party Executive Committee members serve as poll managers. MCA § 23-15-221
- Poll managers are trained by either the election commission or the party executive committee depending on the type of election. MCA § 23-15-239
- MCA § 23-15-227 and § 23-15-229 sets the compensation paid to poll managers.
 - Poll workers shall be paid \$75.00 per election. Governing authorities may approve additional compensation not to exceed \$50.00 per election.
 - Governing authorities may compensate managers to attend training. The compensation shall be at a rate of not less than the federal hourly minimum wage nor more than Twelve Dollars (\$12.00) per hour.

VOTER REGISTRATION

All residents of a municipality who are at least eighteen (18) years old and have not been convicted of a disqualifying crime and have not been judicially declared *non compos mentis* (not of sound mind) may register to vote. Disqualifying crimes are arson, armed robbery, bigamy, bribery, carjacking, embezzlement, extortion, felony bad check, felony shoplifting, forgery, larceny, larceny under lease, murder, obtaining money or goods under false pretense, perjury rape, receiving stolen property, robbery, theft, timber larceny, unlawful taking of a motor vehicle and statutory rape. (MS Constitution § 241; Cotton v. Fordice (1998); AG Opinion Karrem, 2004; Heggie, 2009).

The municipal clerk is the registrar for the municipality and deputy registrar for the county in which the municipality is located. MCA § 23-15-35

- A resident of a municipality may register to vote in all elections in the municipal clerk's office, the county circuit clerk's office, or by mail. MCA 23-15-35 & 23-15-47
- The municipal registration must conform to the county registration, in both form and substance, and must be entered into the Statewide Elections Management System. MCA § 23-15-35 & 23-15-47
- The names of municipal residents whose registrations are approved are forwarded by the municipal clerk to the county registrar for entry into the Statewide Elections Management System. MCA §23-15-35

TYPES OF ELECTIONS

Guidelines for conducting elections can be found in the Municipal Election Manual on the Secretary of State's website: www.sos.ms.gov. The elections division of the Secretary of State's Office conducts municipal election training during each election cycle. All election officials are required to attend the training.

PRIMARY ELECTIONS

Except in municipalities operating under a special or private charter providing otherwise, a political party may choose to conduct primary elections to determine nominees to represent that party in the municipal general election. Municipalities are not required to have primary elections. It is up to each political party to decide whether it wishes to conduct a primary. There can be no primary for a particular political party if there is no municipal party executive committee.

If a political party chooses to conduct a primary, it must have a municipal party executive committee lawfully established by the deadline for candidates to qualify.

- If a political party has elected an executive committee in a primary conducted prior to the last municipal general election, that committee (the officials in charge of the election), would be authorized to conduct the next primary election.
- If no lawfully elected municipal party executive committee is in place, the party must establish a temporary committee if it wishes to conduct a primary.

- The procedure for establishing a temporary committee is set forth in MCA §§ 23-15-313 through 315.

The members of a municipal party executive committee have the same duties and responsibilities in connection with municipal primary elections as municipal election commissioners have in connection with general and special elections, except that party executive committees do not have any authority to “purge” the registration books and poll books. The municipal election commission has the responsibility to prepare the poll books to be used in primary elections. MCA § 23-15-127

The date for municipal primary elections is the first Tuesday in May prior to the general election in 2001 and every four (4) years thereafter. MCA § 23-15-171

GENERAL ELECTIONS

All municipalities, except some special or private charter municipalities, must conduct a general election on the first Tuesday after the first Monday of June, 2005, and every four (4) years thereafter. MCA § 23-15-173

- The municipal election commission is responsible for conducting the general election with the assistance of the municipal clerk.
- Each municipality must have an election commission composed of the appropriate number of commissioners duly appointed by the governing authorities. MCA § 23-15-221
- The commissioners should be appointed at the first regular meeting of each new term by the governing authorities.
- The commissioners so appointed serve the same term as the governing authorities making the appointments.

If all offices on the general election ballot are unopposed, the municipal election commissioners may dispense with the general election and declare all candidates duly elected. However, if at least one race is contested on the ballot, all races must appear on the ballot. MCA § 23-15-359 and AG Opinion 2005-0315

SPECIAL ELECTIONS

Upon the occurrence of a vacancy, a clerk should contact the Elections Division of the Secretary of State’s Office for assistance in setting the dates for the special election.

The municipal election commission is also responsible for conducting all special elections to fill vacancies in municipal office, and all referenda on such issues as the issuance of bonds, beer and liquor local options, etc. MCA § 23-15-857

Should only one person qualify for a position being filled by special election, at the conclusion of the appropriate qualification period, the municipal election commission may dispense with the special election and declare the sole candidate to be the winner. MCA § 23-15-839(2)

General Provisions

MCA §23-15-857 sets forth the general procedure to fill vacancies in municipal offices.

1. When the unexpired term is less than six (6) months

- A vacancy in an elective municipal office, the unexpired term of which does not exceed six (6) months, must be filled by appointment by the municipal governing authorities.
- The “governing authorities” of a municipality are generally the Board of Aldermen and the Mayor.
- The Board of Aldermen would make such appointment subject to the Mayor’s veto.
- If the municipality operates under the Mayor-Council, Council-Manager, Commission, or Private Charter form of government, consult the City Attorney to determine who is legally authorized to make such appointments and the manner in which such appointments are to be made.
- The Municipal Clerk must certify such appointment to the Secretary of State, and the appointee will be commissioned by the Governor.

2. When the unexpired term exceeds six (6) months

- If a vacancy occurs in an elective municipal office, the unexpired term of which exceeds six (6) months, the governing authorities must enter an order on the official minutes requiring an election to be held in the municipality to fill the vacancy and fixing a date upon which such election will be held.
- This order must be entered at the next regular meeting of the governing authorities after the occurrence of the vacancy or at a special meeting to be held not later than ten (10) days after occurrence of the vacancy.
- The order must set the election on a date not less than thirty (30) days nor more than forty-five (45) days after the date on which the order is adopted.
- If the municipality operates under the Mayor-Council, Council-Manager, Commission, or Private Charter form of government, consult the City Attorney for possible variations of this procedure.

Notice of Election – Special Election

- The Municipal Clerk must give notice of the election by an appropriate publication in a newspaper published in the municipality, or if there is no newspaper published in the municipality, the notice must be published in a newspaper which has a general circulation with the municipality.
- Such notice must be published once a week for three (3) successive weeks preceding the date of such election.
- The first notice in the newspaper must be published at least thirty (30) days before the date of such election.

- Notice shall also be given by posting a copy of such notice at three public places in such municipality not less than twenty-one (21) days prior to the date of such election. One such notice must be posted at City Hall.

Sample Notice:

RESOLUTION AND ORDER FOR AN ELECTION

A vacancy having occurred on the Board of Aldermen, (ward), of the (name of municipality), Mississippi by virtue of the (reason for vacancy) on (date of vacancy),

IT IS HEREBY ORDERED THAT:

Pursuant to Mississippi Code Annotated Section 23-15-857, on the (date of election), a special municipal election will be held in the (name of municipality), (name of county), Mississippi, for the purpose of electing an Alderman to fill the vacancy left as a result of the (reason for vacancy) of one of the duly elected and acting members of the Board of Aldermen of the (name of municipality), Mississippi.

IT IS FURTHER ORDERED THAT:

Each candidate for the said office is required by law to qualify by 5:00 p.m. at least twenty (20) days prior to the date set for the said election. Each candidate shall qualify by Petition filed with the City Clerk, which Petition shall be signed by not less than fifty (50) qualified electors of said Ward. No qualifying fee shall be required of any candidate.

If no candidate of said Ward in said election receives a majority of the votes cast therein, the two candidates receiving the highest number of votes shall have their names placed on the ballot for a run-off election to be held two (2) weeks, thereafter.

SO RESOLVED, ORDERED AND DIRECTED by the Mayor and the Board of Aldermen of the (name of municipality), Mississippi, on this the (date).

BY: MAYOR

ATTEST: _____
CITY CLERK

Candidate Qualification – Special Election

- Each candidate must qualify by petition filed with the Municipal Clerk at least twenty (20) days before the date of the election. All candidates will qualify as independents.
- The petition must contain the names of at least fifty (50) qualified municipal electors if the municipality has a population of one thousand (1000) or more residents.
- If the population of the municipality is less than one thousand (1000) residents, the petition must contain the names of at least fifteen (15) qualified municipal electors.
- In order to be certain that a petition is legally sufficient, it is suggested that if the population of the ward is one thousand (1000) residents or more, that names of at least fifty (50) qualified municipal electors who are registered in that ward appear on the petition.
- If the population of the ward is less than one thousand (1000) residents, the names of at least fifteen (15) qualified municipal electors who are registered in the ward would be sufficient. (MCA §23-15-857)
- Copies of acceptable petitions for at-large and ward elections are available at the Secretary of State's Office. (See Attorney General's Opinion dated February 23, 1996)
- MCA § 1-3-75 requires that all petitions presented to the governing authorities of a municipality must be personally signed by each petitioner. For example, if a husband signed his wife's name to a petition, her name could not be lawfully counted.
- See Petition Section of Chapter for additional information on verification of signatures.

Campaign Finance Reports – Special Election

- All candidates must file their campaign finance reports in accordance with MCA § 23-15-801. Additional information concerning the campaign finance report can be found on the Secretary of State's Election website: www.sos.ms.gov.

Qualifying Fee - Special Election

There is no qualifying fee for candidates in Municipal Special Elections.

Statement of Economic Interest – Special Election

- All candidates must file a statement of economic interest with the Ethics Commission. This statement must be filed electronically at the Ethics Commission website, www.ethics.state.ms.us. MCA § 25-4-25 (See Ethics Chapter)

Determining Results – Special Elections

- The candidate receiving a majority of the votes cast shall be elected.
- If no candidate receives a majority vote, the names of the two (2) candidates receiving the highest number of votes will be placed on the ballot for a run-off election to be held two (2) weeks after the Special Election, and whoever receives the most votes cast in such runoff shall be elected.
- If only one (1) person qualifies to run, the election shall be dispensed with and that person must be appointed.

If no one qualifies, the election shall be dispensed with and the vacancy must be filled by appointment. **Certificate of Election – Special Election**

The Election Commission must give a Certificate of Election to the person elected. When the certificate has been issued, and the individual elected has acquired the necessary surety bond (if required), he/she may be sworn in and may assume the duties of the office. It is not necessary for the person elected to have a Commission in order to be sworn in and assume his/her duties.

Filing Copy of Order, Copy of Minutes, and Results - Special Elections

The Election Commission must provide the Secretary of State a copy of the order calling the Special Election, a copy of the board meeting minutes, and a statement of the results (the precinct returns). The copy of the order and the statement of the results must be certified by the Municipal Clerk as being true and correct.

PETITIONS – Clerk’s Role (Presentation by Phil Carter, Retired)

The municipal clerk is the “certifying official” as to the number of signatures of registered voters that appear on a petition seeking an election or referendum. (AG Opinion, Kerby, August 23, 1996)

The Clerk gives governing authorities a certificate stating the number of signatures of duly registered voters that appears on a particular petition.

All signatures on a petition must be personally signed by each registered voter. One person may not sign another person’s name even if the person they are signing has asked them to do so. MCA § 1-3-75

The clerk is required to post a list of all names disqualified from the petition and the reason for disqualification at city hall. Any person whose signature has been disqualified may, within ten (10) days after the notice has been posted, appear before such certifying official and present evidence of his qualification accompanied by a notarized affidavit stating the reason that his signature is qualified for the petition. Based upon such information, the certifying official shall reconsider his disqualification and may allow the signatures to be counted if such action appears justified. MCA § 1-3-76

The governing authorities make the final adjudication of the sufficiency of each petition. *Coleman v. Bd. Of Supr. Of Choctaw Co.*, 63 So 2d 533 (Miss. 1953)

Any person who has signed a petition may have their name removed from a petition by signing a “counter petition.” One who wishes to have his or her name removed from a petition may sign a statement to do so up until the time the governing authorities makes the determination as to whether or not to call an election. (AG Opinion, Stroup, Feb 4, 1982)

No signatures can be considered if they are on pages which do not contain a heading that clearly states what the petitioners are asking the governing authorities to do. *City of Clinton v. Smith*, 493 So. 2nd 331 (Miss. 1986)

CANDIDATE QUALIFYING PROCEDURES

Primary Elections

Any qualified elector (registered voter) of a municipality may become a candidate for a political party’s nomination for a municipal office or to become a member of the party’s municipal executive committee by

- Filing a statement of intent expressing his intent to be a candidate for nomination to a particular office and paying a ten dollar filing fee. The statement of intent and filing fee is filed with the municipal clerk.
- Candidates for party executive committee positions do not have to pay the filing fee.
- The municipal clerk is required to promptly turn the statement of intent and filing fee over to the appropriate party executive committee. (MCA § 23-15-309)
- For accounting purposes, it is recommended that the filing fee be paid by check made out to the appropriate municipal party executive committee.
- The municipal party executive committee may use the filing fee monies to reimburse its members for travel or other necessary expenses and/or pay the secretary of the committee a salary. [MCA § 23-15-299(5)]
- As previously stated, if a political party does not have a lawfully established municipal executive committee, it cannot have a primary.
- The municipal clerk should not accept any statements of intent and/or filing fees without knowing that there is a municipal party executive committee in place and who the members of the committee are.

General Elections

The municipal election commission is required to place the names of party nominees and independent candidates on the general election ballot. However, the commission must first review the qualifications of each candidate. They must not accept a municipal party executive committee's finding that a particular nominee meets the requisite qualifications to hold a particular office. The commission must make an independent determination on the qualifications of each person who has been certified as the nominee of a political party as well as each person who has qualified as an independent. [Powe v. Forrest County Election Commission, 249 Miss. 757, 163 So. 2d 656 (1964)]

To qualify as an independent candidate, one must file a petition signed by the appropriate number of signatures of municipal qualified electors requesting that the name of the candidate be placed on the general election ballot.

- the required number of signatures is fifty (50) in a municipality or ward that has a population of one thousand (1,000) or more,
- and fifteen (15) in a municipality or ward with a population of less than one thousand (1,000). MCA § 23-15-361

Special Elections

All candidates in a special election qualify as independent candidates in the same manner as in general elections and no party affiliation is indicated on the ballot. MCA § 23-15-857

PRINTING OF BALLOTS

The officials in charge of an election, with the assistance of the municipal clerk, must prepare the official ballot taking care that only the names of those candidates who meet the requisite qualifications for the particular office they seek are placed on the ballot and that each name is properly spelled and, to the extent possible, is exactly the way the candidate wishes his name to appear. Professional titles and nicknames should not appear before or after the candidate's name unless the officials in charge of the election determine, consistent with the facts, that such title or nickname is necessary to identify the candidate to the voters.

- In primary elections, candidates' names are required to be printed on the ballot in alphabetical order by last name. MCA § 23-15-333
- In general and special elections, the arrangement of the names of candidates is left to the discretion of the chairman of the municipal election commission. MCA § 23-15-351 and 23-15-367
 - For purposes of uniformity, the alphabetical listing of candidates' names is recommended.

Generally, absentee ballots are supposed to be ready not less than forty-five (45) days prior to any election. Since most municipal elections are conducted less than forty-five (45) days after the qualifying deadline, the ballots should be prepared as quickly as possible following the qualifying deadline in order to allow as much time as possible for absentee voting.

APPOINTMENT AND TRAINING OF POLL WORKERS

The officials in charge of the election are required to appoint and train a sufficient number of poll workers to insure that the election is properly conducted.

- The party executive committee appoints and trains the poll workers for party primaries.
- The municipal election commission appoints and trains the poll workers for general and special elections.
- The minimum number of poll workers for a voting precinct is three (3). Additional poll workers may be appointed based on the number of registered voters in each precinct in accordance with *Code*, § 23-15-235.

Municipal party executive committees and election commissions are required to train poll workers for their respective elections not less than five (5) days prior to each election.

- No poll worker may work in an election unless he has received proper training during the twelve (12) month period preceding the date of the election. MCA §§ 23-15-239, 23-15-263 and 23-15-171
- Training by a county executive committee or county election commission within twelve (12) months of an election would qualify one to work in a municipal election.

CONDUCT OF ELECTION

The polls are required to be opened from 7:00 a.m. to 7:00 p.m. MCA § 23-15-541

The basic procedure for voting is as follows:

- the voter is asked to give his name;
- the voter must provide an acceptable form of identification (see Voter ID section);
- a poll worker locates the voter's name on the poll book;
- the initialing manager initials the ballot (paper and scanner ballots only);
- the voter is given a ballot (or ticket to vote on a machine);
- the voter proceeds to cast his ballot; and
- a poll worker writes the word "voted" by the appropriate voter's name on the poll book.

Each candidate, or his representative designated in writing, has the right to be present at each polling place. The managers are required to assign each such poll watcher a suitable position from which he may observe the process and challenge any voter's qualification to vote. MCA § 23-15-577

Only the candidates, properly appointed poll watchers, poll workers, voters in line to vote and officials in charge of the election may be within thirty (30) feet of where voters are casting their ballots. Each political party who has nominees on the ballot may appoint two (2) poll watchers to observe municipal general elections. MCA § 23-15-245

VOTER PHOTO IDENTIFICATION REQUIREMENTS

All voters must present an acceptable form of photo identification before casting his/ her ballot in person in the polls on an election day or in the Municipal Clerk's Office during absentee voting.

Acceptable Photo Identification:

- Driver's license;
- Photo ID card issued by any branch, department, agency, or entity of the State of Mississippi;
- United States passport,
- Employee photo identification card issued by any branch, department, agency, or entity of the United States government;
- License to carry a pistol or revolver, containing a photo of the voter;
- Tribal photo identification card;
- United States military photo identification card;
- Student photo identification card, issued by any accredited college, university or community or junior college in the State of Mississippi;
- Mississippi Voter Identification Card; and
- Any photo ID issued by any branch, department, agency, or entity of the United States government or any state government, such as a driver's license issued by a state other than Mississippi.

Current means the document has no expiration date or was issued no more than ten years prior to the date the ID is presented at the polling place.

Valid means the document does not appear to be a forgery or fake.

Voters who cannot present Acceptable Photo ID at the precinct or at the Municipal Clerk's Office are entitled to vote by an affidavit ballot. No voter is ever denied the right to vote. The voter has five (5) days to present the acceptable photo ID to the clerk's office for the vote to be counted.

Exemptions to the Photo ID Requirement:

1. A voter who casts an absentee ballot by mail, e-mail or fax is not required to provide or enclose a copy of an acceptable photo ID,
2. A voter who resides in a state-licensed care facility and who votes in person in a precinct located in that same state-licensed care facility is not required to present acceptable photo ID, and

3. A voter who has a religious objection to being photographed is not required to present acceptable photo ID.
 - a. A voter with a religious objection may only vote by an affidavit ballot.
 - b. An affidavit ballot cast by a voter with a religious objection cannot be rejected for this reason IF, within five (5) business days after an election day, the voter signs an Affidavit of Religious Objection in the Municipal Clerk's Office in the voter's municipality of residence.
 - c. An affidavit ballot cast by a voter with a religious objection cannot be counted IF, within five (5) business days after an election day, the voter DOES NOT sign an Affidavit of Religious Objection in the Municipal Clerk's Office in the voter's municipality of residence

AFFIDAVIT BALLOTS

If any person declares that he is a registered voter in the precinct in which he offers to vote and his name does not appear in the poll book, a poll manager must notify the person that he may cast an affidavit ballot at the election.

- The paper ballot shall be handed to the voter to mark.
- The voted paper ballot shall be handed back to one of the poll managers to enclose in an envelope with the affidavit printed on the envelope.
- The Poll Manager shall seal the envelope and mark plainly upon it the name of the person offering to vote.
- The Poll Manager shall provide the voter information on a toll-free access system and written information on how to use this system for affidavit voters to learn the outcome of their ballot.
- The affidavit ballots will be examined and either counted, or not counted, when the election officials – Executive Committee or Election Commissioners- are canvassing the returns.
MCA § 23-15-573

CHALLENGES

Anyone who is entitled to be within thirty (30) feet of where the voting is taking place may challenge any voter's qualifications. When a challenge is made, the poll workers must rule on the challenge. The three (3) possible rulings are as follows:

- If the poll workers at a particular box unanimously agree that the challenge is valid, the voter is then allowed to mark a ballot. The word "rejected" and the name of the voter is written on the back of the ballot by one of the poll workers and placed in a separate enveloped marked "Rejected Ballots."
- If a majority, but not all, of the poll workers at a particular box believe that the challenge is valid, the word "challenged" is written on the back of the ballot by one (1) of the poll workers and placed in a separate envelope marked "Challenged Ballots."

- If all or a majority of the poll workers at a particular box believe the challenge is not valid, the challenge is disregarded as being frivolous and the voter is allowed to cast his ballot just as if he had never been challenged.

A separate count of the challenged ballots must be made and attached to the challenged ballot envelope. Under no circumstances may any challenged ballots be added to the regular ballot totals. MCA § 23-15-579

All challenges must be ruled on by the poll workers. Neither a municipal election commission nor a municipal party executive committee has any authority to rule on whether challenged or rejected ballots should be counted and included in the vote totals of the election. *Misso v Oliver*, 666 So. 2d 1366 (1996)

VOTER ASSISTANCE

Any voter who declares to the poll workers that he requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice other than the voter's employer, or agent of that employer, or officer or agent of the voter's union. MCA § 23-15-549

No assistance may be lawfully allowed if the proper procedure is not followed. Care must be taken not to destroy the secrecy of the voter's ballot. The decision to seek assistance must be made by the voter without any coercion or influence from any other person. Ballots marked with assistance are invalid if the proper procedure is not followed. *O'Neal v. Simpson*, 305 So. 2d 998 (1997)

COUNTING BALLOTS

Refer to the Municipal Election Handbook for detailed information on counting the ballots for various types of voting devices.

- When the polls close at 7:00 p.m. and preparations are made to count the ballots, the first order of business is to remove all absentee ballots from the boxes.
- The poll workers must then review each absentee ballot application and ballot envelope to insure compliance with all technical, legal requirements such as signatures and notarization [except for disabled voters' applications and envelopes which only require the signature of a witness eighteen (18) years of age or older].
- The signature of the voter on each application must match the voter's signature on the corresponding ballot envelope.
- If all is in order, each ballot is carefully removed from the envelope so as to preserve its secrecy and each such ballot is placed with the regular ballots to be counted. MCA § 23-15-639

On the day following the election, the officials in charge of the election must meet and canvass the returns, review each affidavit ballot and count those that are determined to be valid, and within five (5) days of the election, certify the official results. (MCA § 23-15-611)

EXAMINATION OF BOXES

While there is no formal “recount” provision in our statutes, each candidate has the right to examine the contents of the ballot boxes and count the ballots themselves,

- Provided written notice is given to the other candidates for the office in question at least three (3) days in advance of the examination.
- The examination must be completed within twelve (12) calendar days of the date of certification of the election. MCA § 23-15-911

CONTEST OF ELECTION

Any losing candidate has the right to formally contest the certified results of an election by filing a petition in circuit court of the county where the election was conducted.

To contest a primary election, a petition must first be filed with the municipal party executive committee pursuant to MCA § 23-15-921. If the executive committee does not grant the relief sought by the petitioner, he may then file his petition in circuit court pursuant to the provisions of MCA § 23-15-927.

To contest a general or special election, a losing candidate must file a petition in the circuit court of the county where the election was conducted pursuant to MCA § 23-15-951.

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ACCOUNTING GUIDELINES AND RECORDS SYSTEM

(Financial Management)

MS Municipal Audit and Accounting Guide, 2010 Edition

Office of the State Auditor

2016 Supplement

Purpose of Accounting System

A properly operating municipal accounting system must comply with Mississippi legal requirements. These requirements are intended to provide a system that will present information to the officers and employees of the municipality for the proper operation and management of the municipality. The system is also designed to provide required information to the public, municipal auditors and regulatory agencies, such as the Office of the State Auditor.

Responsibility for the Accounting System

MCA § 21-35-11 requires the clerk of the municipality to open and keep the books and records of the accounting system. This means the municipal clerk is responsible for the accounting records and should secure them at all times from loss, damage and alteration.

Funding the Accounting System

Governing authorities should provide for funding for accounting records within the municipal clerk's department. The cost of accounting records should be paid from the municipal general fund. The costs of accounting records required for some special funds (such as utility system funds) may be paid from those funds or reimbursed to the General Fund.

Public Access to Accounting Records

MCA § 21-35-11 requires accounting records to be available for inspection by any citizen during regular office hours. The open records laws [MCA Chapter 61 of Title 25] also require books and records be available to the public for inspection and copying. Municipal authorities should review the open records laws and develop appropriate policies. (See Public Records Chapter)

Budgetary Support of Accounting Records

MCA § 21-35-11 makes clear that accounting records must present financial information in such a way that the status of the budget can be determined easily by anyone comparing the records to the adopted budget. This law requires the books must contain headings and accounts corresponding with those adopted in the municipal budget. These headings and accounts should clearly present the purpose of each expenditure group and source of each item of revenue. (See Budget Chapter for detailed explanation)

Accounting System Fiscal Year

Accounting records must be maintained on a fiscal year beginning October 1 and ending on September 30. This is necessary for financial information to be comparable with the municipal budget (MCA § 21-39-5).

Accounting System Basis of Accounting

Accounting records must be maintained on a cash basis. This means transactions are recorded when cash is received or disbursements are made during the fiscal year. The only exception to this rule is claims that are received prior to the end of the current fiscal year and paid within thirty days of the end of the current fiscal year; these payments may be recorded within the current fiscal year's records. This is necessary for the financial information to be comparable with the municipal budget (MCA § 21-35-23).

Accounting System Required Records

All municipalities must maintain certain records. The following list explains these record requirements and their minimum content. Any other records required by law or other regulation also must be maintained, even though they may not be included in this list.

The design and overall content of these records may vary with the needs of each municipality. Records may be maintained manually or electronically as provided by MCA § 75-12-13.

Municipalities may maintain any additional records they deem appropriate for their needs. Additional records may be necessary to meet reporting requirements associated with grants, loans, contracts or federal law.

Ledgers

Municipalities must maintain records of assets and liabilities, keeping separate ledgers to define asset and liability classifications. Each ledger must contain sufficient information to define the nature and source of individual assets or liabilities (listed below). This requirement is to cover classifications such as receivables, investments and debt obligations that are not otherwise covered in this guide, state law or other regulations.

Doubtful Accounts

Municipal governing authorities may determine the collection of certain receivables is doubtful. Such a finding may be required for financial reporting purposes. However, records of doubtful receivables must be maintained. (Section 100, Miss. Constitution, prohibits the forgiving of receivables without legislative authority.)

Cash Funds

- A cash fund is established to account for designated receipts and disbursements. This accountability is necessary to demonstrate compliance with legal or other restrictions.
- The total number of funds should be kept to a minimum by placing revenues in funds with similar purposes; for example, funds available for all legal municipal purposes should be placed in the General Fund.
- A special fund must be set up to account for any continuing revenue item with legally restricted expenditures. Proceeds of special ad valorem tax levies, state insurance rebate receipts, and littering fines are examples of revenues that must be accounted for in a special fund.
- A separate bank account is not necessary for a fund, unless required by law or contractual obligation.

Cash Receipt Warrants

Receipt warrants must be issued to document all cash collections.

- Receipt warrants must be pre-numbered and accounted for.
- The receipt warrant form must provide:
 - the date issued
 - amount of money received
 - from whom the money was received
 - to what fund(s) money was deposited
 - purpose of money received
 - signature of municipal official who issued the receipt warrant.
- The receipt warrant must also contain sufficient copies to provide for a municipal record and a copy for the person(s) or entity paying the money.
- Other copies may be necessary, depending upon the needs of the municipality's total accounting system.
- The receipt must itemize all items of costs or services if the payer makes a request for an "itemized receipt". However, it is not required that a copy of a receipt (routine or itemized) be delivered to the payer, unless requested.

Cash Disbursement Warrants or Checks

MCA § 21-39-5 and § 21-39-13 require and explain the legal content of disbursement warrants and checks.

- Disbursement warrants and checks must be pre-numbered and accounted for;

- On their faces they must express:
 - the date issued
 - amount of money payable
 - to whom payable
 - from what treasury and fund payable
 - the purpose and municipal minute book authorizing the payment
 - claim number
 - seal of the municipality
 - signature of the mayor (or majority of the board/council)
 - attesting signature of the municipal clerk.
- The disbursement warrant or check also must contain a copy to provide for a municipal record.
- Other copies of the disbursement warrant or check may be necessary, depending upon the needs of the municipality's total accounting system.

Cash Receipts Journal

All cash receipts must be recorded into cash receipts journals.

- A separate journal must be maintained for each fund.
- Each journal must be set up on a fiscal year basis, kept in receipt warrant number order, and totaled monthly with a summary of collections by fund and objective function.
- Each journal must have separate columns so the entry(s) for each receipt warrant will be recorded to show the receipt warrant date, receipt warrant number, payer and amount(s) received.
- Each journal should also have columns to classify the amounts received by functional nature of the receipt and objective function account(s) the money was credited to.
- It may be necessary to have more than one entry receipt number.

Cash Disbursements Journal

All cash disbursements must be recorded into a cash disbursements journal.

- A separate journal must be maintained for each fund. This journal must be set up on a fiscal year basis, kept in disbursement warrant number order and totaled monthly with a summary of payments by department and objective function.
- Due to a special provision in MCA § 21-35-23 claims recorded prior to the end of the fiscal year but paid within 30 days after the end of the year may be charged to the month of September.
- This means journals are held open for one month to accommodate these disbursements. This process is necessary for accounting records to coincide with the legally adopted budget.

- Each journal must have separate columns so the entry(s) for each disbursement warrant will be recorded to show the disbursement warrant date, disbursement warrant number, payee, and amount(s) paid.
- The journal should also have columns to classify the amounts paid by department(s) and objective function account(s) to be charged.
- It may be necessary to have more than one entry disbursement warrant.
- Care should be taken to classify disbursement warrants to the proper funds, departments and objects so as to demonstrate compliance with budget laws.

Cash Receipts and Disbursements Ledger

A cash receipts and disbursements ledger must be maintained for each fund. These ledgers are designed to present monthly and annual totals of cash received for and disbursed from the funds.

- Each ledger record must present the departments and object columns to correspond to those used in the cash receipts and disbursements journals for the corresponding fund.
- Each month, summarized totals from each fund's cash receipts and cash disbursements journals should be posted to their corresponding ledgers.
- At the end of the fiscal year, the postings to the ledger should be totaled to present the total fiscal year's receipts and disbursements.

Municipal Clerk's Monthly Cash Budget Report

MCA § 21-35-13 requires the municipal clerk to prepare a budget report to be presented to the governing authority at the regular meeting each month.

- This report is intended to provide information to the board/council so it can determine the status of the budget.
- This information is important for proper management of municipal finances and for the claims approval process.
- Approval of claims that result in the budget being exceeded could result in liability of the governing authority, MCA § 21-35-17.

For receipts -- This report should show the total amount received for the fiscal year through the preceding month for property taxes and other revenue items.

For disbursements -- The report must show the status of each department's budget. This means totals for each item adopted in the department's budget. These totals are as follows:

- Charges to each budget item from the beginning of the fiscal year through the end of the previous month -- This means the total of disbursements and any unpaid claims previously approved;

- Charges to each budget item for the previous month -- This means the total of disbursements and any unpaid claims approved at the previous month's board/council meeting;
- The total balance of each budget item -- This means the total budget item less the charges to the item for the year; and
- The total balance of each budget item as it will be if the board/council approves claims currently under consideration.

Other information -- The monthly budget report may contain such other information as the board/council may request (See MCA § 21-39-19). For example, it is recommended that the report include a listing of each municipal fund along with its cash balance.

REVENUE SOURCES

Providing public services costs money. State laws grant municipalities authority to impose certain taxes and charges for its services. MCA § 21-17-5 (municipal home rule) makes clear that a municipality may not impose a tax or issue debt without specific authority.

Revenue sources may be local, state, or federal. Some revenues may be restricted. This means they must be spent for specified purposes, such as the MCA § 83-1-37 requirement that insurance rebate money from the state be spent to improve fire protection.

Local Source Revenue

Typical local sources of revenues are privilege taxes, fees for services, utility system rates, franchise fees, permit fees, and ad valorem taxes. However, there may be local revenues unique to a particular municipality due to special laws, such as local share taxes on casinos.

Ad valorem tax is one of the most important local revenues. It is used to make up the difference between other revenues and the amount of total revenue necessary to fund the budget. With certain exceptions, such as for new property, debt service, and mandatory new programs, this tax is limited by MCA § 27-39-321 to a growth of 10 percent over prior year dollar collections, unless allowed by a special election. MCA § 27-39-203 requires a public notice and hearing for the budget and proposed tax levy, and MCA § 21-33-47 requires certification to certain other governmental agencies and public notice of the final tax levy. (See Budget & Tax Levy Chapter for details)

MCA § 21-33-53 requires municipalities to assess and collect ad valorem taxes in the same way as counties. They must use the county assessment rolls and collect the tax at the same time and subject to the same penalties as the county. Municipalities may contract with the county to collect this tax. The county may retain a share of the collection as provided by MCA § 25-7-21. With an inter-local cooperative agreement (MCA § 17-13-9), the county may conduct the sale of land for delinquent taxes and the subsequent land redemptions. (See Ad Valorem Tax Collection Chapter for details)

Utility system rate collections are another important revenue source. MCA § 21-27-23 allows municipalities to operate specified utility systems and charge for their services. It does not allow rates to be set to produce money to be transferred to the general fund of the municipality.

State and Federal Source Revenues

State and federal source revenues are received from the state or federal government. These sources of revenue include such things as sales tax, homestead exemption reimbursements, insurance rebate funds, and federal grants.

Sales taxes are usually the most important state source revenue. MCA § 27-65-75 provides for a share of state sales taxes collected within each municipality to be paid to that municipality.

Loans

Loans may only be made with specific legal authority. There are many specific provisions for loans depending on the purpose of the loan. Care should be taken to document legal authority and to follow that authority's procedure if a loan is made.

- The most commonly used authority for bonded debt is MCA § 21-33-301.
- The authority for lease purchases is MCA § 31-7-13 (e);
- The authority for notes as an alternative to bonds, MCA § 17-21-51;
- The authority for revenue shortfalls, MCA § 27-39-333.

Transfers

Money may be transferred from one fund to another only with specific legal authority or if the fund transferring the money has all of the expenditure authority of the fund to which the money is being transferred. For example, the general fund may transfer money to the library fund under MCA § 39-3-7 or the general fund may transfer money to the utility system under MCA § 21-27-59.

Surplus funds occur when the purpose of a fund is completed, and money is left over which cannot be used as intended. For example, when a bonded debt is paid off and a balance remains in a debt service fund. In this case, MCA § 27-105-367 explains the procedure to transfer this money to another fund. Care should be taken to prevent surplus funds from developing, because this transfer process can take up to a year to complete.

Transfers from utility systems to the general fund should not be made unless (1) rates are set in good faith for operations only and (2) there is an unexpected windfall profit in the revenue account as provided by MCA § 21-27-57 or funds develop through unexpected efficiency and all debt is paid off as provided by MCA § 21-27-61.

EXPENDITURES

The governing authorities of a municipality provide governmental services by hiring people, purchasing property and supplies, and contracting for services. However services are provided, they will cost money. As with most other things in municipal government, the process of spending money is defined by law.

Appropriations

MCA § 21-17-7 and § 21-13-3 allow the governing authority to appropriate funds. This is the process of making money in the budget available to municipal departments or outside dependent organizations such as domestic violence shelters.

The authorizing order of the governing authority should explain how funds are to be paid. For example, funds appropriated to a municipal department are expended as salary and bill payments through the claims process, subject to appropriation limits. Funds appropriated to a dependent organization are paid on the date and in the amount specified in the order.

Contracted Obligations

MCA § 25-1-43 requires specific authority from the municipal authorities to enter into a contract. Contracts should be entered upon the minutes, approved by the governing authority, and signed by the designated officer. Purchasing agents should be designated, and their routine purchase authority defined.

Claims Process

Claims are the request for payment for services and supplies received by the municipality. MCA § 21-39-5 requires claims to be received, dated, and filed by the city clerk in the order in which they are received, and establishes claims as a public record. MCA § 21-39-7 goes a step further and requires a formal claims docket for municipalities with populations of more than 2,000.

MCA § 21-39-9 requires the governing authority to review all unpaid claims and determine if there is an obligation. An obligation exists if the related materials and supplies were properly contracted and received. The governing authority should adopt procedures so that it will have the information it needs to determine if an obligation exists and the claim should be paid. Procedures should include some method to ensure that materials and supplies were received. One such method is to have the responsible official verify receipt of the goods by signing the claim or providing a receiving report.

Claims Exceptions

Some items need not be presented as a claim for the governing authority to authorize payment. Generally, these are items where there is no preexisting obligation, such as an appropriation to a dependent organization, a donation to an authorized beneficiary, or payment of a scheduled bonded

debt. The AG's Opinion to Ronald S. Cochran of March 8, 1996, provides insight into exceptions to the claims system. MCA § 21-39-7 allows salaries to be paid after being earned, but prior to claim approval, if the governing authority authorized such payments and the wages have been established by order of the governing authority or as a separate budget item.

Claims Disallowed

Claims not found to be legal obligations should be disallowed, or payment of these claims may be viewed as a donation. *Mississippi Constitution* § 66 and MCA § 21-17-5 prohibit donations without specific authority. A payment in advance constitutes a donation and may not be authorized. Claims may be held for further consideration, pending presentation of additional information. For example, a claim based on a statement rather than an invoice should have verification that it has not already been paid.

MCA § 21-35-17 imposes liability upon the governing authority for approving claims in excess of the budget. The city clerk's budget report should verify that funds are in the budget to cover the claim. Responsible officials should explain obligations in excess of their budget. The board may amend the budget as previously discussed.

MCA § 21-39-11 allows claimants to appeal to circuit court if they wish to challenge the governing authority's decision. MCA § 31-7-57 explains that vendors who acted in good faith and did not participate in a purchase law error are entitled to payment. These vendors may also appeal to circuit court.

Claim Payments

MCA § 21-39-13 and § 21-35-17 provide that when claims are approved, the city clerk must determine that the funds are available in the budget and sufficient cash is in the municipal depository to pay the claims. Upon this determination, the mayor or majority of the governing authority must sign the check, and the city clerk must attest the check. Payment is then promptly made to the claimant.

MCA § 31-7-305 requires that claimants be paid within 45 days after services have been provided and claims filed. It is the municipality's obligation to add 1½% interest per month to any claims, not in dispute, paid later than 45 days.

There is no responsibility for the governing authority to determine that cash is available for it to approve a claim. It is presumed that since funding is in the budget, cash will be available within the fiscal year. In the event that cash is not currently available, MCA § 21-33-325 provides for tax anticipation loans of up to 50 percent of ad valorem taxes. However, the loan must be paid back by March 15 of the fiscal year.

CASH MANAGEMENT

Proper cash management is necessary for financial planning, security, and legal compliance. Municipal authorities should understand when and where cash is collected, how it is handled, and where it is held. Policies should be developed to ensure that cash is secure and available when needed.

Cash Flow

The time cash is received rarely matches the time it is needed. The budget and taxing process makes cash available during the fiscal year, but does not ensure that it will be available when municipal services are required. For example, cash collections may be low until January when most ad valorem tax collections are made.

Cash shortfalls cost the municipality in late charges due to vendors and cost the public in delayed services. Unmanaged surpluses cost the municipality through lost investment interest. The flow of cash should be analyzed so shortfalls and surpluses of cash can be anticipated and managed. Expected cash shortages may be offset by budgeting a beginning working cash balance or making a tax anticipation loan. Cash surpluses may be invested and interest may be earned on the investment.

Cash Security

Obviously, cash security is a major concern. State laws require some security measures; however, every situation is different and demands constant evaluation. Every step of the flow of cash should be examined to assure that there is accountability and security. This evaluation should be done by a qualified CPA during the annual audit.

Employees whose duties involve handling cash should be screened very carefully. They must be trustworthy and competent to perform their duties correctly. State law requires that every employee who handles money be bonded. This bond protects the municipality from loss due to the employee. Municipalities should also consider purchasing theft insurance and errors and omissions insurance.

Bonding Requirements

- Anyone Handling Money
 1. All officers and employees in a code charter government who handle or have custody of public funds are required to give bond in an amount not less than \$50,000.00. MCA § 21-3-5
 2. All officers and employees in a commission form government who handle or have custody of public funds are required to give bond in an amount not less than \$10,000.00. MCA § 21-5-9

3. All officers and employees in a council form of government who handle or have custody of public funds are required to give bond in an amount not less than \$10,000.00. MCA § 21-7-11
 4. All officers and employees in a mayor-council form of government who handle or have custody of public funds are required to give bond in an amount not less than \$50,000.00. MCA § 21-8-23
 5. All officers and employees in a council-manager form of government who handle or have custody of public funds are required to give bond in an amount not less than \$50,000.00. MCA § 21-9-21
- Municipal Clerk, City Manager, etc.
Municipal Clerk, city managers, municipal administrators and municipal chief administrative officers are required to give bond in an amount not less than \$50,000.00. MCA § 21-15-38
 - Deputy Municipal Clerks
Deputy clerks are required to give bond in an amount not less than \$50,000.00. MCA § 21-15-23
 - Board Members
All board or council members are required to give bond in an amount equal to five percent (5%) of assessed valuation, not to exceed \$100,000.00. MCA § 21-17-5

Cash Investments

MCA § 21-33-323 allows municipalities to invest their surplus funds; however, this is a very restrictive authority. They may only invest in direct obligations of the United States, or the State of Mississippi, or certain local Mississippi governments. They may also invest in interest bearing accounts from the municipal depositories or State of Mississippi depositories located within the municipality. There is no authority to invest in mutual funds or brokerage firm accounts.

MUNICIPAL DEPOSITORIES

MCA § 27-105-353 and § 27-105-363 require municipalities to commission one or more depositories to serve the municipality for two year terms. The municipality must give notice to qualified financial institutions in December and receive bids in January. The selected depositories must pledge certain securities to secure deposits and should outline their services and fees.

INTERNAL CONTROL

Internal control occurs through the organization of financial affairs to create a system of checks and balances that safeguards assets and assures legal compliance. No one system works for every municipality. Each governing authority must constantly review its operations and personnel in an effort to minimize weaknesses.

An example of a weakness would be more than one employee using the same cash drawer for collection of water bills. In this case, if money is missing, there is no way to absolutely assign

responsibility. This results in liability being assigned to the person in charge which is probably the municipal clerk. An evaluation of internal control should be made by a qualified CPA during the annual audit. Appendix A is an internal control guide.

ANNUAL AUDIT

MCA § 21-35-31 states, “The governing authority of every municipality in the state shall have the municipal books audited annually, before the close of the next succeeding fiscal year, in accordance with procedures and reporting requirements prescribed by the State Auditor. The municipality shall pay for the audit or report out of its general fund. No advertisement shall be necessary before entering into the contract, and it shall be entered into as a private contract. The audit or report shall be made upon a uniform formula set up and promulgated by the State Auditor, as the head of the State Department of Audit, or the director thereof, appointed by him, as designated and defined in Title 7, Chapter 7, Mississippi Code of 1972, or any office or officers hereafter designated to replace or perform the duties imposed by said chapter”.

There are three reports that municipal authorities may contract for that will be acceptable in accordance with MCA § 21-35-31. The requirements of each are based on total revenues or expenditures. The three reports are as follows:

1. Full scope audit in accordance with GAAP
2. Full scope audit in accordance with OCBOA (Cash Basis)
3. Compilation report using OCBOA (Cash Basis) and Agreed Upon Procedures

The criteria to determine which report to use is based on total revenues or expenditures, whichever is greater. The report thresholds can be found in the Municipal Audit and Accounting Guide published by the Office of the State Auditor. We suggest the auditor use current year amounts if available to determine which report is applicable.

Municipalities, who have received federal funds, directly or indirectly, may be required to have special federal audit work such as a federal single audit. A CPA must do this type of audit and should be consulted to determine audit responsibilities. Municipalities may also contract with CPAs for any additional audit or other services, if required. The annual audit is a good time to have special studies of internal control, accounting systems, and overall efficiency.

Within 30 days of completion of the audit, public notice of audit availability must be given. Also, copies of the audit must be sent to the State Auditor. Copies should also be sent to federal or state agencies as required by grant or loan contracts. (See Municipal Audit Chapter for detailed information).

ANNUAL TAX REVENUE REPORT

MCA § 27-101-21 requires all taxing entities to report all tax revenue received to be reported to the State Audit Department within 90 days of the end of the fiscal year. Appendix B is an example of the form.

APPENDIX A INTERNAL CONTROL

Segregation of Duties in a Small Office

The most important thing to remember is not having any single employee responsible for one or more of the following duties: custody of assets, recording transactions, and authorizing transactions relating to cash.

Two-person office

Clerk/Admin Employee	Director/Chief/Mayor
<ul style="list-style-type: none"> ✧ Write checks ✧ Mail checks ✧ Receive cash ✧ Reconcile bank statements ✧ Disburse petty cash ✧ Record accounts receivable and general ledger entries ✧ Approve payroll ✧ Authorize purchase orders ✧ Authorize check requests ✧ Authorize invoices for payment 	<ul style="list-style-type: none"> ✧ Sign checks ✧ Complete deposit slips ✧ Review bank reconciliations ✧ Perform inter-bank transfer ✧ Reconcile petty cash ✧ Process vendor invoices ✧ Approve employee timesheets ✧ Distribute payroll

Three-person office

Bookkeeper	Clerk/Admin Assistant	Director/Chief/Mayor
<ul style="list-style-type: none"> ✧ Write checks ✧ Record accounts receivable entries and general ledger journal entries ✧ Reconcile petty cash ✧ Record general ledger entries ✧ Reconcile bank statements 	<ul style="list-style-type: none"> ✧ Authorize purchase orders ✧ Approve and process vendor invoices ✧ Disburse petty cash ✧ Receive cash ✧ Mail checks ✧ Authorize employee timesheets ✧ Approve payroll ✧ Distribute payroll 	<ul style="list-style-type: none"> ✧ Sign checks ✧ Complete deposit slips ✧ Review bank reconciliations ✧ Perform inter-bank transfers

Four-person Office

Bookkeeper	Clerk	Office Manager	Director/Chief/Mayor
<ul style="list-style-type: none"> ✧ Write checks ✧ Reconcile petty cash ✧ Reconcile bank statements ✧ Record accounts receivable entries ✧ Record general ledger entries 	<ul style="list-style-type: none"> ✧ Receive cash ✧ Disburse petty cash ✧ Authorize purchase orders ✧ Authorize check requests ✧ Mail checks ✧ Distribute payroll 	<ul style="list-style-type: none"> ✧ Complete deposit slips ✧ Process vendor invoices ✧ Approve payroll 	<ul style="list-style-type: none"> ✧ Sign checks ✧ Review bank reconciliations ✧ Perform inter-bank transfers ✧ Approve employee timesheets

Of course, another option to consider is hiring a payroll service or outside bookkeeper to do some of the accounting duties. This helps with segregation of duties.

INTERNAL CONTROL RECOMMENDATIONS

General Controls

1. Have bank statements mailed directly to someone outside of accounting; recipient should peruse bank statement activity before providing it to accounting
2. Perform surprise audits (use outside CPA if possible)
3. Elected officials and management should review monthly budget to actual reports (and other pertinent financial reports)
4. Map internal control processes by transaction cycle; once complete, provide map to all employees involved in the cycle; when control weaknesses exist, institute additional controls (see 11. below)
5. Use a whistleblower program (preferably use an outside whistleblower company)
6. Reconcile bank statements monthly (have a second person review and initial the reconciliation)
7. Purchase fidelity bond coverage (based on risk exposure)

8. Periodically request from the government's bank a list of all bank accounts in the name of the government or with the government's federal tax I.D. number; compare list to bank accounts set up in the general ledger
9. Secure computer access physically (e.g., locked doors) and electronically (e.g., passwords)
10. Immediately remove terminated employees' physical and electronic access to computers, buildings, etc.
11. Do not allow the electronic transmission (e.g., email) of sensitive data (e.g., social security numbers) without the use of protected transmission technology; create policy and train staff
12. Where possible, segregate who
 - a. authorizes transactions,
 - b. records transactions,
 - c. reconciles records, and
 - d. has custody of assets; when [segregation of duties](#) is not possible, require documented second-person review and/or surprise audits

Cash Receipts and Billing Controls

1. Use a [centralized receipting](#) location (when possible)
2. Assign each cash drawer to a separate person; require daily reconciliation to receipts; require second person review
3. Deposit cash timely (preferably daily); require composition of cash and checks to be listed on each deposit ticket (to help prevent [check-for-cash substitution](#))
4. Immediately issue a receipt for each payment received; a duplicate of the receipt or electronic record of the receipt is to be retained by the government
5. Supervisor should review receipting-personnel adjustments made to accounts receivable
6. Do not allow the cashing of personal checks (e.g., from cash drawers)

Cash Payments and Purchasing Controls

1. Guard all check stock (as though it were cash)
2. Do not allow hand-drawn checks; only issue checks through the computerized system; if hand-drawn checks are issued, have a second person create and post the related journal entry
3. Do not allow the signing of blank checks
4. Limit check signing authorization to as few people as possible
5. Require two employees to effectuate each wire transfer

6. Persons who authorize wire transfers should not make related accounting entries
7. Require a documented bidding process for larger purchases (and sealed bids for significant purchases or contracts); specify procedures for evaluating and awarding contracts.
8. Limit the number of credit cards and the amount that can be charged on each card
9. Allow only one person to use an individual credit card; require receipts for all purchases
10. Require a street address and social security or tax I.D. numbers for each vendor added to accounts payable vendor list (P.O. box numbers without a street address should not be accepted)
11. Signed vendor checks should not be returned to those who authorized the payment; mail checks directly to vendors
12. Compare payroll addresses with vendor addresses for potential fictitious vendors (usually done with electronic audit tools such as IDEA or ACL; Microsoft Excel can also do this)

Payroll Controls

1. Provide a departmental overtime budget/expense report to governing body or relevant committee****
2. Use direct deposit for payroll checks if possible
3. Payroll rates keyed into the payroll system must be supported by proper authorization in the employee personnel file
4. Immediately remove terminated employees from the payroll system!!!!
5. Use biometric time clocks to eliminate buddy-punching, if possible
6. Check for duplicate direct-deposit bank account numbers
7. Overtime should be authorized in writing by department head or designee (before payment is made)
 - a. Look for repetitive overtime without justification

ANNUAL TAX RECEIPT REPORT

Section 27-101-21

MS Code of 1972, Annotated

Email to: tech@osa.ms.gov

Municipality: Name, Address, Phone Number

Population:

Reporting Period:

From:

To:

Taxes Received: Cash Basis

Type of Tax	Amount	Source
Ad Valorem		Real, Personal, Public Utility, Automobile, Homestead
Payment in Lieu of Taxes		
Sales Tax		State of MS
Local Sales Tax		
Gaming Fees & Taxes		
Fuel Tax Diversions		State of MS
Other Tax Sources		
Franchise Tax		Utilities
Grand Gulf Refund		Grand Gulf
Heavy Truck Tax		
Privilege License		Local Businesses
Railroad Tax		
Road Tax		

Person Submitting Report:

Signature

Date

Printed Name:

Miss. Code Ann. § 27-101-21 (2016)

§ 27-101-21. Annual reports by taxing entities; definitions; content of report

(1) As used in this section, the following words and phrases shall have the meanings ascribed herein unless the context clearly indicates otherwise:

(a) "Taxing entity" includes, but is not limited to, counties, municipalities, school districts, fire protection districts, road districts, water districts, sewer districts, utility districts, regional solid waste management authorities, utility authorities, drainage districts, community hospitals, community college districts and junior college districts, housing authorities, county industrial development authorities, port commissions, and any other such regional or local agencies, authorities or entities created under law.

(b) "Tax revenue" includes, but is not limited to, revenue from ad valorem taxes, local sales taxes, gaming fees and taxes, payments in lieu of taxes, state sales tax diversions, fuel tax diversions and other tax sources.

(2) (a) In addition to any other requirements provided by law, a taxing entity shall file an annual report with the State Auditor providing the amount of tax revenues received by the taxing entity during the prior fiscal year. The report shall provide at least the following information:

(i) The total tax revenues derived from taxes levied by the taxing entity and/or for the taxing entity;

(ii) The total tax revenues distributed to the taxing entity from state sales tax diversions, fuel tax diversions, ad valorem taxes, local sales taxes, payments in lieu of taxes, gaming fees and taxes and other tax sources; and

(iii) The sources from which the taxing entity received the tax revenues and the amounts received from each source.

(b) The report required under this subsection shall be filed by the taxing entity not later than ninety (90) days after the close of the fiscal year for which the report is prepared.

(3) The reports filed under this section shall be posted on the State Auditor's website.

HISTORY: SOURCES: Laws, 2016, ch. 439, § 1, eff from and after passage (approved Apr. 18, 2016).

CLASSIFICATION AND CHART OF ACCOUNTS SYSTEM

MS Municipal Audit and Accounting Guide, 2010 Edition

Office of the State Auditor

Purpose of Chart of Accounts

The classification and chart of accounts system was developed to provide an accounting for expenditures and revenues on a basis consistent with the municipal budget. The system is also designed to provide information necessary for other purposes, such as financial reporting. The accounts in the chart are intended to define purpose of expenditures and source and nature of revenues.

Chart of Accounts Number System

The accounts listed in the chart should be sufficient to meet the needs of most municipalities. Additional accounts may be added and accounts may be subdivided as needed. Account numbers for funds, departments or objects not required or beneficial to the interest of the municipality may be deleted, provided sufficient accounts are used to demonstrate compliance with budget laws and other state legal compliance laws.

Numbers have been assigned to these accounts for organizational purposes and easy reference. Some numbers have not been assigned. Municipal authorities may adopt a different set of numbers for use with this chart of accounts. This may be necessary if the assigned numbers are not flexible enough to meet the needs of the municipality; or are not consistent with the accounting software used by the municipality. If a different set of numbers is adopted for the chart of accounts, the municipality must maintain a reference record to clearly associate each number with the account it represents.

How the Chart of Accounts Works

This is a cash basis system designed to meet the mandatory requirement that a municipality maintain accounting records readily showing the status of compliance with its budget [MCA § 21-35-11]. The system accounts for cash activity by associating a nine- digit code and optional extensions to each transaction. The nine digits are separated into three groups of three each, so each transaction will be defined in terms of fund affected, department or function related, and purpose. Extensions separated from the primary number by a decimal point may be added for further classification purposes.

Also included in the system are supplemental (non-mandatory) classifications to account for assets, liabilities, etc.

First Three Digits of Chart of Accounts

The first set of three digits of the nine-digit code identify the fund affected by the financial transaction. The numbers in these three digits are divided into groups to categorize the funds used.

Accounting numbers are also provided for supplemental records for long-term debt and fixed assets. These numbers should be used to organize long-term debt and fixed asset information for governmental financial reporting purposes.

Fund and Account Groups

General Funds	From 001 to 099
Special Revenue Funds	100 to 199
Debt Service Funds	200 to 299
Capital Projects Funds	300 to 389
Permanent Funds	390 to 399
Enterprise Funds	400 to 499
Internal Service Funds	500 to 599
Private Purpose Trust Funds	600 to 649
Agency Funds	650 to 699
For Future Expansion	700 to 799
Long-term Debt	800
Capital Assets	900

Definitions: Fund and Account Groups

General Fund - To account for the municipal general fund and funds created and budgeted by local option for money within the General Fund (See budget regulations).

Special Revenue Funds - To account for funds required by law to be accounted for within a separate fund which does not fall within any of these other fund groups (such as proceeds of a special tax levy).

Debt Service Funds - To account for funds designated by law for debt payments (such as a tax levy or assessment to repay bonded debt).

Capital Projects Funds - To account for funds designated by law for capital projects (such as proceeds of any bond issue).

Permanent Funds - To account for funds legally restricted to expenditure of their earnings, as expenditure of principal is prohibited, and where expenditure is for governmental purposes.

Enterprise Funds - To account for utility funds (such as funds required for utility system operations by Chapter 27 of Title 21).

Internal Service Funds - To account for funds received by a municipal department from another municipal department for services rendered (such as a municipal repair shop or legal department).

Private Purpose Trust Funds - To account for funds for trust arrangements where principal and income benefit others (individuals, private organizations, or other governments).

Agency Funds - To account for funds not subject to expenditure control of the municipality's board/council (such as payroll clearing or the employment security trust fund, state court assessments, etc.).

Long-term Debt - Separate accounting numbers to be used with the municipality's debt accounting system and to organize information for financial reporting purposes.

Capital Assets - Separate accounting number to be used with the property accounting system prescribed in this guide and to organize information for financial reporting and other municipal purposes.

Second Three Digits of Chart of Accounts

The second set of three digits of the nine-digit code identifies the department or program affected by the financial transaction. The numbers in these three digits are divided into groups to categorize the functions of the departments. These functional groups are for financial reporting purposes and may not be used to group departments into a single budget. The following table lists the range of numbers available for departmental or program functions.

Program and Department Functions

Program Functions:

Define as Appropriate	From 001 to 099
-----------------------	-----------------

Departmental Functions:

General Government	From 100 to 199
Public Safety	200 to 299
Public Works	300 to 399
Health and Welfare	400 to 499
Culture and Recreation	500 to 599
Conservation of Natural Resources	600 to 649
Economic Development and Assistance	650 to 699
Enterprise	700 to 799
Debt Service	800
Inter fund Transactions / Other	900

It is required that each budgeted department be accounted for separately so the status of the budget is readily apparent [MCA § 21-35-11]. A separate number must be assigned to each municipal department. Expenditure transactions must be coded with the department function number of the department whose budget will be charged.

Revenue transactions must also be coded with a program or department function number if the municipality is required to prepare full-scope financial statements (See Audit Requirement Chapter). Revenue coding is not required if the municipality qualifies for and elects to prepare a limited-scope financial report.

Revenue classification is determined by identifying the department associated with the revenue. If a revenue item is not associated with a department, it should be classified by function. For example fees produced by department activity, grants for the operation of the department, etc., should be classified using that department's number. Revenues that are not associated with specific department function should be classified as general function. Revenues that are not associated with a single department or available for general municipal use may be assigned a separate function number.

The "Summary of Classification of Accounts for Municipalities" provides specific program function numbers to classify each department, and program numbers for revenues not associated with a specific department. The summary also includes a "most probable classification" department or program function number (in parentheses) by the revenue operating account numbers.

Third Three Digits of Chart of Accounts

The third set of three digits of the nine digit code provides for the objective account number. The numbers in these three digits are divided into groups to classify transactions by their nature and at the minimum detail level required for municipal budgeting. These numbers should be assigned to define information required for financial reporting and other purposes to be determined locally.

Objective Functions

Assets and Other Debits	From 001 to 099
Liabilities and Other Credits	100 to 199
Receipts	200 to 399
Disbursements for Personnel Services	400 to 499
Disbursements for Supplies	500 to 599
Disbursements for Contractual Services	600 to 699
Disbursements for Grants, Subsidies and Allocations	700 to 799
Disbursements for Debt Service	800 to 899
Disbursements for Capital Outlay	900 to 949
Transfers and Other Functions	950 to 999

Account Extensions

An account extension is one or more numbers positioned after a decimal at the end of the assigned account number. Extension numbers are used to define separate financial information in an account when it is not practical to establish a separate account.

Municipalities preparing financial statements in accordance with generally accepted accounting principles will require additional financial information, such as when expenditures are associated with a capital project. Extensions can be used for this purpose or any other good reason, such as tracking special projects, year of agreement, compiling operating cost of particular vehicles or monitoring individual's travel expenses.

Extensions may be added to any of the three classification groups (Fund, Function or Department, or Object). If extensions are used, they must be defined in writing by the municipal clerk and on file in the municipal clerk's office.

Summary of Chart of Accounts Classifications

Series of Numbers for Funds and Accounts	Fund Number (---)	Department or Function Number (---)	Operating Account Number (---)
Fund and Account Groups: General Funds Special Revenue Funds Debt Service Funds Capital Projects Funds Permanent Enterprise Funds Internal Service Funds Private Purpose Trust Agency Agency Funds For Future Expansion Long-term Debt Accounts Fixed Assets Accounts	001-099 100-199 200-299 300-389 390-399 400-499 500-599 600-649 650-699 700-799 800 900		
Program Functions: Department Functions: General Government Public Safety Public Works Health and Welfare Culture and Recreation Conservation and Natural resources Economic Development and Assistance Enterprise Debt Service Inter fund Transactions		001-099 100-199 200-299 300-399 400-499 500-599 600-649 650-699 700-799 800 900	
Objective Functions: Assets and Other Debits Liabilities and Other Credits Receipts Disbursements: Personnel Services Supplies Contractual Services Grants, Subsidies and Allocations Debt Service Capital Outlay Transfers and Other Functions			001-099 100-199 200-399 400-499 500-599 600-699 700-799 800-899 900-949 950-999

Classification of Fund and Account Group Numbers

Fund Accounts	Fund Number (---)	Department Or Function Number (---)	Operating Account Number(---)
GENERAL FUNDS (001-099): Local Source Funds (001-049) General Fund Court Fines Not Assigned State/Federal Source Funds (050-099) Not Assigned	 001 002 003-049 050-099		
SPECIAL REVENUE FUNDS (100-199): Local Source Funds (100-149) Parks and Recreation Fund Library Fund Garbage and Solid Waste Fund Litter Prevention Fund Fire Protection Fund Insurance Rebate Fund Not Assigned State/Federal Source Funds (150-199) Community Development Block Grant Fund Not Assigned	 100 101 102 103 104 105 106-149 150 151-199		
DEBT SERVICE FUNDS (200-299): General Obligation Bonds Certificates of Indebtedness Not Assigned	 200-224 225-249 250-299		
CAPITAL PROJECTS FUNDS (300-399): Governmental Purposes Enterprise Purposes Not Assigned	 300-349 350-374 375-389		
PERMANENT FUNDS (390-399): Cemetery Perpetual Fund Not Assigned	 390 391-399		
ENTERPRISE FUNDS (400-499): Utilities: Recreational Facilities: Not Assigned	 400-449 450-474 475-499		

Fund Accounts	Fund Number (---)	Department Or Function Numbers(---)	Operating Account Number (---)
INTERNAL SERVICE FUNDS (500-599): Central Garage and Motor Pool Central Printing and Duplicating Central Purchasing and Stores Central Data Processing Legal Services Not Assigned	500 501 502 503 504 505-599		
PRIVATE PURPOSE TRUST FUNDS (600-649): Museum Trust Fund Not Assigned	600 601-649		
AGENCY FUNDS (650-699) State Assessment Clearing Payroll Clearing Cash Bail Bond Fund Performance Bond Deposit Fund Not Assigned	650 651 652 653 654 655-699		
FOR FUTURE EXPANSION	700-799		
LONG-TERM DEBT	800		
CAPITAL ASSETS	900		

Classification of Program and Department Function Numbers

Department Accounts	Fund Number (---)	Department Or Function Number (---)	Operating Account Number (---)
PROGRAM FUNCTIONS (001-099) General Education Not Assigned		001 002 003-099	
GENERAL GOVERNMENT (100-199): Legislative (100-109): Board, Council or Commission Not Assigned		100 101-109	
Judicial (110-119): Court Not Assigned		110 111-119	
Executive (120-129): Mayor City Manager Boards and Commissions Not Assigned		120 121 122 123-129	
Elections (130-139): Elections Not Assigned		130 131-139	
Financial Administration (140-159): General Finance: General Supervision (City Clerk) Tax Administration Not Assigned		140 141 142-159	
Legal (160-169): Attorney and Staff Not Assigned		160 161-169	
Purchasing (170-179): Purchasing Agent Not Assigned		170 171-179	
Personnel Administration (180-189): Personnel Administration Not Assigned		180 181-189	
Other General Government (190-199): Planning and Zoning Data Processing General Government Building and Plant Not Assigned		190 191 192 193-199	

Classification of Program and Department Function Numbers

Department Accounts	Fund Number (---)	Department Or Function Number (---)	Operating Account Number (---)
PUBLIC SAFETY (200-299): Police (200-259): Police Administration Not Assigned Crime Control and Investigation: Criminal Investigation Vice Control Patrol Records and Identification Youth Investigation and Control Custody of Prisoners Custody of Property Crime Laboratory Not Assigned Traffic Control: Not Assigned Police Training: Police Training Not Assigned Support Service: Communications Service Automotive Service Ambulance Service Medical Services Not Assigned Special Detail Service: Special Detail Service Not Assigned Police Station and Building: Police Station and Building Not Assigned Fire (260-269): Fire Administration Fire Fighting Fire Prevention Fire Training Fire Communications		200 201-209 210 211 212 213 214 215 216 217 218-219 220-229 230 231-239 240 241 242 243 244-249 250 251-254 255 256-259 260 261 262 263 264	

Classification of Program and Department Function Numbers

Department Accounts	Fund Number (---)	Department Or Function Number (---)	Operating Account Number (---)
Fire Repair Service Medical Service Fire Stations and Buildings Not Assigned Corrections (270-279): Jail Juvenile Correctional Institutions Not Assigned Protective Inspection (280-289): Building Inspection Plumbing Inspection Electrical Inspection Gas Inspection Not Assigned Other Protection (290-299): Civil Defense Traffic Engineering Flood Control Not Assigned		265 266 267 268-269 270 271 272-279 280 281 282 283 284-289 290 291 292 293-299	
PUBLIC WORKS (300-399): Public Works Administration: Street Department (301-319): Streets Street Lighting Not Assigned Sanitation and Waste Removal (320-349): Sanitary Administration Street Cleaning Waste Collection Waste Disposal Not Assigned Sewage Collection and Deposit: Not Assigned Other: Weed Control Not Assigned Not Assigned		300 301 302 303-319 320 321 322 323 324-329 330-339 340 341-349 350-399	

Classification of Program and Department Function Numbers

Department Accounts	Fund Number (---)	Department Or Function Number (---)	Operating Account Number (---)
HEALTH AND WELFARE (400-499): Health (400-449): Communicable Disease Control: Rabies and Animal Control (Dog Pound) Not Assigned Other Communicable Diseases: Extermination of Rodents, Mosquitoes and Flies Not Assigned Not Assigned Welfare (490-499):		400 401-409 410 411-419 420-449 450-499	
CULTURE AND RECREATION (500-599): Culture (500-549) Recreation (550-599)		500-549 550-599	
CONSERVATION OF NATURAL RESOURCES (600-649): Municipal Drainage Not Assigned		600 601-649	
ECONOMIC DEVELOPMENT AND ASSISTANCE (650-699): Economic Development Administration Industrial Recruitment Advertising Municipal Resources Not Assigned		650 651 652 653-699	
Department Accounts	Fund Number (---)	Department Or Function Number (---)	Operating Account Number (---)
ENTERPRISE (700-799): Administrative and General Finance and Customer Accounts Operation and Maintenance Of: Buildings, Grounds and Equipment Structures and Improvements Transmission and Distribution Treatment and Purification Operations Pumping Operations Source of Supply (Reservoir and Wells) Sanitary Sewer Lines Not Assigned Debt Service Not Assigned		700 710 720 721 722 723 724 725 726 727-729 730 740-799	
DEBT SERVICE (800):		800	
INTERFUND TRANSACTIONS (900):		900	

Operating Accounts	Fund Number (---)	Department Or Function Number(---)	Operating Account Number (---)
<p>ASSETS AND OTHER DEBITS (001-099):</p> <p>Assets and Investments: (001-018):</p> <p>Cash in Bank Not Assigned Investments Not Assigned Petty Cash Not Assigned Cash With Fiscal Agent</p> <p>Receivables: (019-064)</p> <p>Accrued Interest Receivable Property Taxes Receivable Accounts Receivable - Allowance for Uncollectible Accounts Fines Receivable - Allowance for Uncollectible Accounts Loans Receivable Capital Lease Receivable Assessments Receivable: Not Assigned Intergovernmental Receivable Other Receivables Due from Other Funds Not Assigned Advances to Other Funds Due From Component Units Due From Primary Government Not Assigned</p>			<p>001 002-007 008 009-014 015 014-017 018</p> <p>019 020 021 022 023 024 025 026 027 028-049 050 051-052 053 054-055 056 057 058 059-064</p>
<p>Prepaid Expenses: (065-069)</p> <p>Prepaid Insurance Not Assigned</p> <p>Inventories: (070-074)</p> <p>Inventory - Materials and supplies Inventory - Held for Resale Not Assigned</p> <p>Restricted Assets: (075-079)</p> <p>Restricted Cash and Cash Equivalents Restricted Investments Not Assigned</p> <p>Capital Assets: (080-099)</p> <p>Land Construction-in-Progress Buildings - - Accumulated Depreciation Improvements Other Than Buildings - - Accumulated Depreciation Mobile Equipment - - Accumulated Depreciation Other Furniture and Equipment - - Accumulated Depreciation Leased Property Under Capital Leases - - Accumulated Depreciation Infrastructure - Streets - - Accumulated Depreciation Infrastructure - Bridges - - Accumulated Depreciation Other Capital Assets - One - - Accumulated Depreciation Not Assigned</p>			<p>065 066-069</p> <p>070 071 072-074</p> <p>075 076 077-079</p> <p>080 081 082 083 084 085 086 087 088 089 090 091 092 093 094 095 096 097 098-099</p>

Operating Accounts	Fund Number (---)	Department Or Function Number(---)	Operating Account Number (---)
<p>LIABILITIES, EQUITIES, AND OTHER CREDITS (100-199):</p> <p>Claims Payable 100</p> <p>Due to Primary Government 101</p> <p>Due to Component Unit 102</p> <p>Liabilities Payable From Restricted Assets 103</p> <p>Net Wages Payable 104</p> <p>Workmen's Compensation Payable 105</p> <p>Garnishments Payable 106</p> <p>Retained Payables 107</p> <p>Deposits Payable 108</p> <p>Not Assigned 109-120</p> <p>Intergovernmental Payables: (121-147)</p> <p> Due to Federal Government: (121-129)</p> <p> Not Assigned 121</p> <p> Social Security FICA Payable 122</p> <p> Federal Withholding Tax Payable 123</p> <p> Not Assigned 124-129</p> <p> Due to State Government: (130-146)</p> <p> Not Assigned 130</p> <p> Judicial Assessments 131</p> <p> Not Assigned 132-133</p> <p> State Withholding Tax 134</p> <p> Retirement System 135</p> <p> Not Assigned 136-146</p> <p> Due to Local Governments 147</p> <p>Due to Other Funds 148</p> <p>Not Assigned 149-150</p> <p>Advances From Other Funds 151</p> <p>Matured Bonds and Interest Payable 152</p> <p>Accrued Interest Payable 153</p> <p>Deferred Revenue: (154-158)</p> <p> Property Taxes 154</p> <p> Federal 155</p> <p> Garbage Fees 156</p> <p> Lease Principal Payable 157</p> <p> Lease Interest Payable 158</p> <p>Not Assigned 159-160</p>			
<p>Long Term Debt</p> <p>Due Within One Year (161-183)</p> <p> Not Assigned 161-162</p> <p> Compensated Absences Payable 163</p> <p> Claims and Judgments Payable 164</p> <p> Certificates of Indebtedness 165</p> <p> Capital Leases Payable 166</p> <p> General Obligation Capital Bonds Payable 167</p> <p> General Obligation Operation Bonds Payable 168</p> <p> Not Assigned 169-183</p> <p>Due In More Than One Year (184-189)</p> <p> Limited Obligation Capital Bonds 184</p> <p> Limited Obligation Operational Bonds 185</p> <p> Revenue Bonds 186</p> <p> Other Long Term Debt 187</p> <p> Not Assigned 188-189</p> <p>Equities (190-199)</p> <p> Fund Balance - Unreserved 190</p> <p> Fund Balance - Reserved for</p> <p> Advances to Other Funds 191</p> <p> Fund Balance - Reserved for Inventory 192</p> <p>Other Reserve Fund Balance 193</p> <p>Not Assigned 195-199</p>			

Operating Accounts	Fund Number (---)	Department Or Function Number(---)	Operating Account Number (---)
RECEIPTS (200-399):			
Taxes (200-219):			
General Property Taxes:		(001)	
Real			200
Personal:			
Automobiles			201
Other			202
Prior Year Taxes:			
Real			203
Automobile			204
Other			205
Payments in Lieu of Taxes		(001)	206
Not Assigned			207-209
Penalties and Interest on Delinquent Taxes		(001)	210
Other Taxes (211-219)			
Not Assigned			211-219
Licenses and Permits (220-229):			
Privilege Licenses		(001)	220
Franchise Charges - Utilities		(001)	221
Permits - Building		(280-289)	222
Not Assigned			223-229
Intergovernmental Revenues (230-279):			
Federal Operating Grants:			
Public Safety		(200-299)	230
Public Works		(300-399)	231
Health and Welfare		(400-499)	232
Culture and Recreation		(500-599)	233
Education		(002)	234
Conservation of Natural Resources		(600-649)	235
Economic Development		(650-699)	236
Federal Capital Grants:			
Public Safety		(200-299)	237
Public Works		(300-399)	238
Health and Welfare		(400-499)	239
Culture and Recreation		(500 or 599)	240
Education		(002)	241
Conservation of Natural Resources		(600-649)	242
Economic Development		(650-699)	243
Federal Enterprise Fund Grants:			
Operating Grants		(700-799)	244
Capital Grants		(700-799)	245
Not Assigned			246-249

Operating Accounts	Fund Number (---)	Department Or Function Number(---)	Operating Account Number (---)
Welfare: Not Assigned		(450-499)	305-309
Culture and Recreation: Golf Fees		(500-599)	310
Swimming Pool Fees			311
Playground Fees			312
Park and Recreation Concessions			313
Auditorium/Coliseum Use Fees			314
Library Use Fees (Not Fines)			315
Participation Fees			316
Not Assigned			317-319
Not Assigned			320-329
Fines and Forfeits (300-339): Court Fines		(001)	330
Litter Fines		(110-119)	331
Parking Fines		(110-119)	332
Library Fines		(110-119)	333
Not Assigned		(110-119)	334-339
Miscellaneous (340-359): Interest Earned		(001)	340
Rents and Royalties		(001)	341
Cemetery Fees (Not Sale of Lots)		(001)	342
Special Assessments - Current		(300-399)	343
Special Assessments - Delinquent		(300-399)	344
Not Assigned		(001)	345
Donations from Private Sources		(001)	346
Not Assigned			347
Premiums on Bonds Sold		(001)	348
Not Assigned			349
Billings to Other Departments		(001)	350
Not Assigned			351-359
Charges for Services (360-379): Metered Sales		(700-799)	360
Other Sales		(700-799)	361
Service Connection Charges		(700-799)	362
Sewer Charges		(700-799)	363
Interest Earned		(001)	364
Golf Green Fees		(550-599)	365
Swimming Fees		(550-599)	366

Parking Fees	(001)	367
Bus Fares	(740-799)	368
Advertising Income	(001)	369
Rental (Golf Carts, Lockers, Etc.)	(550-599)	370
Concessions Income	(001)	371
Not Assigned		372-379
Transfers and Non-Revenue Receipts (380-399)		
Transfers In		380
Not Assigned		381-389
Proceeds of Long-Term Debt		
Proceeds of Loans		390
Proceeds of Bond Sales		391
Sale of Real Estate		392
Sale of Cemetery Lots	(420-499)	393
Sale of Personal Property		394
Not Assigned		395-399
DISBURSEMENTS (400-999):		
Personnel Services (400-499):		
Salaries:		
Mayor		400
Administrative		410
Non Administrative		420
Not Assigned		430-459
Employee Benefits:		
State Retirement (Municipality's Share)		460
FICA Taxes (Municipality's Share)		470
Employee Group Insurance		
(Municipality's Share)		480
Unemployment Contribution		490
Workers' Compensation		491
Not Assigned		492-499
Supplies (500-599):		
Office Supplies (Office Stationery, Forms, Small		500
Items, Equipment, Maps, Etc.)		501-509
Not Assigned		

Operating Supplies:			
Cleaning and Janitorial Supplies			510
Feed for Animals			515
Prisoner Meals			520
Gas and Oil			525
Jail Supplies			530
Uniforms			535
Not Assigned			540-559
Repair and Maintenance Supplies:			
Building Materials and Supplies			560
Paints and Painting Supplies			565
Motor Vehicle Repair Parts and Supplies			570
Not Assigned			575-599
Contractual Services (600-699):			
Professional Services (Accounting, Consulting, Legal, Engineering, Medical, Etc.) Communications (Telephone, Telegraph and Postage)			600
Transportation (Travel Expense, Motor Pool Charges, Freight, Etc.)			605
Advertising			610
Printing and Binding			615
Insurance (Liability, Etc.)			620
Utilities (Gas, Electric, Water and Waste Disposal)			625
Repairs and Maintenance (Outside Labor Paid for Repairs and Maintenance of Buildings, Grounds, Structures, Improvements and Equipment)			630
Rentals (Land, Buildings, Machinery and Equipment)			635
Aid to Other Governments			640
Exhibitions and Promotions			645
Purchase of Water (For Resale)			650
Purchase of Gas (For Resale)			655
Purchase of Electricity (For Resale)			660
Judgments and Losses			665
Not Assigned			670 680-699

Grants, Subsidies and Allocations (700-799):			
Assistance to Individuals			700
Grants to Other Governmental Agencies			701
Not Assigned			702-799
Debt Service (800-899):			
Bonds Redeemed:			
General Obligation			800
Revenue			801
Interest on Bonds:			
General			810
Revenue			811
Note Principal			820
Interest on Notes			830
Paying Agent Fees:			
General Obligation			840
Revenue			841
Not Assigned			890-899
Capital Outlay (900-940)			
Land			900
Buildings			901
Not Assigned			902
Parking Lots and Sidewalks			903
Not Assigned			904
Lighting			905
Not Assigned			906
Other Improvements			907
Not Assigned			908-910
Construction In Progress			911
Streets			912
Bridges			913
Dams and Spillways			914
Vehicles			915
Heavy Road Equipment and Machinery			916
Other Mobile Equipment			917
Not Assigned			918
Office Machinery and Equipment			919
Not Assigned			920
Furniture and Fixtures			921
Not Assigned			922-923
Not Assigned			924-949
Transfers Out			950
Not Assigned			951-999

MUNICIPAL AUDIT GUIDELINES
MS Municipal Audit and Accounting Guide, 2010 Edition
Office of the State Auditor
2016 Supplement

State law requires that all municipalities have an annual audit. This law is specific with regard to type of audit, who may perform the audit and other conditions. The State Auditor is charged with the responsibility to prescribe guidelines for the audit process.

The following explains the municipal audit responsibilities of the municipal officials and the municipal auditors.

SECTION IV - MUNICIPAL AUDIT REQUIREMENTS

A. LEGAL REQUIREMENTS FOR THE AUDIT

B. GUIDELINES FOR MUNICIPAL OFFICIALS

Audit Contracts

Management's Discussion and Analysis Publication and Distribution of Annual Audit
Municipal Compliance Questionnaire

C. GUIDELINES FOR MUNICIPAL AUDITORS

Qualifications and Procedures

D. FINANCIAL REPORTING – Types of Audit Reports

Full Scope Audit in accordance with GAAP

Full Scope Audit in accordance with OCBOA (Cash Basis) Compilation Report using
OCBOA (Cash Basis) and

Agreed Upon Procedures

Exemption from Compilation and Agreed Upon Procedures Report

A. LEGAL REQUIREMENTS FOR THE AUDIT

MCA § 21-35-31 (1), requires all municipalities have an annual audit of their books. The requirements of this law are as follows:

The governing authority of every municipality in the state shall have the municipal books audited annually, before the close of the next succeeding fiscal year, in accordance with procedures and reporting requirements prescribed by the State Auditor.

The municipality shall pay for the audit or report out of its general fund.

No advertisement shall be necessary before entering into the contract, and it shall be entered into as a private contract.

The governing authorities of the municipality may enter into a contract for the audit, without the necessity of soliciting bids.

The audit or report shall be made upon a uniform formula set up and promulgated by the State Auditor.

Two copies of the audit or compilation must be mailed to the State Auditor within 30 days after completion.

A synopsis of the audit, as defined by the State Auditor, must be published within 30 days after completion of the audit. The publication must be in a newspaper published in the municipality or, if no newspaper is published in the municipality, in a newspaper having general circulation in the county. As an alternative to publishing the synopsis, the audit may be publicized as provided by MCA § 21-17-19. Further, the publication shall be made one (1) time and the municipality may only pay one-half (½) of the legal rate prescribed by law for such legal publications MCA § 25-7-65.

MCA § 21-35-31(2), states, it shall be the duty of the State Auditor to determine whether each municipality has complied with the requirements of subsection (1) of this section.

If upon examination the State Auditor determines that a municipality has not initiated efforts to comply with the requirements of subsection (1), the State Auditor shall file a certified written notice with the clerk of the municipality notifying the governing authority of the municipality that a certificate of non-compliance will be issued to the Department of Revenue and to the Attorney General thirty (30) days immediately following the date of the filing of the notice unless within that period the municipality substantially complies with the requirements of subsection (1).

If, after thirty (30) days from the giving of the notice, the municipality, in the opinion of the State Auditor, has not substantially initiated efforts to comply with the requirements of subsection (1), the State Auditor shall issue a certificate of non-compliance to the clerk of the municipality, Department of Revenue and the Attorney General.

Thereafter, the Department of Revenue shall withhold from all allocations and payments to the municipality that would otherwise be payable the amount necessary to pay one hundred fifty percent (150%) of the cost of preparing the required audit or report as contracted for by the State Auditor.

The cost shall be determined by the State Auditor after receiving proposals for the audit or report required in subsection (1) of this section.

The State Auditor shall notify the Department of Revenue of the amount in writing, and the Department of Revenue shall transfer that amount to the State Auditor.

The State Auditor is authorized to escalate, budget and expend these funds in accordance with rules and regulations of the Department of Finance and Administration consistent with the escalation of federal funds. All remaining funds shall be retained by the State Auditor to offset the costs of administering these contracts. The State Auditor shall not unreasonably delay the issuance of a written notice of cancellation of a certificate of non-compliance but shall promptly issue a written notice of cancellation of certificate of non-compliance upon an affirmative showing by the municipality that it has come into substantial compliance.

In the event the State Auditor issues a certificate of noncompliance with the annual audit, the Department of Revenue shall withhold ten percent (10%) of the sales tax revenue allocations and payments to the municipality until such time that the department receives written notice of the cancellation of a certificate of noncompliance from the State Auditor.

B. GUIDELINES FOR MUNICIPAL OFFICIALS

Audit Contracts

These guidelines have been developed for use by municipal officials when contracting for the annual municipal audit. These guidelines should be carefully reviewed and followed to assure full compliance with state law.

Contract Requirements -- The governing authorities must enter into a written contract with a municipal auditor to perform the annual audit. This contract must assure the auditor's reports, financial statements and supplemental schedules are prepared in accordance with the guidelines presented in the "Municipal Auditing Guide" and state law, as explained in this section under "Legal Requirements for the Audit." The audit contract may be for one or more years up to the last year of the term of office of the governing authorities. The auditor's engagement letter may serve as the written contract. The contract must also address the requirement to provide necessary hard and electronic copies of the audit report and allow subsequent auditors reasonable access to predecessor auditor's working papers.

Record Access -- In connection with the annual audit, the municipality must make all relevant records available to the municipal auditor and provide appropriate assistance.

Audit Content -- MCA § 21-35-31, The audit or report shall be made upon a uniform formula set up and promulgated by the State Auditor, as the head of the State Department of Audit, or the director thereof, appointed by him, as designated and defined in Title 7, Chapter 7, Mississippi Code of 1972, or any office or officers hereafter designated to replace or perform the duties imposed by said chapter.

Compliance Questionnaire --As part of the municipality's audit, the governing authorities of the municipality must make certain assertions with regard to legal compliance. The municipal compliance questionnaire was developed for this purpose. The questionnaire and related certification must be completed at the end of the municipality's fiscal year and entered into the official minutes of the governing authorities at their next regular meeting.

Management's Discussion and Analysis -

Governing authorities who contract for full scope audits will be required to prepare a management's discussion and analysis. This report will require financial and statistical information as well as certain statements of the governing authorities.

Publication and Distribution of Annual Audit

State law requires the municipality, within 30 days after the completion of the annual audit, to follow certain procedures governing publication of audit report information and distribution of the audit report.

Publication of Annual Audit

Legal requirements call for municipalities to provide public notice of the completion and availability of the annual audit. The form of this public notice depends upon options exercised by the governing authorities of the municipality.

Municipalities have an option of two public notice procedures. These are as follows:

Synopsis of Audit Option -- NOT RECOMMENDED

This option, authorized in MCA § 21-35-31, requires a municipality to publish a "synopsis of the audit" as defined by the State Auditor. For this purpose, the following definition is provided:

Definition of *Synopsis* - The entire audit report

Substance of Publication Option -- RECOMMENDED

This option, as provided by MCA § 21-17-19, requires:

Publishing of the substance and availability of the audit; posting of the audit at the city hall, library or courthouse, and one other public place; and providing of a copy of the audit to any municipal residents who make a request for one.

This office recommends the notice of audit completion be published at least twice in a newspaper serving the municipality and the following format be used when publishing the substance and availability of the audit.

EXAMPLE 1 - For cities issuing a compiled (unaudited) financial report

PUBLIC NOTICE

The City of _____
hereby gives notice that its annual financial
report for the year ended _____
has been completed. Copies are available
to the public at _____.

EXAMPLE 2 - For cities issuing an audited financial report

PUBLIC NOTICE

The City of _____
hereby gives notice that its annual audited financial
report for the year ended
_____ has been completed.
Copies are available to the public at
_____.

Note: The minimum size of this publication is two columns wide by three inches long.

Transmittal Letter for Municipal Audit Reports

Number of Copies to be Transmitted -- Two hard copies and one electronic copy of the completed audit or compilation report must be sent to the State Auditor. If the Federal Single Audit report is prepared, the municipality is reminded a copy of the report and a data collection form must be sent to the U. S. Census Federal Clearinghouse.

Format for Transmittal Letter -- In addition to sending the State Auditor and Clearinghouse the appropriate reports, the mayor of the municipality must also provide the State Auditor a transmittal letter. This transmittal letter must contain a statement regarding the existence of any management letters. If management letters have been written, a hard and electronic copy must be transmitted to the State Auditor along with each audit or compilation report sent.

The appropriate transmittal letter should be written as follows:

Office of the State Auditor
P.O. Box 956
Jackson, Mississippi 39205

Re: Annual Municipal Audit

Accompanying this letter is a copy of the annual audit (compilation) of the city (town) of _____, Mississippi, for the fiscal year ended September 30, 20____. In connection with this audit (compilation), a separate management letter was written to the city (town). Enclosed you will find a copy of this management letter along with the audit (compilation) reports.

OR

Accompanying this letter is a copy of the annual audit (compilation) of the city (town) of _____, Mississippi, for the fiscal year ended September 30, 20____. A separate management letter was not written to the city (town) in connection with this audit.

Sincerely,

(Mayor's Signature)
Mayor

Municipal Compliance Questionnaire

As part of the municipality's audit, the governing authorities of the municipality must make certain assertions with regard to legal compliance. The municipal compliance questionnaire was developed for this purpose.

The following questionnaire and related certification must be completed at the end of the municipality's fiscal year and entered into the official minutes of the governing authorities at their next regular meeting.

The governing authorities should take care to answer these questions accurately. Incorrect answers could reduce the auditor's reliance on the questionnaire responses, resulting in the need to perform additional audit procedures at added cost.

Information

Note: Due to the size of some municipalities, some of the questions may not be applicable. If so, mark N/A in answer blanks. Answers to other questions may require more than "yes" or "no," and, as a result, more information on this questionnaire may be required and/or separate work papers may be needed.

1. Name and address of municipality:

2. List the date and population of the latest official U.S. Census or most recent official census:

3. Names, addresses and telephone numbers of officials (include elected officials, chief administrative officer, and attorney).

4. Period of time covered by this questionnaire:
From: _____ To: _____

5. Expiration date of current elected officials' term: _____

MUNICIPAL COMPLIANCE QUESTIONNAIRE

Year Ended September 30, 20__

Answer All Questions: **Y** - YES, **N** - NO, **N/A** - NOT APPLICABLE

PART I - General

1. Have all ordinances been entered into the ordinance book and included in the minutes? (MCA § 21-13-13)
2. Do all municipal vehicles have public license plates and proper markings? (MCA § 25-1-87 and 27-19-27)
3. Are municipal records open to the public? (MCA § 25-61-5)
4. Are meetings of the board open to the public?
(MCA § 25-41-5)
5. Are notices of special or recess meetings posted? (MCA § 25-41-13)
6. Are all required personnel covered by appropriate surety bonds?
 - Board or council members (MCA § 21-17-5)
 - Appointed officers and those handling money, see statutes governing the form of government (i.e., MCA § 21-3-5 for Code Charter)
 - Municipal clerk (MCA § 21-15-38)
 - Deputy clerk (MCA § 21-15-23)
 - Chief of police (MCA § 21-21-1)
 - Deputy police (MCA § 45-5-9) (if hired under this law)
7. Are minutes of board meetings prepared to properly reflect the actions of the board? (MCA § 21-15-17 and 21-15-19)
8. Are minutes of board meetings signed by the mayor or majority of the board within 30 days of the meeting?
(MCA § 21-15-33)
9. Has the municipality complied with the nepotism law in its employment practices? (MCA § 25-1-53)
10. Did all officers, employees of the municipality, or their relatives avoid any personal interest in any contracts with the municipality during their term or within one year after their terms of office or employment? (MCA § 25-4-105)
11. Does the municipality contract with a Certified Public Accountant or an auditor approved by the State Auditor for its annual audit within twelve months of the end of each fiscal year? (MCA § 21-35-31)

12. Has the municipality published a synopsis or notice of the annual audit within 30 days of acceptance?
(MCA § 21-35-31 or 21-17-19)

PART II - Cash and Related Records

1. Where required, is a claims docket maintained?
(MCA § 21-39-7)
2. Are all claims paid in the order of their entry in the claims docket? (MCA § 21-39-9)
3. Does the claims docket identify the claimant, claim number, amount and fund from which each warrant will be issued? (MCA § 21-39-7)
4. Are all warrants approved by the board, signed by the mayor or majority of the board, attested to by the clerk, and bearing the municipal seal? (MCA § 21-39-13)
5. Are warrants for approved claims held until sufficient cash is available in the fund from which it is drawn?
(MCA § 21-39-13)
6. Has the municipality adopted and entered on its minutes a budget in the format prescribed by the Office of the State Auditor? (MCA § 21-35-5, 21-35-7 and 21-35-9)
7. Does the municipality operate on a cash basis budget, except for expenditures paid within 30 days of fiscal year end or for construction in progress? (MCA § 21-35-23)
8. Has the municipality held a public hearing and published its adopted budget? (MCA § 21-35-5, 27-39-203, & 27-39-205)
9. Has the municipality complied with legal publication requirements when budgetary changes of 10% or more are made to a department's budget? (MCA § 21-35-25)
10. If revenues are less than estimated and a deficit is anticipated, did the board revise the budget by its regular July meeting? (MCA § 21-35-25)

11. Have financial records been maintained in accordance with the chart of accounts prescribed by the State Auditor? (MCA § 21-35-11)
12. Does the municipal clerk submit to the board a monthly report of expenditures against each budget item for the preceding month and fiscal year to date and the unexpended balances of each budget item? (MCA § 21-35-13)
13. Does the board avoid approving claims and the city clerk not issue any warrants which would be in excess of budgeted amounts, except for court-ordered or emergency expenditures? (MCA § 21-35-17)
14. Has the municipality commissioned municipal depositories? (MCA § 27-105-353 and 27-105-363)
15. Have investments of funds been restricted to those instruments authorized by law? (MCA § 21-33-323)
16. Are donations restricted to those specifically authorized by law? [MCA § 21-17-5 (Section 66, Miss. Constitution) -- MCA § 21-19-45 through 21-19-59, etc.]
17. Are fixed assets properly tagged and accounted for? (Property Accounting System Chapter)
18. Is all travel authorized in advance and reimbursements made in accordance with MCA § 25-3-41?
19. Are all travel advances made in accordance with the State Auditor's regulations? (MCA § 25-3-41)

PART III - Purchasing and Receiving

1. Are bids solicited for purchases, when required by law (written bids and advertising)? [MCA § 31-7-13(b) and (c)]
2. Are all lowest and best bid decisions properly documented? [MCA § 31-7-13(d)]
3. Are all one-source item and emergency purchases documented on the board's minutes? [MCA § 31-7-13(m) and (k)]
4. Do all officers and employees understand and refrain from accepting gifts or kickbacks from suppliers? (MCA § 31-7-23)

PART IV - Bonds and Other Debt

1. Has the municipality complied with the percentage of taxable property limitation on bonds and other debt issued during the year? (MCA § 21-33-303)
2. Has the municipality levied and collected taxes, in a sufficient amount for the retirement of general obligation debt principal and interest? (MCA § 21-33-87)
3. Have the required trust funds been established for utility revenue bonds? (MCA § 21-27-65)
4. Have expenditures of bond proceeds been strictly limited to the purposes for which the bonds were issued? (MCA § 21-33-317)
5. Has the municipality refrained from borrowing, except where it had specific authority? (MCA § 21-17-5)

PART V - Taxes and Other Receipts

1. Has the municipality adopted the county ad valorem tax rolls? (MCA § 27-35-167)
2. Are interest and penalties being collected on delinquent ad valorem taxes? (MCA § 21-33-53)
3. Has the municipality conducted an annual land sale for delinquent ad valorem taxes? (MCA § 21-33-63)
4. Have the various ad valorem tax collections been deposited into the appropriate funds? (Separate Funds for Each Tax Levy) (MCA § 21-33-53)
5. Has the increase in ad valorem taxes, if any, been limited to amounts allowed by law? (MCA § 27-39-320 and 27-39-321)
6. Are local privilege taxes collected from all businesses located within the municipality, except those exempted? (MCA § 27-17-5)
7. Are transient vendor taxes collected from all transient vendors within the municipality, except those exempted? (MCA § 75-85-1)
8. Is money received from the state's "Municipal Fire Protection Fund" spent only to improve municipal fire departments? (MCA § 83-1-37)
9. Has the municipality levied or appropriated not less than 1/4

mill for fire protection and certified to the county it provides its own fire protection or allowed the county to levy such tax? (MCA § 83-1-37 and 83-1-39)

10. Are state-imposed court assessments collected and settled monthly? (MCA § 99-19-73, 83-39-31, etc.)
11. Are all fines and forfeitures collected when due and settled immediately to the municipal treasury? (MCA § 21-15-21)
12. Are bids solicited by advertisement or, under special circumstances, three appraisals obtained when real property is sold? (MCA § 21-17-1)
13. Has the municipality determined the full and complete cost for solid waste for the previous fiscal year? (MCA § 17-17-347)
14. Has the municipality published an itemized report of all revenues, costs and expenses incurred by the municipality during the immediately preceding fiscal year in operating the garbage or rubbish collection or disposal system? (MCA § 17-17-348)
15. Has the municipality conducted an annual inventory of its assets in accordance with guidelines established by the Office of the State Auditor? (MMAAG)

(MUNICIPAL NAME)

Certification to Municipal Compliance Questionnaire

Year Ended September 30, 20____

We have reviewed all questions and responses as contained in this Municipal Compliance Questionnaire for the Municipality of _____, and, to the best of our knowledge and belief, all responses are accurate.

(City Clerk's Signature)

(Mayor's Signature)

(Date)

(Date)

Minute Book References:

Book Number _____

Page _____

(Clerk is to enter minute book references when questionnaire is accepted by board.)

C. GUIDELINES FOR MUNICIPAL AUDITORS

These guidelines have been developed for use by auditors who contract with municipalities for their legally required annual audit. Generally, they provide information on what is required for each type of municipal audit.

Qualifications and Procedures

Legal Authority -- Municipal audit and accounting requirements are prescribed in accordance with MCA § § 21-35-29, 21-35-31, and 7-7-211. This means that for a municipal audit to be prepared in accordance with state law, it must be prepared as required by this guide.

Contract Requirements -- The preceding portion of this guide "Guidelines for Municipal Officials" requires the municipality enter into a written contract for audit services. This contract may take the form of a standard engagement letter. This contract should make clear which of the listed types of audits is to be performed and what additional services are to be provided.

Auditing Standards -- All audit and compilation services must be provided in accordance with appropriate generally accepted auditing standards (GAAS) or standard for accounting and review services (SARS) as prescribed by the American Institute of Certified Public Accountants (AICPA). Other auditing standards, such as government auditing standards (yellow book) prescribed by the United States General Accounting Office (GAO) are only required in those cases where the municipality contracts for such services. GAO auditing standards will be required when a municipality contracts for federal audit work, such as a federal single audit.

Auditing Procedures -- It is the auditor's responsibility to develop a suitable audit program encompassing the applicable above-mentioned standards. Appropriate reference material would include the AICPA Audit Guide of State and Local Governments, Federal Compliance Supplement and commercially prepared audit guides for State and Local Governments. Compliance audit procedures presented in "Example 8" are offered as suggestions only.

Substantial Non-Compliance Reporting Procedure -- The auditor should contact the state auditor's office for additional guidance if misappropriation of public funds, services or property; or other substantial non-compliance with legal requirements is determined to have occurred, or is suspected.

D. FINANCIAL REPORTING

Legal Requirement

MCA § 21-35-31 states, "The governing authority of every municipality in the state shall have the municipal books audited annually, before the close of the next succeeding fiscal year, in accordance with procedures and reporting requirements prescribed by the State Auditor. The municipality shall pay for the audit or report out of its general fund. No advertisement shall be necessary before entering into the contract, and it shall be entered into as a private contract. The audit or report shall be made upon a uniform formula set up and promulgated by the State Auditor, as the head of the State Department of Audit, or the director thereof, appointed by him, as designated and defined in Title 7, Chapter 7, Mississippi Code of 1972, or any office or officers hereafter designated to replace or perform the duties imposed by said chapter".

Report Options

There are three reports that municipal authorities may contract for that will be acceptable in accordance with MCA § 21-35-31. The requirements of each are based on total revenues or expenditures. The three reports are as follows:

1. Full scope audit in accordance with GAAP
2. Full scope audit in accordance with OCBOA (Cash Basis)
3. Compilation report using OCBOA (Cash Basis) and Agreed Upon Procedures

The criteria to determine which report to use is based on total revenues or expenditures, whichever is greater. We suggest the auditor use current year amounts if available to determine which report is applicable.

Full Scope Audit in accordance with GAAP

All municipalities with total revenues or expenditures equal to or greater than \$10,000,000 are required to have a full scope audit and report in accordance with GASB #34. This report will be considered optional for all other municipalities in the State. Audit reports of municipalities are to be prepared in accordance with Generally Accepted Accounting Principles as prescribed by the Governmental Accounting Standards Board. All reports must be prepared in accordance with GASB Statement 34 and have all of the required schedules and statements.

The minimum required financial presentation for municipalities consists of four sections:

1. Management Discussion and Analysis (MD&A) Prepared by Management
2. The Basic Financial Statements
3. Required Supplemental Information (RSI) other than MD&A
4. Other Supplemental Information (As required by State Auditor)

The Basic Financial Statements have three sections:

1. Government-wide Financial Statements
2. Fund Financial Statements
3. Notes to Financial Statements.

Audits shall be performed in accordance with AICPA generally accepted auditing standards (GAAS). Any entity that expends federal funds during the fiscal year in excess of the Single Audit requirements will be required to have an audit performed in accordance with the Single Audit Act. In this case, the auditor should include all applicable additional reports as required by the Single Audit Act. Single Audits shall be performed in accordance with Government Auditing Standards (the Yellow Book).

Additionally, the following schedules and reports must be included in the audit report:

Schedule on Surety Bonds for Municipal Official
Report on Compliance with State Laws and Regulations

Each municipality must prepare a “Municipal Compliance Questionnaire” (MCQ) and enter it into the official minutes. (See the section of this guide on guidelines for Municipal Officials.) The municipal auditor should review the assertions made in this questionnaire and perform such compliance audit procedures as are appropriate. Upon completion of audit procedures, the auditor should prepare a special report for the purpose of reporting instances of material non-compliance with legal requirements addressed in the MCQ and any other findings of material non-compliance with legal requirements. If there are no instances of non-compliance, the special report should make a statement of negative assurance.

Full Scope Audit in accordance with OCBOA (Cash Basis)

All municipalities with total revenues or expenditures equal to or greater than \$1,000,000 but less than \$10,000,000 are required to have a full scope audit of their Combined Statement of Cash Receipts and Disbursements. The municipality should prepare its report in accordance with GASB #34.

This report is very common in a small town that may require a Single Audit. Any entity that expends federal funds during the fiscal year in excess of the Single Audit requirements will be required to have an audit performed in accordance with the Single Audit Act. In this case, the auditor should include all applicable additional reports as required by the Single Audit Act. Single Audits shall be performed in accordance with Government Auditing Standards (the Yellow Book).

The minimum required financial presentation for municipalities consists only of the Basic Financial Statements.

The Basic Financial Statements have two sections:

1. Fund Financial Statements-(Statement of Cash Receipts and Disbursements)
2. Notes to Financial Statements (if applicable).

Additionally, the following schedules and reports should be included in the audit report:

Schedule of Investments
Schedule of Capital Asset
Schedule of Long-term debt
Schedule on Surety Bonds for Municipal Officials
Suggested Compliance Audit Procedures
Report on Compliance with State Laws and Regulations

Each municipality must prepare a “Municipal Compliance Questionnaire” (MCQ) and enter it into

the official minutes. (See the section of this guide on guidelines for Municipal Officials.) The municipal auditor should review the assertions made in this questionnaire and perform such compliance audit procedures as are appropriate. Upon completion of audit procedures, the auditor should prepare a special report for the purpose of reporting instances of material non-compliance with legal requirements addressed in the MCQ and any other findings of material non-compliance with legal requirements. If there are no instances of non-compliance, the special report should make a statement of negative assurance.

Compilation Report using OCBOA (Cash Basis) and Agreed Upon Procedures

Under certain conditions, municipalities may contract for this type report in lieu of a full scope audit in accordance with GAAP. This option is intended to provide minimal reporting at a reduced cost. The municipality should prepare its report in accordance with GASB #34.

In order to qualify for this type report, a municipality's total revenues or expenditures must be less than \$1,000,000.

This option involves a compilation of certain financial information and a special report on specific agreed-upon audit procedures. This option should not be used if the municipality is required to have a federal single audit.

The minimum required financial presentation for municipalities consists only of the Basic Financial Statements.

The Basic Financial Statements have two sections:

1. Fund Financial Statements-(Statement of Cash Receipts and Disbursements)
2. Notes to Financial Statements (if applicable).

Additionally, the following schedules and reports should be included in the audit report:

- Schedule of Investments
- Schedule of Capital Assets (Optional)
- Schedule of Long-term Debt
- Schedule on Surety Bonds for Municipal Officials
- Report on Compliance with State Laws and Regulations

Each municipality must prepare a "Municipal Compliance Questionnaire" (MCQ) and enter it into the official minutes. (See the section of this guide on guidelines for Municipal Officials.) The municipal auditor should review the assertions made in this questionnaire and perform such compliance audit procedures as are appropriate. Upon completion of audit procedures, the auditor should prepare a special report for the purpose of reporting instances of material non-compliance with legal requirements addressed in the MCQ and any other findings of material non-compliance with legal requirements. If there are no instances of non-compliance, the special report should make a statement of negative assurance.

In addition to the compilation report the auditor is required to perform an Agreed-Upon Procedures Engagement.

The procedures required to prepare this report are as follows:

- Cash (including investments)
 - Confirm and reconcile cash on deposit and investments made by all funds as of the end of the fiscal year.
 - Physically inspect investment securities as of the end of the fiscal year if amounts were not confirmed.
 - Examine all investment transactions during the fiscal year for compliance with MCA § 21-33-323.
- Ad Valorem Taxes
 - Trace levies to governing body minutes. Trace settlements to the proper funds.
 - Determine that increases in ad valorem taxes are within the growth limitation allowed by law (MCA § 27-39-320 through 27-39-323).
- State Receipts
 - Confirm payments from the Department of Finance and Administration.
 - Trace deposits into municipal treasury as recorded in the cash receipts journal.
- Disbursements
 - Test a sample of disbursements and determine that all were approved by the board prior to disbursement and if applicable in compliance with state purchasing laws (MCA § 31-7-13).
- State Court Fine Assessment
 - Test a sample collection of fines and forfeitures and determine that the municipal court clerk has settled daily with the municipal clerk (MCA § 21-15-21).
 - Test a sample of state-imposed court assessments collected and determine that municipal clerk has settled monthly with the Department of Finance and Administration (MCA § 99-19-73 & 83-39-31).
- Municipal Compliance Questionnaire
 - Determine that the municipal compliance questionnaire was completed, signed and recorded in the board's minutes.
 - Test the completed questionnaire to determine that it was accurately prepared. Include any instances of non-compliance in the auditor's special report on agreed-upon procedures.

Exemption from Compilation and Agreed Upon Procedures Report

A municipality in Mississippi may request an exemption from a compilation and agreed upon procedure report if certain requirements are met. The following requirements must be met before the State Auditor will consider an exemption from this requirement:

1. Request must be postmarked within 90 days of fiscal year end.
2. Total revenue or expenditures shall not exceed \$100,000 for the fiscal year under consideration.

The State Auditor will consider the request only if both of the above requirements are met. The Application for Exemption and the instruction on how to complete it can be found on the State Auditors website.

MUNICIPAL BUDGETS
MS Municipal Audit and Accounting Guide, 2010 Edition
Office of the State Auditor
2016 Supplement

State laws require all municipalities adopt and base their operations on a budget. These laws require specific budgetary procedures and require the State Auditor to regulate the process.

INTRODUCTION

Mississippi law requires municipalities to adopt a formal budget. Generally, a budget is a plan of action for a fiscal year representing the choices of the governing authorities as to how the municipality will allocate its limited resources among various competing demands. The budget also serves to justify the need to levy taxes for the support of municipal operations.

Many different kinds of budgets exist, each designed for different purposes. However, Mississippi law requires municipalities to use a particular type of budget and employ specific budgetary procedures. Municipal governing authorities may adopt additional budgetary controls and monitoring procedures, so long as legally required procedures are followed. A useful working definition of this particular budget is:

A statement by fund of estimated receipts, disbursements, and balances for the next fiscal year, accompanied by other information that helps understanding of the fund statements and the municipality's overall financial picture.

As a collection of financial decisions, a budget becomes a detailed plan of operations and capital outlay for the fiscal year. The budget includes the activities and services the municipality plans to provide its citizens during the fiscal year; physical improvements such as streets, water systems and buildings the municipality plans to construct (all or part of) during the fiscal year; the expenditures required for support of these operations and capital projections; and the resources available for meeting the planned expenditures. The budget also addresses such policy issues as debt service needs, cash management, purchasing requirements, and taxation and other revenue levels and rates imposed upon local taxpayers.

The following chart demonstrates how the budget provides important information on governmental financial policies and practices for a variety of users.

<u>Users</u>	<u>Information</u>	<u>Purpose</u>
The Public	An opportunity to learn about and understand the government's public service programs and policies	Accountability
Governing Body	An opportunity to judge the adequacy of operating programs, to establish level of services to be rendered to the public, and to provide input into the budgetary process	Control
Departments of the Governmental Unit	An opportunity to justify the department's programs and operations, to propose changes in services, and to recommend changes in organization and methods	Planning
Fiscal Financial Officers/ Comptroller/ Administrators	An opportunity to review organization, methods and procedures; to initiate improvements; and to select problems for intensive study	Control and Management
Grantors/ Legislators/ Investors/Etc.	An opportunity to review the various programs of a government and their costs and financial position for decision making purposes	Decision Making

THE BUDGETARY PROCESS

An effective budget is best developed by employing a deliberate building process. The recommended process encompasses a number of different activities and decisions over a period of several months, the end result of which is the annual budget. The "Proposed Budget Calendar" presents the budgetary process.

STAGES OF THE PROCESS:

The stages of the recommended budgetary process are:

Starting the process

Preparing departmental budget requests

Reviewing of departmental budgets by the municipality's governing authority

Preparing the recommended annual budget

Adopting and implementing the budget

Each budgetary process stage encompasses a number of activities and/or decisions. Responsibility for carrying out the activities and making the decisions vary among governmental units, financial administrators and various departments of governmental units. The governing authority is responsible for all policy decisions, including setting budgetary guidelines and adopting the annual budget. The governing authority is responsible for preparing revenue estimates, reviewing departmental budget requests, preparing a recommended annual budget and implementing the adopted annual budget. The departments of the governmental unit are responsible for preparing and submitting appropriation requests for the ensuing budget year.

The budget process normally takes place over a period of several months. The Proposed Budget Calendar provides for a five month budgetary period but this schedule can be adjusted to meet the needs of individual municipalities. However, adequate time must be provided so that the various budget activities can be carried out and decisions made after proper review and consideration.

Budgeting is only one of many financial policy control mechanisms but it is the most basic and, therefore, the most important. Municipal governments provide services to people, and the financing of these services must be properly planned and controlled in order to achieve the maximum efficiency, economy and effectiveness of the use of governmental financial resources; to minimize the tax burden upon local citizens; to comply with applicable state law, contractual provisions and professional financial management practices; and to assure that the government's financial position is sound.

The municipal budgetary process should be a "building blocks" approach to the development of the budget. Budget information is developed in a set of basic budget documents for estimating revenues and departmental requests for expenditures.

The initial step in the budgetary process involves estimating the amount of revenues which can be expected to be available for the coming fiscal year, setting budgetary guidelines, and transmitting this information, together with the budget forms, to the municipal departments. This preliminary work sets the stage for later decisions to be made by the municipal departments, the municipal administration and the governing authorities.

At the July meeting each year, the municipal departmental budgets should be submitted for approval by the governing authorities.

The clerk/administrator is usually responsible for the next step in the budget process, which is developing a proposed budget for the individual funds.

The total proposed budget and proposed tax levy shall be presented during a public hearing at either the August or September meeting of the board/council each year. At least one (1) public hearing must be held at least one (1) week prior to the final official adoption of the budget by September 15 (MCA § 21-35-5 § 27-39-203).

The advertisement for the proposed budget and tax levies must be published once a week for the two (2) week period preceding the public hearing; and the hearing must be no less than seven days after the day of the first advertisement. The specific wording for the advertisement and the publishing requirements are found in MCA § 27-39-203.

During the budgetary process, the governing authorities are responsible for preparing a statement showing every source of revenue, the amount received from each source through the last complete month of the current fiscal year and a projection for the entire current year (MCA § 21- 35-5).

The budget is presented in a format prescribed by the State Auditor, and all funds which require expenditure authorization from the governing authorities must be budgeted individually and amended by fund (MCA §§ 21-35-7, 21-35-9 and 21-35-25).

After the budget is completed and the public hearing conducted, the board must, by resolution, adopt and approve the budget in the minimum detail allowed by law (revenues; expense by categories of personnel services, supplies, other services and capital outlay) and enter it in detail upon the minutes (MCA § 21-35-9).

At each regular monthly meeting of the governing authorities, the clerk is to submit a financial report showing the expenditures and liabilities incurred against each separate budget item during the preceding month. This report is to also show the unexpended balance of each budget item and the unencumbered balance in each fund. During each meeting, the clerk must set forth the receipts from all taxes and fees collected from all sources during the preceding month (MCA § 21-35-13 and 21-39-19).

The governing authorities are to stay within the spending limits set by the budget and annual revenue. The amount appropriated and authorized to be expended for any item in the budget must not exceed the amount estimated (MCA §§ 21-35-15 and 21-35-17).

The following "Proposed Budget Calendar" establishes a common-sense schedule to complete the budget process and comply with legal requirements.

Proposed Budget Calendar

<u>Date</u>	<u>Process</u>
May Board Meeting	Formulate budget policy (governing authorities)
May - Presentation	Develop financial forecast (budget officer) to the Governing Authorities
June Board Meeting	Distribute departmental request forms and notify of due date (budget officer)
July Board Meeting	Deadline for return of departmental request
August Board Meeting	Act on request of departmental budgets (governing authorities)
August Board Meeting	Publish notices of public hearing(s) on proposed budget and tax levies and of availability of the budget for inspection before hearing in accordance with MCA § 27-39-203. If the population is less than 1,500 and the municipality is not increases the tax levy, then the notice may be posted in three public places.
August (15-30) or Sept (1-15)	Hold public hearing(s) on budget and tax levy and adopt tax levy or announce when tax levy will be adopted (MCA § 27-39-203 & 21-35-5)
September (1-15)	Adopt budget and tax levies (if not adopted during budget hearing) no later than September 15
September (1-30)	Publish tax levy resolution one time, or post in three public places, if less than 1,500 inhabitants
September (1-30)	Publish budget at least one time, or post in three public places, if less than 1,500 inhabitants

STATE LAWS - LEGAL REQUIREMENTS

Mississippi laws require municipalities follow very specific budgetary procedures. These laws attach a wide range of conditions to the preparation and use of the municipality's budget. The following law overview should help the reader to achieve a general understanding of legal requirements. For specific information on legal requirements, references to the related Mississippi Code Sections are provided.

Planning Process Basics

Source of Authority

- Statutory -- "Municipal Budget Law" -- MCA § 21-35-1.
- Regulatory -- MCA § 21-35-29 authorizes the State Auditor to regulate the municipal budget process.

Funds Which Must be Budgeted -- MCA §§ 21-35-5 and 21-35-9

- Funds receiving revenues to the municipality.
- Funds which will require approval from the board/council for expenditure.
- Proprietary / Enterprise funds (utility systems, etc.).
- Municipal Reserve Fund, see MCA § 21-35-22.
 - A municipal reserve fund is a fund to hold money in reserve for other funds for a fiscal year's unanticipated expenditures which were otherwise not budgeted.
 - These funds may only be spent by board order for reserve purposes; and as limited by the source of the reserve fund revenue.
 - Interest earned on fund investments must be credited to the reserve fund.
- Funds confiscated and forfeited in connection with drug and liquor cases, see MCA §§ 41-29-181 and 41-29-185, Miss. Code Ann. (1972).

Funds Which do not Have to be Budgeted --

- Fiduciary type funds do not require board approval to make disbursements. These include various clearing funds (payroll, state court assessments, etc.).

Mandatory Fiscal Year -- MCA § 21-35-3, requires an October through September 30 fiscal year.

Content of Budget -- MCA § 21-35-5

(See the Budget Regulation Section of this chapter for additional information)

- Revenues which are to be credited to the budget. Revenues must be defined to the minimum level prescribed by the State Auditor.
- Expenditures which are to be charged to the budget. Expenditures must also be defined to the minimum level prescribed by the State Auditor; this would be the purpose level (personnel services, supplies, other services and capital outlay).
 - Caution: Liability occurs if the budget is exceeded at the lowest level adopted.
- Working cash balance (beginning and ending including investments).
This balance may be budgeted for the purpose of preventing cash flow problems during the next fiscal year.
- Ad valorem taxes may not be levied to accumulate capital for future years' capital projects.

Basis of Budget -- MCA § 21-35-23

- Revenues which are legally receipted (cash basis) from October 1 through September 30 may be credited to the budget.
- Expenditures which may be charged to the budget are those which were legally budgeted, incurred prior to the end of the fiscal year, and disbursed (**cash basis**) during the fiscal year or within 30 days thereafter; if not paid within this period, they may be budgeted again for payment in the next fiscal year.
- Expenditures for uncompleted improvements in progress of construction may be charged to the budget at any time.

Preparation Requirements

- The budget must be prepared on forms prescribed by the State Auditor, MCA § 21-35-5.
- The budget must be adopted on the board/council's minutes by September 15, MCA § 21-35-9.
- A public hearing on the proposed budget and tax levy must be held at least one week prior to adoption of the budget, MCA §§ 21-35-5 & 27-39-203.
- Notification of the public hearing for the proposed budget and tax levy must be published in a newspaper for two (2) times if there is a proposed tax levy increase for any size municipality or for all municipalities that have a population greater than one thousand five hundred (1,500), MCA § 27-39-203 (amended 2015 session).
- Notification of the public hearing for the proposed budget and tax levy may be posted in three (3) public places in the municipality if the municipality has a population less than one thousand five hundred (1,500) or is not proposing a tax levy increase, MCA § 27-39-203 (amended 2015 session).

- The adopted budget and the statement of current revenues and expenses must be published at least once in September, MCA § 21-35-5.
 - Municipalities with a population of 1,500 or more: publish in a newspaper published in the municipality (in the county, if none in the municipality).
 - Municipalities with a population of less than 1,500: publish by posting in at least three public places in the municipality.
- The adopted tax levy must be published within 10 days of adoption in the local newspaper, MCA § 21-33-47.

Public Hearing Requirements

MS Code has two (2) different sections (Section 21-35-5 and Section 27-39-203) regarding the public hearing and notice requirements for municipalities. There are contradictions in the two sections therefore, each municipality should adhere to both sections..

MCA § 21-35-5, Miss. Code Ann. (1972)

- Requires municipal governing authorities hold a public hearing at least one week prior to the adoption of the final budget.
- Notice of this hearing must be published in the same manner as the municipality is required to publish its final budget. This means the notice must be published in a municipal newspaper (county newspaper, if no newspaper exists in the municipality); or for municipalities with a population of less than 1,500, posted in three public places in the municipality. The proposed budget is not required to be published.
- The notice required in MCA § 27-39-203 will be sufficient for this notice requirement.

MCA § 27-39-203, Miss. Code Ann. (1972)

- The governing body of all taxing entities shall hold a public hearing at which time the budget and tax levies for the upcoming fiscal year will be considered.
- The public hearing shall be advertised in accordance with the following procedures.
 - The advertisement shall be no less than one-fourth (1/4) page in size
 - Type used shall be no smaller than eighteen (18) point
 - Surrounded by a one-fourth-inch solid black border.
 - The advertisement may not be placed in that portion of the newspaper where legal notices and classified advertisements appear.
 - It is the intent of the Legislature that the advertisement appears in a newspaper that is published at least five (5) days a week, unless the only newspaper in the county is published less than five (5) days a week.
 - It is further the intent of the Legislature that the newspaper selected be one of general interest and readership in the community, and not one of limited subject matter.

- The advertisement shall be run once each week for the two (2) weeks preceding the adoption of the final budget.
- The advertisement shall state that the taxing entity will meet on a certain day, time and place fixed in the advertisement, which shall be not less than seven (7) days after the day the first advertisement is published, for the purpose of hearing comments regarding the proposed budget and proposed tax levies.
- Any increase in the projected budget revenues or any increase in the millage rate over the current fiscal year shall be explained by the governing body giving the reasons for the proposed increase.
- A taxing entity collecting taxes in more than one (1) county shall make the required advertisement by publication in each county where the taxing entity collects taxes.
- All hearings shall be open to the public. The governing body of the taxing entity shall permit all interested parties desiring to be heard an opportunity to present oral testimony within reasonable time limits.
- Each taxing entity shall notify the county or municipal governing body of the date, time and place of its public hearing.
 - No taxing entity may schedule its hearing at the same time as another overlapping taxing entity in the same county, but all taxing entities in which the power to set tax levies is vested in the same governing authority may consolidate the required hearings into one (1) hearing.
 - The county or municipal governing body shall resolve any conflicts in hearing dates and times after consultation with each affected taxing entity.
- If an increase in the tax levy is necessary only because of an increased funding request made by a county district or any other cost which by law the county must fund and may not decrease in amount, then the notice required by this subsection shall be used and the county shall explain, in clear language in the notice, that the increase in the tax levy is necessary only because of the increased funding request of the county district or other cost incurred.
- After the hearing has been held in accordance with the above procedures, the governing body of the taxing entity may adopt a resolution levying a tax rate on classes of property designated by Section 112, Mississippi Constitution of 1890, as specified in its advertisement. If the resolution adopting the tax rate is not adopted on the day of the public hearing, the scheduled date, time and place for consideration and adoption of the resolution shall be announced at the public hearing and the governing body shall advertise the date, time and place of the proposed adoption of the resolution in the same manner as provided under subsection (2).
- Any governing body of a tax entity shall be prohibited from expending any funds for the applicable fiscal year until it has strictly complied with the advertisement and public hearing requirements set forth in this section.

- This notice must be published in a newspaper if the municipality has a population greater than 1,500 or if a municipality of any size is increasing the proposed tax levy.
- If a municipality has a population of less than 1,500 and not proposing to increase the tax levy, the notice of the public hearing may be posted in three (3) public places in the municipality.
- It should be noted that if the ad valorem tax levy is not adopted at the MCA § 27-39-203 public hearing, further advertisements will be required.

Notice Types

- **If the proposed tax levies are not in excess of the current fiscal year's certified tax rate, the advertisement shall be in the following form:**

"NOTICE OF A PUBLIC HEARING ON THE PROPOSED BUDGET AND PROPOSED TAX LEVIES FOR THE UPCOMING FISCAL YEAR FOR -- (Name of the taxing entity)

The (name of the taxing entity) will hold a public hearing on its proposed budget and proposed tax levies for fiscal year (insert the year) on (date and time) at (meeting place).

The (name of the taxing entity) is now operating with projected total budget revenue of \$. (percent) or \$ of such revenue is obtained through ad valorem taxes. For the next fiscal year, the proposed budget has total projected revenue of \$. Of that amount, (percent) or \$, is proposed to be financed through a total ad valorem tax levy.

The decision to not increase the ad valorem tax millage rate for fiscal year (insert the year) above the current fiscal year's ad valorem tax millage rate means you will not pay more in ad valorem taxes on your home, automobile tag, utilities, business fixtures and equipment and rental real property, unless the assessed value of your property has increased for fiscal year (insert the year).

Any citizen of (name of the taxing entity) is invited to attend this public hearing on the proposed budget and tax levies for fiscal year (insert the year) and will be allowed to speak for a reasonable amount of time and offer tangible evidence before any vote is taken."

- **If the proposed tax levies for the upcoming fiscal year shall exceed the current fiscal year's certified tax rate, the advertisement shall be in the following form:**

"NOTICE OF A TAX INCREASE AND A PUBLIC HEARING ON THE PROPOSED BUDGET AND PROPOSED TAX LEVIES FOR -- (Name of the taxing entity)

The (name of the taxing entity) will hold a public hearing on a proposed ad valorem tax revenue increase for fiscal year (insert the year) and on its proposed budget and proposed tax levies for fiscal year (insert the year) on (date and time) at (meeting place).

The (name of the taxing entity) is now operating with projected total budget revenue of \$ _____. (_____ percent) or \$ _____ of such revenue is obtained through ad valorem taxes. For next fiscal year, the proposed budget has total projected revenue of \$ _____. Of that amount, (_____ percent) or \$ _____ is proposed to be financed through a total ad valorem tax levy.

For next fiscal year, the (name of the taxing entity) plans to increase your ad valorem tax millage rate by _____ mills from _____ mills to _____ mills. This increase means that you will pay more in ad valorem taxes on your home, automobile tag, utilities, business fixtures and equipment and rental real property.

Any citizen of (name of the taxing entity) is invited to attend this public hearing on the proposed ad valorem tax increase, and will be allowed to speak for a reasonable amount of time and offer tangible evidence before any vote is taken."

- **If the municipality is located in a county completing its countywide reappraisal update during the current fiscal year and has experienced an increase in the assessed valuation of the property, the advertisement shall include the following statement:**

"A millage rate of _____ will produce the same amount of revenue from ad valorem taxes as was collected the prior year. The millage rate for the prior year was _____."

Adoption of Budget & Tax Levy

Tax Levy

- After the hearing has been held, the governing authority may adopt a resolution levying the tax rate as specified in the advertisement, MCA § 27-39-203 (7).
- If the resolution is not adopted at the hearing, the scheduled date, time and place for consideration and adoption of the resolution shall be announced at the public hearing and the governing body shall advertise the date, time and place of the proposed adoption of the resolution in the same manner as provided for the first notice, MCA § 27-39-203 (7).

Budget

- The governing authority shall adopt the budget at least one week after the required public hearing or by September 15, MCA § 21-35-5
- MCA § 21-35-5 requires the annual budget to be approved by September 15 of each year and published one time during September

- For municipalities with population of 1,500 or greater, the budget shall be published one (1) time during September of said year in a newspaper published in the municipality or county
- For municipalities with population of less than 1,500, the budget shall be posted in at least three (3) public places in said municipality

Purposes for Which Ad Valorem Taxes May Be Levied

In its order adopting the ad valorem tax levy, the board must specify the purpose for each levy, including:

- For general revenue purposes and for general improvements, as authorized by MCA § 27-39-307;
- For schools, including all maintenance levies, whether made against the property within such municipality, or within any taxing district embraces in such municipality, as authorized by MCA § 27-39-307 and MCA § 37-57-3 et seq.
- For municipal bonds and interest thereon, for school bonds and interest thereon, separately for municipal-wide bonds and for the bonds of each school district
- For municipal-wide bonds and interest thereon, other than for school bonds
- For loans, notes or any other obligation, and the interest thereon, if permitted by law
- For special improvement or special benefit levies, as now authorized by law
- For any other purpose for which a levy is lawfully made. If any municipal-wide levy is made for any general or special purpose under the provisions of any law other than MCA § 27-39-307 each such levy shall be separately stated in the resolution, and the law authorizing same shall be expressly stated therein
- Solid Waste Collection, MCA § 21-19-2
- Library Fund, MCA § 39-3-5

Approval and Certification of Tax Levy

MCA § 21-33-47 provides that when the governing authority has made the levy of taxes by resolution:

- The clerk shall certify the tax levy to the tax collector of the municipality and send a copy to the Department of Revenue
- The clerk shall also certify the tax levy to the tax collector of the county and the Chancery Clerk

- The clerk shall publish the resolution levying the taxes within 10 days after it is adopted. If no newspaper is published within the municipality, then a copy of the resolution shall be posted in at least three (3) public places within ten (10) days after its adoption.

Accounting and Budgets

Accounting Records -- MCA § 21-35-11

- The records must conform to the system prescribed by the State Auditor in this guide. The records must correspond to the budget line items and basis of accounting.
- The city clerk must maintain the records and is liable for damages to the municipality if records are not maintained as required.
- A municipality may keep any additional records that it may have a need for.

Monthly Budget Report -- MCA § 21-35-13

The city clerk must prepare a monthly report to the governing authorities showing for each budgeted fund, the expenditures and liabilities incurred against the budget during the prior month and year-to-date, with like information for receipts and unencumbered balances.

Budget Revisions -- MCA § 21-35-25

When Budgets are Revised

- The budget may be revised at any time, except the governing authority is limited to one revision during the first three months of its term of office.
- The budget must be revised at the first meeting in July and every year thereafter, if it appears that budgeted revenues will not materialize.

Budget Revision Publication Requirement

- Budget revisions resulting in more than a ten percent (10%) change in a department's originally adopted budget must be publicized in the same way the municipality published its original budget.
 - Publish in newspaper if population is greater than 1,500
 - Post in three public places if population is less than 1,500
- The publication must explain the revision, including amounts, need and purpose.

Emergency Expenditures -- MCA § 21-35-19 and 21-35-21

- The governing authority may, by unanimous vote, revise the budget without any public hearings or notice, if an emergency situation exists as defined in MCA § 21-35-19. (See the Purchasing chapter for the procedures to follow for emergency purchases)

- Money may be borrowed to keep the budget in balance.

Expenditure Limitations and Liabilities

Exceeding the Budget Limitation -- MCA § 21-35-15

- Expenditures shall not exceed budget estimates, measured at the lowest level adopted in the budget, except for capital outlay, election expenses and payment of emergency warrants. A municipality would still have to amend the budget to cover these exempted expenses.

Personal Liability for Exceeding the Budget

- Personal liability exists for expenditures made, liabilities incurred, or warrants issued, except upon proper court order or emergencies in excess of the budget (measured at the lowest level adopted in the budget) [MCA § 21-35-17].
 - Officials making or incurring excess expenditures or issuing warrants are liable personally and upon their official bonds.
 - Governing authority members approving excess claims are liable for twice the amount of the claims.
 - City clerks and governing authorities issuing excess warrants are liable for twice the amount of the claims.

Special Compliance Requirements

Last Year of Term Expenditure Limitation -- MCA § 21-35-27

The governing authority is prohibited from charging against the budget more than one-fourth of any item of the original budget from April through July of the last year of its term of office, and the city clerk is prohibited from issuing a warrant in violation of this provision. This prohibition does not apply to purchases made which are subject to MCA § 31-7-13.

Annual Audit of Municipality -- MCA § 21-35-31(see Municipal Audit Requirements Chapter)

- Every municipality must contract an audit within 12 months of the end of the fiscal year (no bid solicitation required).
- The auditor must be a CPA or an auditor approved by the State Auditor.
- The audit must be performed and reported as required by the State Auditor.
- The form of the audit report and extent of audit procedures will be prescribed by the State Auditor.
- A synopsis of the audit must be published or notice published with posting in three places of the audit report within 30 days after completion of the audit.

- The publication shall be made one (1) time and the municipality may only pay one-half ($\frac{1}{2}$) of the legal rate prescribed by law for such legal publications [MCA § 25-7-65].

Failure to Perform Audit

- The State Auditor shall file a certified written notice with the clerk of the municipality notifying the governing authority of the municipality that a certificate of noncompliance will be issued to the Department of Revenue and to the Attorney General thirty (30) days immediately following the date of the filing of the notice.
- If, after thirty (30) days from the giving of the notice has not substantially initiated efforts to comply, the State Auditor shall issue a certificate of noncompliance to the clerk of the municipality, Department of Revenue and the Attorney General.
- The Department of Revenue shall withhold from all allocations and payments to the municipality that would otherwise be payable the amount necessary to pay one hundred fifty percent (150%) of the cost of preparing the required audit or report as contracted for by the State Auditor.
 - The cost shall be determined by the State Auditor after receiving proposals for the audit or report.
 - The State Auditor shall notify the Department of Revenue of the amount in writing, and the Department of Revenue shall transfer that amount to the State Auditor.
- The State Auditor is authorized to escalate, budget and expend these funds in accordance with rules and regulations of the Department of Finance and Administration consistent with the escalation of federal funds. All remaining funds shall be retained by the State Auditor to offset the costs of administering these contracts. The State Auditor shall not unreasonably delay the issuance of a written notice of cancellation of a certificate of noncompliance but shall promptly issue a written notice of cancellation of certificate of noncompliance upon an affirmative showing by the municipality that it has come into substantial compliance.
- In the event the State Auditor issues a certificate of noncompliance with the annual audit, the Department of Revenue shall withhold ten percent (10%) of the sales tax revenue allocations and payments to the municipality until such time that the department receives written notice of the cancellation of a certificate of noncompliance from the State Auditor.

Report Options

There are three reports that municipal authorities may contract for that will be acceptable in accordance with MCA § 21-35-31. The requirements of each are based on total revenues or expenditures. The three reports are as follows:

1. Full scope audit in accordance with GAAP
2. Full scope audit in accordance with OCBOA (Cash Basis)
3. Compilation report using OCBOA (Cash Basis) and Agreed Upon Procedures

The criteria to determine which report to use is based on total revenues or expenditures, whichever is greater. We suggest the auditor use current year amounts if available to determine which report is applicable. (See the Municipal Audit Regulations Chapter for more detailed information)

BUDGET REGULATIONS

MCA § 21-35-29, empowers the State Auditor to prescribe rules, regulations and classifications necessary to carry out the provisions of the municipal budgeting laws. Accordingly, the following regulations are prescribed.

Budget Nature **[Balanced Budget]**

The nature of the budget is to project a balanced estimate of revenues, expenditures and cash/investment balances. Reasonable estimates must be made to justify the levy of ad valorem taxes to balance the budget. Balanced budget means beginning cash/investments and revenues equal expenditures and ending cash/investments.

Budget Detail

The minimum detail of the finally adopted budget is fund, department and purpose. This means there must be a separate budget for each fund; with amounts of money detailed for revenue items, departmental purposes and working cash balances. The following definitions apply to these terms.

- **Budgeted Fund Definition**

For purposes of budgeting, a fund is any account established to hold revenues of the municipality available for expenditure by the municipal governing authorities. Separate funds should be set up as required by law and to account for restricted purpose and continuing revenues. Funds not subject to expenditure by the municipal governing authorities should not be budgeted; such as trust or agency funds (clearing accounts, etc.). Note: Legal fund revenues may not be excluded from claim obligations by setting them aside as separate funds.

- **Budgeted Revenue Definition**

For purposes of budgeting, revenue means cash receipts collected by a municipality and designated to be deposited into a budgeted fund. Such receipts must be defined in sufficient detail to show the nature of the collection (type of tax, fee, grant, loan, etc.).

All revenues that do not have expenditure restrictions established by law should be deposited into the General fund. Unrestricted revenues may be accounted for in a separate fund for accountability purpose; however, these funds are still considered General Fund collections for purposes of claim obligations against the General Fund.

- **Budgeted Department Definition**

A department is established by budgeting money within a fund for expenditure for a function prescribed by state law or legal order of the municipal governing authorities. It is essential that a budget for each department be established to account for the departments activities and assign responsibility for exceeding budget expenditure limits. Each department budget must have only one department head (or board or council) to be responsible for its expenditures [MCA § 21-35-17].

Some departments must be budgeted as separate departments as a matter of funding the ability of a statutory officer to perform statutory functions. Examples are police department, fire department, court department, municipal clerk's department, and mayor's departments [ex: MCA §§ 21-21-1, 21-25-1, 21-23-11, 21-15-21, and 21-3-15]. In these cases this officer is responsible for that budget's expenditures.

Some obligations and appropriations of municipalities are by state law or municipal policy the direct responsibility of the municipal board or council. In these cases a municipal department budget under the direct responsibility of the board or council may be established. Only the board or council may initiate charges against this type of budget. Board or council departments are typically for special purpose functions; such as to make money available for debt service, transfers and donations and similar appropriations.

- **Budgeted Department Purpose Definitions**

The total amount available to each separately budgeted municipal department must be presented by purpose. The following defined purposes (as appropriate) are the minimum acceptable breakdown of amounts of money available within a department's budget.

- **Personnel Services**

- Amount of money available to pay for employee or officer compensation (salaries, fringe benefits, etc.) services provided.

- **Contractual Services**

- Amount of money available to pay for work or other services provided.

- **Supplies**

- Amount of money available to pay for material items provided.

- **Grants, Subsidies and Allocations**

Amount of money available for appropriations, donations paid to others, and settlements. This includes optional (allowed by state law) appropriations from a municipal fund to another fund or entity. Payments when no obligation exist. Examples: MCA §§ 17-3-3, 21-19-65, 43-1-12, 17-19-1. Caution: Section 66 & 96 Miss. Constitution and MCA § 21-17-5 limit authority to donate. Allocations are all other charges to a fund for items such as fines and legal settlements (MCA §§ 25-1-47 & 11-46-17). Allocations may also include losses to a fund due to theft.

- **Debt Service**

Amount of money available for debt and interest payments. Example: MCA § 21-33-87

- **Capital Outlay**

Amount of money available to pay for material items that will provide benefits beyond the budget year.

- **Transfers and Other Functions**

Amount of money available for transfers (or appropriation) of money from one fund to another. Examples: MCA §§ 27-105-367 and 21-33-59. This may include thefts payable from one fund to another.

- **Working Cash Definition**

Money may be budgeted as “ending cash and investment balance” in a fund. The amount of money may be sufficient to meet cash flow requirements of the next fiscal year. This budget item is necessary when budgeted revenues will not be realized until after expenditure requirements; such as when bond maturities occur early in a fiscal year. [Note: MCA § 21-33-325 & 21-33-326, provide for certain revenue anticipation loans.]

Year End Accrual to Budget

MCA § 21-35-23, allows disbursements made within 30 days after September 30 to be charged back to the budget for fiscal year ending on September 30. This provision applies to obligations incurred prior to the end of the fiscal year ending September 30 and intended (appropriated) to be paid from that fiscal year’s budget. To qualify for this charge back, the claim for payment [MCA § 21-39-9] must be approved and the check for payment dated no later than October 30.

If for some reason budgeted obligations cannot be paid by October 30, the next year’s budget should be revised [MCA § 21-35-25] to provide for the payment after October 30. As a result of not charging the prior year’s budget with this expenditure, additional cash should be available in the prior year’s ending cash to be carried over to the new year’s budget (beginning cash balance). This cash may be recognized to increase the new year’s beginning cash to fund the budget revision.

Line Item Budgets

These regulations require municipal budgets to be adopted by fund, department and purpose. A municipal board or council may adopt a budget in greater detail, such as to the object level (line item). However, it should be noted the penalty for exceeding the budget [MCA § 21-35-17] applies at the lowest level adopted.

It is suggested that line item budget limit not be included in the formally adopted budget. A municipality may adopt line item numbers for internal control purposes only. If line item numbers are adopted, care should be taken on the official minutes to make clear the nature of the numbers.

BUDGET FORMS

MCA §§ 21-35-7 and 21-35-29, require the Office of the State Auditor to prescribe the form of the budget. The following final budget forms are prescribed for this purpose and must be used for all budgets and budget revisions.

A separate final budget form must be used for each fund. Each final form must be completely filled out and in balance. In balance means “Total From All Sources” must equal “Total Disbursements and Ending Balance”. Municipalities may also substitute substantially equivalent forms to satisfy local preference and information requirements. The budget may also be

developed and adopted by substituting electronically generated forms as provided by MCA § 75-12-13.

These forms also include a column for “Estimated Total For Current Fiscal Year”. MCA § 21-35-5 requires publication of the final budget, including a statement of revenues and expenses. This column should satisfy the information required by this statute. The estimated total for the current fiscal year should be the total of the available current year’s actual and estimated revenues and expenditures. These figures provide a comparison of the coming year’s budget to a projection of the current year’s actual revenues and expenditures.

The following worksheet forms are provided for the convenience of the municipality to assist in the development of the final budget; and are not required to be adopted as part of the final budget.

Budget Worksheet #1**DEPARTMENTAL PERSONNEL SERVICES REQUEST****Fiscal Year Ending _____****DEPARTMENT:****A. Personnel Costs**

Positions	Requested Annual Salary	Approved Annual Salary
1.	\$	\$
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		
TOTAL	\$	\$

Budget Worksheet #1 - (Cont'd)**DEPARTMENTAL PERSONNEL SERVICES REQUEST****Fiscal Year Ending _____****B. Employer Costs**

	Requested Annual Salary	Approved Annual Salary
1. FICA	\$	\$
2. Retirement		
3. Group Insurance		
4. Unemployment Insurance		
5. Workers' Compensation		
6. Other		
TOTAL	\$	\$

C. Summary

	Requested Annual Salary	Approved Annual Salary
1. Total Personnel Costs	\$	\$
2. Total Employer Costs		
TOTAL	\$	\$

Budget Worksheet #2**DEPARTMENTAL CONTRACTUAL SERVICES REQUEST****Fiscal Year Ending _____****DEPARTMENT: _____**

Item	Requested	Approved
1.	\$	\$
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		
16.		
17.		
18.		
19.		
20.		
TOTAL	\$	\$

Budget Worksheet #3**DEPARTMENTAL SUPPLIES REQUEST****Fiscal Year Ending _____****DEPARTMENT: _____**

Item	Requested	Approved
1.	\$	\$
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		
16.		
17.		
18.		
19.		
20.		
TOTAL	\$	\$

Budget Worksheet #4**DEPARTMENTAL CAPITAL OUTLAY REQUEST****Fiscal Year Ending _____****DEPARTMENT: _____**

Item	Requested	Approved
1.	\$	\$
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		
TOTAL	\$	\$

Budget Worksheet #5

DEPARTMENTAL BUDGET SUMMARY

Fiscal Year Ending _____

DEPARTMENT: _____

1. Personnel Services	\$
2. Contractual Services	
3. Supplies	
4. Capital Outlay	
TOTAL	\$

Budget Worksheet #6**DEBT SERVICE SCHEDULE****Fiscal Year Ending _____****(Type of Issues: General, Revenue, Other)**

Issue	Bond Redemption	Interest Paid	Other Charges	Total
1.	\$	\$	\$	\$
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
TOTAL	\$	\$	\$	\$

Budget Worksheet #7

GRANTS, SUBSIDIES AND ALLOCATIONS SCHEDULE
(Appropriations, Donations, Settlements, etc.)
Fiscal Year Ending _____

DEPARTMENT(S): BOARD/COUNCIL

Who or Where Paid		Purpose - Reason	Authority	Total
1.				\$
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
TOTAL		\$	\$	\$

Budget Worksheet #8

TRANSFERS AND OTHER FUNCTIONS SCHEDULE
(Transfers and Reimbursement Charges)
Fiscal Year Ending _____

DEPARTMENT(S): BOARD/COUNCIL

Fund Charged	Fund (or other) Receiving	Function (Transfer or Other)	Explanation for Transaction	Total
1.				\$
2.				
3.				
4.				
5.				
6.				
7.				
8.				
Total Transfers				
Total Other 1				
Total Other 2				

(MUNICIPALITY)

(Fund)

BUDGET OF ESTIMATED REVENUES AND EXPENDITURES

For the Fiscal Year Ended September 30, 20__

	Final Budget For Next <u>Fiscal Year</u>	Estimated Total For Current <u>Fiscal Year</u>
RECEIPTS		
License and Permits	\$ _____	\$ _____
Intergovernmental Revenues:		
Federal Grants		
Federal Shared Revenues		
Federal Payments in Lieu of Taxes		
State Grants		
State Shared Revenues		
Grants from Local Units		
Charges for Governmental Services:		
Fines and Forfeits		
Miscellaneous:		
Charges for Utility Services:		

Final Budget For Next	Estimated Total For Current
--------------------------	--------------------------------

	<u>Fiscal Year</u>	<u>Fiscal Year</u>
Transfers		
Non-Revenue Receipts		
Total from All Sources, Other Than Taxation	_____	
Beginning Cash and Investment Balance		
Total Receipts Other Than Ad Valorem Tax	_____	
Amount to be Raised by Ad Valorem Tax (necessary to balance budget)		
TOTAL FROM ALL SOURCES	\$ _____	\$ _____

DISBURSEMENTS

_____ Department:

Personnel Services	\$ _____	\$ _____
Supplies		
Contractual Services		
Capital Outlay		
Total		

____ Department:

Personnel Services
Supplies
Contractual Services
Capital Outlay
Total

Final Budget
For Next
Fiscal Year

Estimated Total
For Current
Fiscal Year

___ Department:

Personnel Services
Supplies
Contractual Services
Capital Outlay

Total

___ Department:

Personnel Services
Supplies
Contractual Services
Capital Outlay

Total

Board/Council Department:

Grants, Subsidies and Allocations:

1. _____
2. _____

Transfers:

1. _____
2. _____

Other Functions:

1. _____
2. _____

Total

Total Disbursements

Ending Cash and Investment Balance

**TOTAL DISBURSEMENTS AND
ENDING BALANCE**

\$ _____ \$

(MUNICIPALITY)

(Fund)

BUDGET OF ESTIMATED REVENUES AND EXPENDITURES

For the Fiscal Year Ended September 30, 20__

	Final Budget For Next <u>Fiscal Year</u>	Estimated Total For Current <u>Fiscal Year</u>
RECEIPTS		
Rent	\$ _____	\$ _____
Interest Earned		
Miscellaneous (Other)		
Transfers		
Non-Revenue Receipts		
Total from All Sources, Other Than Taxation	_____	
Beginning Cash and Investment Balance		
Total Receipts Other Than Ad Valorem Tax	_____	
Amount to be Raised by Ad Valorem Tax (necessary to balance budget)		
TOTAL FROM ALL SOURCES	\$ _____	\$ _____

Final Budget	Estimated Total
For Next	For
Current <u>Fiscal Year</u>	<u>Fiscal</u>
<u>Year</u>	

DISBURSEMENTS

_____ Bonds:

Bonds Redeemed	\$ _____	\$
_____ Interest on Bonds		
Paying Agent Fees		

_____ Notes:

Note Principal
Interest on Notes
Paying Agent Fees

Total Disbursements
Ending Cash and Investment Balance

TOTAL DISBURSEMENTS AND ENDING BALANCE	\$ _____	\$
---	----------	----

DONATIONS

MS Attorney General's Office

Miss. Code Ann. Section 21-17-5, the “Home Rule statute”, provides that the governing authorities of a municipality, unless specifically authorized by another statute or law, shall not “grant any donation. . . .” Some examples of specific statutory authority are discussed below (this list is NOT an exhaustive list): to lend or lease equipment to other municipalities or counties on terms set by governing authorities (may be for no fee or nominal fee)

MCA Section 17-3-1	Advertise and bring into favorable notice the opportunities, possibilities and resources of the municipality. Total amount of all advertisements shall not exceed one (1) mill of the ad valorem tax.
MCA Section 21-17-1(3)(a)	Donations of real property to (1) a not-for-profit civic or eleemosynary corporation, (2) a not-for-profit corporation which is primarily engaged in construction of housing for persons who otherwise can afford to live only in substandard housing and (3) adjoining landowners of lot that measures twenty five feet or less along the frontage line.
MCA Section 21-17-1(8)	Donations of funds to match any state, federal or private funding for any program administered by the state or federal government or any 501(c)(3)
MCA Section 21-17-1(11)(a)	Donations of blighted property
MCA Section 21-19-7	Donations to hospitals and benevolent institutions
MCA Section 21-19-41	Contributing to support of the federal food stamp program
MCA Section 21-19-44	Donations to local economic development organizations and designated Main Street programs
MCA Section 21-19-44(1)	Donations to the municipality's Main Street Project, Inc., for any economic development endeavor or program, for the development of the municipality's central business district, or for any proper municipal purpose
MCA Section 21-19-45	Donation of funds to non-profit civic and development corporations for recreational purpose

MCA Section 21-19-46	Donation of funds to Court Appointed Special Advocates (CASA). The cumulative sum may not exceed one-fourth (1/4) mill of ad valorem taxes. Nothing in the section authorizes the imposition of addition tax.
MCA Section 21-19-47	Donations to support and maintain band and orchestras for the amusement and entertainment of the citizens of the municipality
MCA Section 21-19-49	Donations to school districts (including real and personal property)
MCA Section 21-19-51	Donations to fair associations domiciled in county, for the purpose of displaying, exhibiting or promoting agricultural or industrial resources of such municipality or its county.
MCA Section 21-19-53	Donations to support historical museums (Vicksburg)
MCA Section 21-19-55	Donations to patriotic organizations
MCA Section 21-19-57	Donations to the American Red Cross
MCA Section 21-19-58	Donations to the Mississippi Burn Care Fund
MCA Section 21-19-59	Donations to state colleges or universities for support of airport
MCA Section 21-19-65	Donations to social and community service programs to match any other <i>available</i> funds
MCA Section 21-19-67	Donations to chartered chapters of the Boys and Girls Club of America, YMCA and farmers' market located within the municipality
MCA Section 21-19-69	Donations to support certified farmers' market
MCA Section 21-27-27	Donation of free utility service to other specific public entities located within municipality
MCA Section 39-15-1	Authority to expend general fund monies in support of the arts within the municipality.
MCA Section 93-21-115	Donations to local shelters (domestic violence or rape crisis centers)

PETTY CASH
MS Municipal Audit and Accounting Guide, 2010 Edition
Office of the State Auditor

MCA § 7-7-60, Miss. Code Ann. (1972), provides authority for municipalities to operate petty cash funds in accordance with regulations set forth by the Office of the State Auditor.

Special procedures are required to establish and operate a petty cash fund to account for the procurement of evidence. The purpose of these special procedures is to provide a method to make expenditures without compromising the confidential nature of related criminal investigations.

The following official regulations are prescribed for the establishment and operation of petty cash funds. These regulations include “Routine Petty Cash Fund Procedures”; and special regulations for “Petty Cash Fund to Account for Procurement of Evidence”.

Routine Petty Cash Fund Procedures

Establishment of a Petty Cash Fund

A petty cash fund may be authorized by the municipal governing authorities. The authorization must be spread upon the minutes and include:

- Reasons for establishing the fund
- Purposes for which fund money may be spent (must be legal)
- Dollar amount of the fund
- Custodian(s)
- Any special provisions, such as use of a depository (bank) account(s)

This authorization will serve as authority for the municipal clerk to transfer the money to the custodian ("Named Custodian, Department Head, etc."). All petty cash funds must be accounted for within the municipal accounting records for cash balances.

Establishing a petty cash fund does not change how money may be legally spent.

- The cash in a petty cash fund may only be authorized to be spent for those purposes that are available to its source fund and budget.
- Further, all procedural laws for the expenditure of public funds (such as purchase laws) must be complied with.
- This means reimbursements may only be made for disbursements that could have been made by the source fund, are within the budget of the authorized department(s) and have been made in accordance with state laws (purchasing, etc.).

Reimbursements to a Petty Cash Fund

Requests for reimbursements may be made by the custodian.

- For each month when disbursements are made from the petty cash fund, a request for reimbursement must be prepared by the custodian and submitted as a claim to be considered by the governing authority.
- The request for reimbursement must include a summary of expenditures on the "Voucher for Reimbursement of Petty Cash Disbursements" along with related invoices and explanations for disbursements made by the petty cash fund.
- Reimbursements shall be charged to the appropriate department's budget and made by municipal warrant, as with the payment of other claims.
- Reimbursements are then placed into the petty cash fund.

Other Petty Cash Requirements

Surety Bond:

- The custodian of a petty cash fund must be bonded (as required by law to handle cash) and will be responsible at all times for the funds and purchases of the petty cash fund.
- Note: A surety bond for an employee's position (such as for police officers) may not cover handling cash.
- This means a separate bond may be required to handle cash for petty cash purposes.

Accounting:

- The amount of cash in the fund, paid invoices and explanations for proper expenditures must always equal the total amount authorized to be in the petty cash fund.
- There must be an accounting for the petty cash fund at the end of each fiscal year.
 - This means the account should be closed out on the last day of the fiscal year and reissued for the next fiscal year.
 - In circumstances where close out is not practical, a cash count by the municipal auditor or other independent person and a verified reimbursement request for disbursed cash will be an acceptable alternative.
 - This accounting is necessary to assure funds are on hand and disbursements are recorded within the proper fiscal year's budget.
 - The governing authorities of the municipality and the municipal auditor may also require an accounting at any time.
- The governing authority must authorize the petty cash fund on an annual basis.

Prescribed Form

Following is the prescribed "Voucher for Reimbursement of Petty Cash Disbursements." The custodian must list the items and amounts claimed on the voucher. The municipal clerk (accounting/bookkeeping department) must verify the amounts and insert proper classification of expenditure codes for budgetary control. Another form design or electronic record may be substituted for this form; provided documentation and authorizations are equivalent.

VOUCHER FOR REIMBURSEMENT OF PETTY CASH DISBURSEMENTS

From: _____

To: _____

DEPARTMENT:

Item	Amount	<u>Verification</u> Accounting Code	Amount
	\$		\$
TOTAL AMOUNT CLAIMED	\$	TOTAL AMOUNT VERIFIED	\$

I certify that the above amount claimed for petty cash disbursements for the period indicated is correct and that payment for any part thereof has not been received.

Custodian Signature

Verified By

Note: Attach all petty cash support (invoices, tickets, explanation, etc.) to the upper left corner of the voucher. Every item must be supported.

Petty Cash Fund to Account for Procurement of Evidence Requirements

During the course of procuring evidence, disbursements of a confidential nature may be required. However, the disbursement of public funds requires accountability. To maintain accountability and confidentiality, the following procedures should be followed:

Availability of Funds -- Funds available for general law enforcement purposes may be used for the purpose of procuring evidence. These include, but are not limited to, money from the general fund, MCA § 41-29-181 forfeitures, and MCA § 99-27-37 fine proceeds.

Appropriation of Funds -- Appropriations for this purpose should be included in the law enforcement agency's budget(s).

Purpose of Funds -- Such funds may be disbursed for, but not limited to,

- disbursements related to surveillance,
- the purchase of investigative equipment,
- purchase of samples to be used as evidence,
- purchase of information related to an investigation and
- the defraying of living expenses of persons specially employed in investigations

Disbursement of Funds -- In order to maintain confidentiality, petty cash funds must be authorized by the law enforcement agency's governing authority:

A petty cash fund must be established in accordance with the Office of the State Auditor's regulations.

Confidential Record – Disbursements from the petty cash funds must be accounted for in a confidential record. This record must show the following information.

- Each transaction
- Amount paid
- To whom paid
- Date paid
- Purpose of the transaction
- Case number
- Such other information as may be necessary to justify the transaction

The record must be available to persons designated by the Office of the State Auditor.

Other Requirements:

- Disbursements from the petty cash funds must be made in accordance with purchase law bidding requirements. (Purchases of evidence and undercover living expenses do not require bids.)
- Confidential disbursements may be supported with a summary of the total amounts spent. These amounts must be defined in sufficient detail to be charged against the appropriate budget items (supplies, contractual services and charges or capital outlay).
- Non-confidential disbursements must be supported with invoices or other evidence of justification for the expenditure, the same as for routine petty cash funds.
- Equipment purchases must be recorded on the municipal fixed asset inventory and tagged appropriately.

AMUSEMENT MACHINES

PURPOSE: An optional tax that a county (or municipality) may impose upon slot amusement machines. MCA § 27-27-5

APPLIES TO: Coin operated machines that play games, music, etc. MCA § 27-27-3 This tax is in addition to other taxes levied by law MCA § 27-27-13

LICENSE/STICKERS: MCA § 27-27-7

1. Application must be filed in such form as required by the tax collector
2. License is due one year from date of purchase
3. Stickers are issued to be attached to each machine
4. Sticker is valid for machine in any location or by any owner

TAX TO BE COLLECTED:

- A. Tax must be levied by Board of Aldermen - MCA § 27-27-5
- B. Amount of tax is: MCA § 27-27-5 (1)
 - (1) Picture or sound producing machines \$ 27 each
 - (2) Unspecified game machines \$ 45 each
 - (3) Ride machines (hobby horse, etc.) \$ 18 each
- C. Tax is payable into the General Fund - MCA § 27-27-21
- D. May pay by cash, check, money order or bank exchange - MCA § 27-27-21

EXEMPTIONS: MCA § 27-27-11

1. Legal gambling machines
2. Bingo or pull-tab machines on the premises of charitable bingo licenses
3. Machines of distributors or manufacturers that are not operated
4. Pool halls where pool table collections are subject to sales tax
5. Antique coin machines - MCA § 27-27-12

ADMINISTRATION: MCA § 27-27-19

1. Taxable persons must keep records for three years to show location, purpose, type of machine and coin size to operate each machine subject to tax. MCA § 27-27-17
2. Tax collector may promulgate regulations not inconsistent with this law.
3. Complete public records must be kept for three years.

PENALTIES:

1. 50 % penalty for not paying tax or affixing license/sticker to machine. MCA § 27-27-9
2. Officer may take possession of machine until tax paid or court order. MCA § 27-27-15
3. A person who continues illegal operation or causes a disturbance after a machine is seized may be fined \$ 500 and/or sentenced to six months in jail. MCA § 27-27-1

BEER TAX

PURPOSE: An optional tax on businesses licensed to sell beer. MCA § 27-71-345

APPLIES: All businesses licensed under MCA § 67-3-27.
Wholesaler, manufacturer, or distributor only where located MCA § 27-71-345

AMOUNT OF TAX:

1. Up to 50 % of the state tax imposed under MCA § 27-71-303
 - Retailers - Amount due is up to one half of \$ 30 or up to \$ 15
 - Wholesalers/distributors - Amount due is up to one half of \$ 100 or up to \$ 50
 - Manufacturers/brewpubs - Amount due is up to one half of \$ 1000 or up to \$ 500

ADMINISTRATION:

- A. The beer tax is in addition to the privilege license fees
- B. Reasonable/proper rules and regulations may be adopted by the municipality
- C. Ordinance for zoning, hourly, etc. regulations as will promote public health, morals, and safety. MCA § 67-3-65

PENALTIES: MCA § 27-71-347

Conviction of violation of this law results in up to \$500 fine and/or sentence of up to six months in jail.

LOCAL PRIVILEGE LICENSE

MS Office of the State Auditor

PURPOSE: A mandatory tax for the privilege of doing business within the municipality. MCA § 27-17-5 (2)

APPLIES TO: All business for profit (unless exempt). MCA § 27-17-3

The business should be in operation for six (6) months or longer for a privilege license.

A business in operation for less than six (6) months will require a transient vendor license.

TYPES OF LICENSE

1. GENERAL BUSINESSES: MCA § 27-17-9

A. Each location of all businesses not specifically covered by another section of law

B. Based on number of employees.

(1)	Three or fewer employees	\$20
(2)	Four to ten employees	\$30
(3)	Eleven or more employees	\$30 plus \$3 for each employee over ten. Maximum fee of \$150

2. MANUFACTURING BUSINESSES: MCA § 27-17-9

A. Based on number of employees

(1)	Three or fewer employees	\$20
(2)	Four to ten employees	\$30
(3)	Eleven or more employees	\$30 plus \$3 for each employee over ten. Maximum fee of \$80

3. AUTOMOBILES FOR HIRE OR RENT: MCA § 27-17-35 and MCA § 21-27-131

A. All taxi cabs, U-drive-it, etc.

B. Based on class of municipality, per MCA § 27-15-9 (county is \$ 5.00)

(1)	\$ 15 each operated	Class 1	25000 & over population
(2)	\$ 10 each operated	Class 2	15000 to 24999 population
(3)	\$ 5 each operated	Class 3 or less	below 15000 population

4. SPECIAL LAW FOR CERTAIN FLEA MARKET VENDORS: MCA § 27-17-162

For Tippah County only, a tax of \$25 is levied for annual license. The vendor may pay a pro rata tax for a single flea market. (This license is in lieu of transient vendor license, whether or not transient vendor license is required.)

5. COIN OPERATED LAUNDRIES: MCA § 27-17-230

- A. Pays “General Business” license only for each location (see 1 above)
- B. Does not pay vending machine tax under MCA § 27-27-301

6. PAWN BROKERS: MCA § 27-17-299

- A. Business defined as pawnbroker under MCA § 75-67-303 and holds a license under MCA § 75-67-321
- B. Each pawnbroker location pays \$ 250
- C. Additional charge of \$ 250 if location receives dirk, knife, sword-cane, brass or metal knuckles or pistol in pawn
- D. Deadly weapons license of \$ 100 also due if deadly weapons are sold.
MCA § 27-17-415

6. RETAIL STORES: MCA § 27-17-365

- A. A business selling goods and wares to the public
- B. Operated from a permanent building (owned or leased for 90 + days)
- C. Open during reasonable hours
- D. Amount for annual license ranges from \$ 20 to \$1,840 depending on ad valorem tax assessed valuation of stock. Motor vehicle dealer inventory excluded MCA § 27-51-41 (2)(a). The ad valorem tax assessed valuation is found on the personal property rolls provided by the county tax assessor.

7. DEADLY WEAPONS DEALERS: MCA § 27-17-415

- A. Selling pistols, dirk knives, sword canes, brass or metallic knuckles, or other deadly weapons (excepting hunting knives, shot guns and rifles)
- B. Each person - \$ 100
- C. This is in addition to other privilege license (pawn brokers, etc.)

8. DRILLING RIGS: MCA § 27-17- 423

- A. Each drilling rig for each well
- B. License cost is based on depth of well, regardless of production
 - (1) Depth up to 7000 feet 1.01 cents per foot
 - (2) Depth more than 7000 feet 4.21 cents per foot
- C. Maximum license required in one year
 - For wells up to 7000 feet eight (8)
 - For wells in excess of 7000 feet four (4)

9. OPTOMETRIST CERTIFIED TO USE DIAGNOSTIC PHARMACEUTICAL AGENTS: MCA § 27-17-425

- Additional fee of \$25.00

10. DEALERS PURCHASING PRECIOUS ITEMS FOR RESALE: MCA § 75-95-3

- Must purchase license under MCA § 27-17-9 authorizing this business
- May operate only from the permanent place of business listed on license
- Must forward copy of license to local law enforcement within five (5) days of receipt of license.

ADMINISTRATION

1. WHERE OBTAINED: MCA § 27-17-451

From the City Clerk

2. HOW OBTAINED: MCA § 27-17-453

- A. On application form provided by the City Clerk
- B. In writing and **sworn** to by authorized person (owner or corporate agent)
Notary is required for original application but is not required for renewals unless there is a change in the required information.
- C. Application content: Name, address, location, nature of business, number of employees (previous 12 Months), any other information the tax collector may require.
 - * All information necessary to classify and collect the tax; and reasonable information for other purposes, such as for the zoning status.
 - * Copies may be forwarded to other county departments (or state, city, etc.) responsible for enforcement of laws and ordinances.
- D. Money required to pay the tax must accompany the application

3. ISSUANCE AND DURATION: MCA § 27-17-455

- A. Upon determination of proper application and payment, license **must be** issued for one year. There is no requirement that other conditions be satisfied to issue a local privilege license. The license should not be withheld pending satisfaction of other requirements (such as zoning qualifications).
- B. A duplicate of the license must be attached to the application and kept on file as a public record for three years. MCA § 27-17-453
- C. SEE “UNLAWFUL BUSINESSES” BELOW

4. EXPIRATION DATE OF LICENSE

- A. Effective from the first day of the month of issuance. MCA § 27-17- 455
- B. Expiration date is September 30 or one year from issuance if an ordinance so provides. MCA § 27-17-463
- C. The charge for a partial year license is prorated.

5. NOTICE OF EXPIRATION OF LICENSE: MCA § 27-17- 465

- A. Tax Collector must send renewal notice, with application form, to businesses by the first day of the month prior to the month of expiration.
- B. Failure to send notice does not exempt penalties.

6. PRIOR YEAR COLLECTIONS: MCA § 27-17-468

Businesses found not to have purchased license for prior years must be charged, but with a limit of 7 prior years.

7. LICENSE MUST BE POSTED: MCA § 27-17-469

- A. Permanent location businesses - post in a conspicuous place
- B. Other businesses (ice cream truck, etc.) - kept in possession of vendor
- C. Slot or vending machines - attach to the machine
- D. Tax collector may endorse location moves

8. LICENSE IS PERSONAL PRIVILEGE: MCA § 27-17-471

License is not transferable to another business; change in partners is not a transfer.

9. UNLAWFUL BUSINESSES

- A. Privilege license does not make an illegal business lawful. MCA § 27-17-473

B. License must have statement printed “this license shall not make lawful any act or thing declared to be unlawful by the state of Mississippi”.
MCA § 27-17-475

C. SEE ISSUANCE AND DURATION ABOVE

10. REQUISITION FOR LICENSES: MCA § 27-17-477

Board approvals for license blanks must note serial numbers of blanks purchased

11. PRIVILEGE TAX REGISTER: MCA § 27-17-493

- A.** A privilege tax register must be kept
- B.** The register must contain names of purchasers, amounts paid, serial numbers, period covered, and type and location of business.
- C.** The register and all unused application blanks must be submitted to the board for examination within 20 days of the end of the fiscal year.
- D.** After examined by the board and if found correct, the register is endorsed as “examined and found correct”.
- E.** The examined register must be filed as a permanent record
- F.** Unused blank application must be kept for three years

12. PENALTIES: MCA § 27-17-467 and § 27-17-499

- A.** Tax collector must demand payment of any delinquent taxes
- B.** A delinquent penalty of 10 % plus 1 % per month must be added to late payments. This penalty is calculated at 10 % the first month and 1 % for each month after the first month (see Attorney General’s Opinion number 2001-0580, Sept. 27, 2001).
- C.** Tax payer may be charged criminally as a misdemeanor. MCA § 27-17-521

13. COLLECTION MONTHLY REPORTS: MCA § 27-17-501

A report of licenses issued must be made to the board each month

14. COLLECTION ENFORCEMENT

- A.** May file suit in court. MCA § 27-17-467 & § 27-17-499 & § 27-17-521
- B.** May collect on suit by seizing property for sale. MCA § 27-17-521

15. PENALTY ON TAX COLLECTOR: MCA § 27-17-499

- A.** Officer liable for tax plus penalties for negligently failing to collect
- B.** Officer liable for \$ 100 penalty for each failure to collect.

EXEMPTIONS

- 1.** Non-profit organizations are exempt; MCA § 27-17-3 only applies to “businesses for profit”
- 2.** Exempt Businesses and Exemption Certificates:
 - A.** Any person 65 + year old, 50 % disabled, or specified maimed and annual income of \$ 900 or less is exempt for businesses listed MCA § 27-17-479 (sign painter, repair shops, etc.). See F. (2), below.
 - B.** Municipalities are always exempt. MCA § 27-17-483
 - C.** Clubs selling products they make in the promotion or development of domestic arts (cooking, sewing, painting, etc.). MCA § 27-17-485
 - D.** Person pursuing trade (labor and not supplying materials). MCA § 27-17-485
 - E.** Amusements and vendors at public benefit fairs. MCA § 27-17-487
 - F.** Exemption Certificate: MCA § 27-17-489
 - (1)** An exemption certificate for any MCA § 27-17-479 through 27-17-485 must be issued prior to operation of the business (not required for fairs).
 - (2)** Disability related application for exemption certificate must have statement from health department or U.S. veterans bureau
 - (3)** Exemption certificate must be reissued each year, with proof of \$900 or less earnings for prior year
- 3.** Any privileges taxed under Chapter 15 of Title 27. MCA § 27-15-7
 - A.** Insurance Companies. MCA § 27-15-81
 - B.** Public utilities – including: telephone, railroad, electric light and power, and pipe line companies. MCA § 27-15-151 through -165
- 4.** Liquor stores paying taxes under MCA § 27-71-5 (2) (A.G. Opinion to Gene F. McGee July 31,1991)
- 5.** Loan Companies holding a MCA § 27-21-3 state privilege license. MCA § 27-21-9
- 6.** Licensed contractors not required to have additional privilege license(s) if licensed in city or county where place of business is located. MCA § 27-17-457

REFUNDS

Tax Collector (city clerk) may refund overpayments per MCA § 27-73-7. No board order is required for this type of refund.

TRANSIENT VENDOR MS Office of the State Auditor

PURPOSE: A mandatory tax on transient vendors doing business within the municipality. MCA § 75-85-5

APPLIES TO: Persons transacting business for a period of less than six months
MCA § 75-85-1

LOCAL ORDINANCE: MCA § 21-19-35 [Municipalities Only]

- Ordinances not inconsistent with MCA § 75-85-1 through 75-85-19 may be adopted
- Municipal ordinance takes precedence over county ordinance
- Transient vendor must post a \$ 2,000 bond to secure compliance with ordinance
- Ordinance violation penalty is up to \$ 1,000 and/or 90 days in jail. MCA § 21-13-1

APPLICATION:

1. Application must be on a form prescribed by the MS Department of Revenue.
MCA § 75-85-9
2. Application must contain the following information. MCA § 75-85-7
 - The name and address of the applicant
 - Nature of business, (kind, location & length of operating time)
 - Name and address of applicant's agent
 - Proof that all other required licenses have been obtained, including sales tax number with municipality's diversion code.
 - Association or corporate information, if applicable (officers, state, etc.)
3. Tax collector to maintain an alphabetical list of all transient vendors. MCA § 75-85-11
4. Application must designate an agent. MCA § 75-85-11
 - Agent must be resident of municipality
 - Agent must agree in writing to serve as agent
 - Agent must accept process, notice and demands on licensee provided by law
 - If the transient vendor has no agent, the tax collector (city clerk) must serve as agent and forward copies of process, notice and demands by registered/certified mail to permanent address of the transient vendor.

LICENSE:

- License must be on form prescribed by the MS Department of Revenue.
MCA § 75-85-9
- License is good for 90 days. MCA § 75-85-15
- A renewal license must be requested before the expiration of the current license.
The license may only be renewed for one time and is good for an additional 90 days.
MCA § 75-85-15

FEE:

- The fee is up to \$ 250 (as set by the board) for deposit to the General Fund.
MCA § 75-85-13
- The renewal fee is \$ 25 for deposit to the General Fund. MCA § 75-85-15

BOND: MCA § 75-85-13

- A cash or surety bond must be posted in favor of the state
- Bond must be for the lesser of \$ 2000 or 5 % of wholesale value of property to be sold
- Bond must cover taxes, fines and judgments due from cause brought within one year
- Bond shall be released upon proof that all claims and taxes are satisfied

POSTING OF VENDOR INFORMATION: MCA § 75-85-17

- Transient vendor must post certain information in a prominent place in bold legible letters and numbers not less than one inch in height
- Information Required:
 1. Sales tax number
 2. Transient vendor license number, and
 3. Statement that receipts are required for purchase that include sales tax

EXCEPTIONS TO TRANSIENT VENDOR REQUIREMENT: MCA § 75-85-3

1. The provisions of this chapter shall not apply to:
 - A. Civic and nonprofit organizations or wholesale sales to retail merchants by commercial travelers;
 - B. Wholesale trade shows or conventions;
 - C. Sales of goods, wares, services or merchandise by sample, catalogue or brochure for future delivery;
 - D. Fairs and convention center activities conducted primarily for amusement or entertainment;

- E.** Any general sale, fair, circus, auction or bazaar sponsored by a church or religious organization;
 - F.** Garage sales held on premises devoted to residential use;
 - G.** Sales or repairs of crafts or sales or repairs of items made by hand by the person making the crafts or items;
 - H.** Duly licensed flea markets operating from a fixed location;
 - I.** Sales of agricultural, dairy, poultry, seafood or forest management products or services related to forest management or silvicultural activities, nursery products, foliage plants or ornamental trees, except such products or services sold at retail and not grown or produced within Mississippi;
 - J.** Sales of agricultural services.
- 2.** A transient vendor not otherwise exempted from this chapter is not exempted from this chapter because of a temporary association with a local dealer, auctioneer, trader, contractor or merchant, or by conducting the transient business in connection with or in the name of any local dealer, auctioneer, trader, contractor or merchant.

PENALTY: MCA § 75-85-19

- Intentional operation without license subjects transient vendor up to \$ 500 fine and/or six months in jail.
- Subject to suit, and tax collector may seize and sell property as with ad valorem tax sales.

VENDING MACHINES

MS Office of the State Auditor

PURPOSE: An optional tax on vending machines operated (or permitted to be operated) within the municipality. MCA §§ 27-27-301 & 27-27-303

APPLIES TO: Coin operated machines dispensing merchandise (weighing, automatic vending, selling cigarettes, etc.) MCA § 27-27-301

TAX TO BE COLLECTED: MCA § 27-27-301

1. Levied and imposed in lieu of all licenses and privilege taxes heretofore levied except the taxes levied by the Mississippi Sales Tax Law
2. Upon each person, firm, association or corporation owning or operating any automatic weighing machine, any automatic vending machine or device for dispensing or selling postage stamps, any automatic vending machine or device for dispensing or selling cigarettes, and automatic machines selling and vending merchandise for the sale of which any tax has been paid by the owner, which service, stamps, or merchandise is obtained by depositing therein any token, coin, or coins, a tax according to the following schedules:
 - A. Automatic or slot weighing machine, or any automatic slot vending machine, or other devices dispensing or selling postage stamps, for each such machine - \$2.00
 - B. Automatic vending machine wherein is kept within the machine cigarettes on which the specific privilege tax of selling such articles of merchandise at retail has been paid by the owner of the machine, or the owner of the place of business where such machine is operated, to be obtained by depositing therein any token, coin, or coins, for each such machine ... \$2.50
 - C. Automatic vending machine where any service is rendered and not elsewhere taxed or where is kept within the machine any article of merchandise to be obtained by depositing therein any token, coin, or coins, as follows:
 1. Coin, or coins, of less than five cents (5 cents) \$2.50
 2. Coin, or coins, of five cents (5 cents) and less than ten cents (10 cents) \$5.00
 3. Coin, or coins of ten cents (10 cents) and not more than twenty cents (20 cents)&7.50
 4. Coin, or coins, of more than twenty cents (20 cents) \$10.00

3. Provided, however, that such machines requiring deposits of ten cents (10¢) or less and vending food products only shall be exempt from the provisions of this article, and no such privilege tax shall be required to be paid when such machines are sponsored by local nonprofit civic service clubs or any other organization either incorporated or unincorporated and existing and operating under the laws of the state of Mississippi when such clubs or organizations expend the proceeds from such machines for charitable purposes only.

ADMINISTRATION: MCA § 27-27-303

Vending machine tax collection is administered under the same rules as for “Local Privilege Taxes”
See MCA §§ 27-17-451 through 27-17-501

EXEMPTIONS: MCA § 27-27-305

1. Machines owned and operated in a store (MCA § 27-17-365) by a store owner who has paid the local privilege tax.
2. Machines operated for employees only at no profit.
3. Legal gambling machine

PERSONNEL – HUMAN RESOURCE MANAGEMENT

2016 Supplement

Municipal Clerks in most municipalities have the responsibility of personnel administration. This includes the processing of various forms, preparing payroll, submitting required reports and involvement in the hiring and disciplinary processes. All of these areas require an understanding of state and federal laws concerning personnel.

EMPLOYER / EMPLOYEE CHECKLIST

Prior to Employment:

- Notice of Vacancy – Based on each municipality's personnel policy, advertising for vacancies may be required. There is no law requiring a municipality to advertise for positions.
- Application – Prior to hiring for a vacancy, an application needs to be reviewed for completeness.
- Drug Testing – MCA § 71-7-3
- Background Check – If applicable
- Motor Vehicle Record and Physical – If applicable

Approval by Governing Authority:

- Code Charter: Approval by Board – All employees are required to be hired by the Board of Aldermen with their position, start date and rate of pay included in the minutes. No potential employee should start work prior to being approved by the Board of Aldermen. MCA § 21-3-5
- Commission: Approval by the commission – All employees are required to be hired by the commission with their position, start date and rate of pay included in the minutes. No potential employee should start work prior to being approved by the Board of Aldermen. MCA § 21-5-9
- Mayor – Council:
 - Mayor appoints department heads and the Council confirms the appointments. MCA § 21-8-23
 - Department Heads appoint employees for their department.
 - Council appoints a clerk of council and deputy clerks as needed. MCA § 21-8-13
- Council – Manager:
 - Council appoints City Manager and can appoint the City Clerk. MCA § 21-9-25
 - City Manager appoints all other employees.

After Employment:

- I-9 Form – Verification of the identity and employment authorization of each new employee. The website and forms for I-9 is www.uscis.gov/i-9
- E-Verify – MS Employment Protection Act requires all employers to use the federal E-verify system to electronically verify that individuals hired as employees are legal citizens or legally authorized to work in the United States.
The website for E-verify is <https://e-verify.uscis.gov/emp/>
- Federal Withholding Tax Form W-4 “Employee’s Withholding Allowance Certificate”
The website for the W-4 Form is www.irs.gov
- State Withholding Tax Forms
The website for the State Withholding Form is www.dor.ms.gov
- PERS Enrollment Form and Beneficiary Form. The website for PERS is www.pers.ms.gov
- Surety Bond
 - Anyone Handling Money - \$50,000 MCA §§ 21-3-5; 21-5-9; 21-7-11; 21-8-23; 21-9-21
 - Municipal Clerk, City Manager - \$50,000 MCA § 21-15-38
 - Deputy Municipal Clerks - \$50,000 MCA § 21-15-23
 - Police Chief - \$50,000 MCA § 21-21-1
 - Police Officers - \$25,000 MCA § 45-5-9
 - Board Members – Amount equal to five per cent (5%) of assessed valuation not be exceed \$100,000 MCA § 21-17-5
- Oath of Office
- Insurance Forms if applicable
- City Handbook and Policy Acknowledgement Forms

Training Requirements:

- Court Clerk – Shall be required to attend the annual course of training and education conducted or approved by the Mississippi Judicial College of the University of Mississippi Law Center. A certificate of completion shall be furnished to the municipal court clerk and the certificate shall be made a permanent record of the minutes of the board. MCA § 21-23-12
- Law Enforcement Officer – All full time and part time law enforcement officers shall attend an approved law enforcement officers training program within one (1) year of employment. MCA § 45-6-11
 - The Mississippi Board on Law Enforcement Officer Standards and Training shall authorize the reimbursement of at least fifty percent (50%) of the allowable salary and allowable tuition, living and travel expense incurred in attendance at approved training programs. MCA § 45-6-13

- If any full or part time officer shall, within three (3) years after the date of his employment, resign from, or be terminated from, employment by the entity and immediately becomes employed by another governmental entity in a law enforcement capacity, then the governmental by which the officer is employed shall reimburse the governmental entity from which the officer was employed a proportionate share of the officer's law enforcement training expenses. MCA § 45-6-13 (4)
- **Fire Fighters** – All full time fire fighters shall attend a training program administered by the State Fire Academy or local governments that have the proper facilities and have been certified by the MS Fire Personnel Minimum Standards and Certification Board within one (1) year of employment. MCA § 45-11-203
 - No fire fighter whose training expenses have been reimbursed to or paid by the municipality shall leave the municipality for not less than two (2) years after completion of the training, unless the reimbursed expenses are paid by the new employer to the current employer. The amount to be paid shall be determined on a pro rata basis based upon when the fire fighter leaves the municipality within the two year period. Defined training expenses include salary, tuition, and travel expenses of the employee as well as personnel cost related to the training incurred during the employee's absence. MCA § 21-25-3

PAYROLL PROCESSING:

- Review Time Sheets for Accuracy
- Process Payroll
- Transfer Money into Payroll Clearing Account
- Federal Withholding Tax Deposit
- **Deposit Due Dates**

In general, you must deposit federal income tax withheld and both the employer and employee social security and Medicare taxes. Schedules for depositing and reporting taxes are not the same.

There are two deposit schedules, monthly and semi-weekly. Before the beginning of each calendar year, you must determine which of the two deposit schedules you are required to use. The deposit schedule you must use is based on the total tax liability you reported on Form 941 during a lookback period. Your deposit schedule for a calendar year is determined from the total taxes reported on Forms 941, line 10, in a 4-quarter lookback period. The lookback period begins July 1 and ends June 30 of the prior year. If you reported \$50,000 or less of taxes for the lookback period, you are a monthly schedule depositor; if you reported more than \$50,000, you are a semiweekly schedule depositor.

You **must** use electronic funds transfer (EFTPS) to make all federal tax deposits.

Monthly Depositor

Under the monthly deposit schedule, deposit employment taxes on payments made during a month by the 15th day of the following month. Employers who deposit monthly should only report their deposits quarterly or annually by filing Form 941 or Form 944.

Semi-weekly Depositor

Under the semiweekly deposit schedule, deposit employment taxes for payments made on Wednesday, Thursday, and/or Friday by the following Wednesday. Deposit taxes for payments made on Saturday, Sunday, Monday, and/or Tuesday by the following Friday. Report your deposits quarterly or annually only by filing Form 941 or Form 944.

- State Withholding Tax Deposit

Withholding Returns are due the 15th day of the month following the period. If a due date falls on a Saturday, Sunday, or legal holiday, the due date becomes the next business day.

The MS Department of Revenue uses the electronic Taxpayers Access Point (TAP) system for filing of reports.

- PERS Deposit

Monthly reports and monthly contributions are due from the employer by the fifth working day of the month following the close of each calendar month. Delinquent reports will be assessed a daily penalty equal to two percent (2%) per annum of the covered wages. Delinquent contributions will be assessed a daily interest penalty equal to ten percent (10%) per annum of the contributions due.

PERS uses the Web-based Employer Reporting System (WEB-ERS) for filing of reports.

- Annual Reports

- W-2's

Employee: W2's are due to all employees by January 31

Federal Reporting Requirements:

Reporting Due Dates

Generally, employers must report wages, tips and other compensation paid to an employee by filing the required form(s) to the IRS. You must also report on the taxes you deposit.

By January 31

- File Form 944, Employer's Annual Federal Tax Return, for the previous calendar year instead of Form 941 **if** the IRS has notified you in writing to File Form 944.

- File Form W-2, Wage and Tax Statement to report wages, tips and other compensation paid to an employee.

By February 28

- File Copy A of all paper Forms 1099 with Form 1096, Annual Summary and Transmittal of U.S. Information Returns, with the IRS. For electronically filed returns, see By March 31 below.
- File Copy A of all paper Forms W-2 with Form W-3, Transmittal of Wage and Tax Statements, with the Social Security Administration (SSA). For electronically filed returns, see By March 31 below.

By March 31

- File electronic Forms 1099 and 8027 with the IRS. File electronic Forms W-2 with the SSA. For information on reporting Form W-2 information to the SSA electronically, visit the Social Security Administration's Employer W-3 Filing Instructions & Information web page.

By April 30, July 31, October 31, and January 31

- File Form 941, Employer's QUARTERLY Federal Tax Return, for the fourth quarter of the previous calendar year. If you timely deposited all taxes when due, you have 10 additional calendar days from January 31 to file the appropriate return.

State Reporting Requirements:

- Employers that issue 25 or more W-2s are required to electronically submit those to MS Department of Revenue (DOR). You can enter or upload the W2s on TAP.
- W2 information filed on paper to the State is due February 28
- W2 information filed electronically to the State is due March 31

Affordable Care Act Reporting

The Affordable Care Act requires all employers of 50 or more full-time or full-time equivalent employees to offer minimum essential coverage to at least 95 percent of these full-time employees. Contact your local health insurance provider for assistance with these requirements.

1. Identity full time employees
2. Track employer mandate requirements – proof insurance coverage was offered to all full time employees OR full time equivalents.
3. Report the cost of employer-sponsored group health plans.
 - a. Report the cost of employer-sponsored group health plan on box 12 of the W-2 form to show workers the total cost of their individual healthcare in relation to the specific plan they use.
 - b. Provide employees with IRS Form 1095-C by January 31

- c. File IRS Form 1094-C and Form 1095-C, if required, transmittal by February 28 for paper filing of forms, or by March 31 if filing electronically.
- 4. Educate employees.

The Summary of Benefits and Coverage (SBC) and Summary Plan Description (SPD) must be provided to health plan participants with initial enrollment materials, and must be re-issued each year thereafter. They must be provided during open enrollment (included electronic OE). If re-enrollment is automatic and someone does not have to show up to affirm changes, the SBC and SPD must be provided at least 30 days prior to first day of coverage. Employers should have a way to track and prove these were distributed.

FEDERAL AND STATE LAWS FOR PERSONNEL ADMINISTRATION

I. UNITED STATES CONSTITUTION

- A. Unlike private employers, public employers, such as municipalities, are restricted in their dealings with employees by the United States Constitution.
- B. The United States Constitution can be enforced through private lawsuits brought by employees against their public employers pursuant to the Civil Rights Act of 1872, 42 U.S.C. Section 1983. Pursuant to Section 1983, employees can bring suit in a federal court, get a jury trial, and possibly obtain damages for back pay, mental and emotional distress and, in some instances, punitive damages. In addition, employees can sometimes persuade a federal court to order their reinstatement to their former position.
 - 1. First Amendment Claims
 - a. Three-part test to determine existence of a First Amendment claim:
 - (1) The relevant speech must involve a matter of public concern.
 - (2) The employee's interest in commenting on the matter of public concern must outweigh the employer's interest in promoting efficiency.
 - (3) The protected speech must have motivated the adverse employment action by the public employer.
 - b. However, speech uttered by a government employee pursuant to his official duties is not protected by the First Amendment.
 - 2. Fourth Amendment
 - a. Drug and alcohol testing covered by the Fourth Amendment
 - b. All employees can be tested if there is individualized reasonable suspicion.

- c. Only employees engaged in "safety sensitive" jobs can be tested without reasonable suspicion.

3. Fourteenth Amendment

- a. A public employee can have a property interest in employment.
 - (1) Property interest arises if the employee has a legitimate claim of entitlement created as defined by an independent source such as state law.
 - (2) An employee who has a property interest must be given procedural due process prior to being terminated.
- b. Termination of an employee may implicate a constitutionally protected liberty interest. The elements of a liberty interest are:
 - (1) He was discharged.
 - (2) A stigmatizing charge was made against him in connection with the discharge.
 - (3) The charges were false.
 - (4) He was not provided notice or an opportunity to be heard prior to his discharge.
 - (5) The charges were made public.
 - (6) He requested a hearing to clear his name.
 - (7) The employer refused his request for a hearing.

II. TITLE VII

- A. Applies to municipalities with 15 or more employees.
- B. Prohibits discrimination in hiring, firing, compensation, terms, conditions or privileges of employment on basis of
 - 1. Race
 - 2. Sex
 - 3. Pregnancy
 - 4. Religion
 - 5. National Origin

III. AGE DISCRIMINATION IN EMPLOYMENT ACT (ADEA)

- A. Applies to municipalities with 20 or more employees.

- B. Prohibits discrimination on basis of age against employees who are over the age of 40.

IV. TITLE I OF THE AMERICANS WITH DISABILITIES ACT (ADA)

A. Coverage

- 1. Applies to all municipalities.

B. Prohibitions

- 1. Prohibits discrimination against a qualified individual with a disability in employment if the individual can perform the essential functions of the job with or without reasonable accommodation.
- 2. Obligates employers to make reasonable accommodation to the disability unless reasonable accommodation would impose an undue hardship on the employer.
- 3. Prohibits retaliation against individuals who exercise their rights under the ADA.

C. Definitions

- 1. Disability means a physical or mental impairment that substantially limits one or more of the major life activities of an individual; a person who has a record of such an impairment; or a person who is regarded as having such an impairment.
 - a. A person is "disabled" even if he uses mitigating measures, such as medication, that remove the limitation, if he would be "substantially limited" absent the mitigating measures. One statutory exception to this is for "ordinary eyeglasses or contact lenses" — if they correct a vision problem, the employee is not disabled.
 - b. Episodic conditions, or conditions that are in remission, are considered disabilities if they substantially limit a major life activity when active.
 - c. The standard for being "regarded as" disabled is lower than the standard for actual disability. An employee's perceived impairment need not "substantially limit" a "major life activity." Instead, any perceived impairment will trigger ADA protection unless it is "transitory and minor."
 - d. The ADA Amendments Act of 2008 emphasizes that courts should interpret "disability" broadly, so expect future litigation to be more plaintiff-friendly.
- 2. Major life activities are those that include caring for oneself,

performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

- a. ADA regulations contain a list of activities that clearly constitute "major life activities," including those listed above and certain "major bodily functions" like digestive, bladder, respiratory, neurological, circulatory, and reproductive functions.
- b. Courts may find that additional activities also constitute major life activities, based on the general statutory language.

D. Reasonable accommodation means

1. Modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position he desires; or
2. Modifications or adjustments to the work environment, or to the manner or circumstances under which the position is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or
3. Modifications or adjustments that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities.
4. Reasonable accommodation may include but is not limited to
 - a. Making existing facilities accessible for individuals with disabilities;
 - b. Job restructuring;
 - c. Reassignment to a vacant position;
 - d. Provision of qualified readers or interpreters; and
 - e. Acquisition of or modification of equipment or devices.
5. An essential function is a fundamental job duty of the employment position the individual with a disability holds or desires. It does not include marginal functions of the position.
6. An employer is not required to make an accommodation if it would result in undue hardship on the employer.
7. Undue hardship means significant difficulty or expense incurred by an employer when considered in light of the following factors
 - a. The nature and the cost of the accommodation;
 - b. The overall financial resources of the facility;
 - c. The effect on the expenses and resources;

- d. The type of operation of the employer; and
 - e. The impact of the accommodation on the operation of the facility.
8. An employer is not required to make an accommodation for an employee who is merely "regarded as" being disabled, but not actually disabled.

V. FAMILY AND MEDICAL LEAVE ACT OF 1993 (FMLA)

A. Requirements

1. Eligible employees of covered employers are entitled to a total of 12 weeks of leave during any 12 month period for one or more of the following reasons
 - a. Because of the birth of a son or a daughter of the employee in order to care for the child.
 - b. Because the placement of a son or daughter with the employee for adoption or foster care.
 - c. In order to care for the spouse, or son/daughter, or parent of the employee if those persons have a serious health condition.
 - d. Because of a serious health condition that makes the employee unable to perform the functions of the position.
 - e. In 2008, Congress amended the FMLA to add leave for certain "exigent circumstances" arising from military deployment of a spouse, son, daughter, or parent in the National Guard or Reserves.
 - "Exigent circumstances" are defined by federal regulations and include (i) deployment on short notice, (ii) military events and related activities, (iii) childcare and school activities, (iv) financial and legal arrangements, (v) counseling, (vi) rest and recuperation, or (vii) post-deployment activities.
 - f. Military caregiver leave was also added to the FMLA in 2008. An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered military service member who suffers a serious injury or illness in the line of duty is entitled to a maximum of **26 weeks** of leave during any 12 month period to care for that service member.
 - (1) Military caregiver leave is a one-time event. It may be taken only once to care for a particular injury to a particular service member.
 - (2) Unlike the other leave provisions, military caregiver leave applies where the employee is not the service member's spouse, son, daughter, or parent, but nonetheless is his "next of kin." This term means "nearest blood relative."

There is a lengthy definition of "nearest blood relative" in the federal regulations.

(3) Employers may require confirmation of next-of-kin status.

2. Upon return from their leave, employees must be restored to the job they held when they left or given an equivalent position with the equivalent employment benefits, pay and other terms and conditions of employment.
3. Employer must continue employee health benefits during the leave as if the employee had continued to work. If the employee does not return to work, the employer is entitled to recover the amount of premiums paid while the employee was on leave.

B. Coverage

1. Applies to all municipalities.
2. Eligible employees must have been employed by the employer at least 12 months and 1,250 hours during the previous year.

C. How can the leave be taken?

1. An employee may take a day of leave periodically when needed, or utilize a leave schedule that reduces the employee's usual number of hours per week per work day.
2. Employer may require medical certification of the need for reduced leave schedule if such request is made, then employer may require the employee to transfer temporarily to an available alternative position that has equivalent pay and benefits and better accommodates the reduced leave schedule than the employee's regular position.

D. Notice

1. When an employee plans to take a leave under the Act, he is required to give the employer 30 days notice or if this is not possible, as much notice as is practicable.
2. An individual undergoing planned medical treatment is required to make a reasonable effort to schedule the treatment to minimize disruptions to the employer's operations.

E. Existing sick leave policies

1. Employees may elect or employers may require that paid vacation leave, personal leave, family leave, or sick leave be taken for any part of the 12 week period.

VI. 42 U.S.C. §1981

- A. Prohibits employers from discriminating against employees in the making of contracts.

- B. Interpreted to prohibit employment discrimination on the basis of race.
- C. Suits brought pursuant to §1981 entitle plaintiffs to jury trials, damages for mental and emotional distress and punitive damages.

VII. FAIR LABOR STANDARDS ACT (Overtime and Compensatory Time)

- A. Coverage
 - 1. Who is a covered employee?
 - a. Volunteer not "employee" even if paid expenses, reasonable benefits or nominal fee.
 - b. An individual cannot be a volunteer of an agency which employs him if he is performing the same type duty he normally performs.
 - 2. Independent contractors - economic realities test.
- B. What time must be compensated?
 - 1. Work week is the time measure.
 - 2. There is a special work period for law enforcement and fire protection employees.
 - 3. Incidental activities
 - a. Time spent by employees on incidental activities which are part of their principal duties generally is compensable.
 - b. Time spent by employees on activities not integrated with their principal activities is compensable if
 - (1) Time is spent for the employer's benefit;
 - (2) Time is controlled by the employer;
 - (3) Time spent is "suffered or permitted" by the employer; or
 - (4) Time spent in activity is requested by the employer.
 - c. Incidental time is not compensable if the employee is freed of duties for a period sufficiently long to be used as he pleases.
 - d. Examples of compensable time
 - (1) Meal periods if
 - (a) Employee is not free to leave his post; or
 - (b) Less than one-half (1/2) hour.
 - (2) Medical attention during working hours at the municipality's direction.
 - (3) Rest periods of 20 minutes or less.

- (4) Stand-by time during meal periods.
- (5) Training programs required by the municipality.
- (6) Traveling out of town or to different locations for the municipality.
- (7) On-call time where freedom is restricted.
- (8) Shift-change work problems.
- (9) Time spent caring for drug dogs.

C. Exclusions from hours worked

- 1. Hours are solely at employee's option and
 - a. Sporadic work for public agency in different capacity than employee primarily employed; or
 - b. Fire protection or law enforcement employees on special detail for separate employer.
- 2. Fire protection and law enforcement employees may trade hours if the employer or employees involved approve.

D. Recordkeeping requirements

- 1. Records to be retained
 - a. Payroll records containing an employee's
 - (1) Name;
 - (2) Number;
 - (3) Home address including zip code;
 - (4) Date of birth, if under 19;
 - (5) Sex and occupation;
 - (6) Time of day and day of week in which the employee's work week begins;
 - (7) Regular rate of pay;
 - (8) Hours worked each work day and total hours worked each work week;
 - (9) Total daily or weekly straight time earnings;
 - (10) Total overtime compensation for the work week;
 - (11) Total additions to or deductions from wages each pay period;
 - (12) Total wages paid each pay period;
 - (13) Date of payment and pay period covered by payment;

- b. Supplementary basic records including
 - (1) Basic employment and earnings records;
 - (2) Wage rate tables;
 - (3) Work time schedules;
 - (4) Records of additions to or deductions from wages paid; and
 - (5) Documentation of basis for payment of wage differential to employees of the opposite sex in the same establishment.
 - c. Certificate of age.
 - d. Written training agreements.
 - 2. Period of retention
 - a. Three years for all records under subpart a.
 - b. Two years for all records under subparts b, c and d.
- E. Overtime requirements
 - 1. Determination of regular rate.
 - a. Payments to be added to regular rate
 - (1) Non-discretionary bonuses; and
 - (2) Premium payments for night shift, on-call status, etc.
 - 2. Compensatory time
 - a. May be given as substitute for overtime pay.
 - b. Must be given at rate of 1 1/2 hours for every overtime hour.
 - c. Must have agreement with employee before performance of work unless
 - (1) Compensatory time was regular practice before April 15, 1986; and
 - (2) Employee was hired before April 15, 1986.
 - d. Limits on compensatory time
 - (1) Employee can accrue maximum of 480 hours if employees work in
 - (a) Public safety;
 - (c) Emergency response; or
 - (d) Seasonal work.
 - (2) All other employees may not accrue more than 240 hours of compensatory time.

- e. Employee must be paid for compensatory time at regular rate.
 - (1) For all hours accrued in excess of maximum; and
 - (2) For all accumulated compensatory time upon termination of employment.
- F. Exemptions from overtime requirements.
 - 1. General considerations regarding "white collar" exemptions
 - a. Job title is not controlling.
 - b. Exemptions construed narrowly against the municipality.
 - 2. Executive employee exemption requirements:
 - a. Primary duty is management of the enterprise or recognized department or subdivision;
 - b. Customarily and regularly directs the work of two or more other employees; and
 - c. Authority to hire or fire or effectively recommend hiring, firing or other change of status.
 - d. Minimum salary of \$913 per week or \$47,476 annually.
 - 3. Administrative employee exemption requirements:
 - a. Primary duty of performing office or non-manual work directly related to management policies or general business operations; and
 - b. Primary duty includes the exercise of discretion and independent judgment regarding matters of significance.
 - c. Minimum salary of \$913 per week or \$47,476 annually.
 - 4. Professional employee exemption requirements:
 - a. Separate tests for five different types of professionals:
 - (1) Learned professionals;
 - (2) Creative professionals;
 - (3) Teachers;
 - (4) Computer professionals; and
 - (5) Outside sales professionals.
 - b. Learned professional requirements:
 - (1) Minimum salary of \$913 per week; and
 - (2) Primary duty of performing work requiring advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction.

- c. Creative professional requirements:
 - (1) Minimum weekly salary of \$913; and
 - (2) Primary duty is performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.
 - d. Teacher requirements:
 - (1) No minimum salary;
 - (2) Primary duty of teaching, tutoring, instructing, or lecturing in an activity of imparting knowledge; and
 - (3) Employed and engaged in this activity as a teacher in an educational establishment.
 - e. Computer professional requirements:
 - (1) Minimum weekly salary of \$913; and
 - (2) Primary duty is:
 - (a) Application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications;
 - (b) The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs;
 - (c) The design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or
 - (d) A combination of the above duties, the performance of which requires the same level of skills.
 - f. Outside sales professional requirements:
 - (1) No minimum salary;
 - (2) Employed for the purpose of and customarily and regularly engaged away from the place of employment in making sales or obtaining orders or contracts for services; and
 - (3) Less than 20% of hours worked in a work week spent on non-sales work customarily performed by non-exempt employees.
5. Amusement or recreational establishment of employees
- a. Exemption from minimum wage and overtime pay requirements.

- b. Amusement or recreational establishment must
 - (1) Not operate for more than seven months in any calendar year; or
 - (2) During the preceding calendar year, its average receipts for any six months of such year were not more than 33 1/3 percentage of average receipts for the other six months of the year; and
 - (3) In the previous year, the establishment must have received at least 75% of its income within six months.
- 6. Mass transit employees
 - a. Time spent in charter activities not considered for purposes of computing overtime pay if
 - (1) Pursuant to a prior agreement, the time is not to be counted as overtime; and
 - (2) Charter activities are not a part of the employee's regular employment.
- 7. Special provisions applicable to employees engaged in fire protection and law enforcement activities
 - a. Definitions
 - (1) Employee engaged in fire protection activities refers to employee, including a firefighter, paramedic, emergency medical technician, rescue worker, ambulance personnel or hazardous material worker, who
 - (a) Is trained in fire suppression, has the legal authority and responsibility to engage in fire suppression, and is employed by a fire department of a municipality, county, fire district, or state; and
 - (b) Is engaged in the prevention, control, and extinguishment of fires or response to emergency situations where life, property, or the environment is at risk.
 - (2) Employee engaged in law enforcement activities refers to an employee who
 - (a) Is a uniformed or plain clothes member of a body of officers and subordinates who are empowered by statute or local ordinance to enforce laws designed to maintain public peace and order and to protect both life and property from accidental or willful injury, and to prevent and detect crimes;
 - (b) Has the power of arrest;

- (c) Is presently undergoing, or has undergone, or will undergo on-the-job training and/or a law enforcement course of instruction and study; and
 - (d) An employee who spends more than 20% of working time in non-exempt activities is not considered to be an employee engaged in law enforcement activities.
- b. Training
 - (1) Time spent in attending training required by the employer is compensable.
 - (a) Only time spent in actual training or retraining constitutes compensable hours of work.
 - (b) Other time is not compensable hours of work even where employee confined to a barracks 24 hours a day.
 - (c) Attending a training facility not required by employer but which may incidentally improve the employee's performance or prepare the employee for further advancement need not be counted as working time.
 - (d) Attendance at specialized or follow-up training which is required by law for certification of public and private employees within a particular governmental jurisdiction does not constitute compensable hours of work.
- c. Ambulance and rescue service employees may be treated as employees engaged in fire protection or law enforcement activities if
 - (1) Their services are substantially related to firefighting or law enforcement activities in that
 - (a) The ambulance and rescue service employees receive special training in the rescue of fire and accident victims or firefighters injured in the performance of their firefighting duties; and
 - (b) The ambulance and rescue service employees are regularly dispatched to fires, riots, natural disasters and accidents.
- d. Work period
 - (1) May have work period of from seven to twenty-eight consecutive days.

- (2) For employees engaged in fire protection activities no overtime compensation required until number of hours worked exceeds the number of hours which bears the same relationship to 212 as the number of days in a work period bears to 28.
- (3) For employees engaged in law enforcement activities, no overtime compensation is required until the number of hours worked exceeds the number of hours which bears the same relationship to 171 as the number of days in the work period bears to 28.

Work period (days)	Maximum hours standards	
	<i>Fire Protection</i>	<i>Law Protection</i>
28	212	171
27	204	165
26	197	159
25	189	153
24	182	147
23	174	141
22	167	134
21	159	126
20	151	122
19	144	116
18	136	110
17	129	104
16	121	96
15	114	92
14	106	86
13	96	79
12	91	73

Work period (days)	Maximum hours standards	
	<i>Fire Protection</i>	<i>Law Protection</i>
11	83	67
10	76	61
9	68	55
8	61	49
7	53	43

e. Sleeping and meal time

- (1) Where the employer has elected to use the special work period available to fire protection employees, sleep and meal times cannot be excluded from compensable hours where
 - (a) The employee is on duty less than twenty-four hours; or
 - (b) The employee is on duty for exactly twenty-four hours.
- (2) Sleep and meal time may be excluded if the employee is on duty for more than twenty-four consecutive hours.

HIRING AND DISCIPLINE FOR MUNICIPALITIES

A. Sample interview format

1. Are you working now? (Get name of company and its location.)
2. If not presently employed, where were you last employed?
3. When did you begin working with your previous employer?
4. What type of business is it?
5. What, specifically, did you do there?
(Include **all** jobs performed for previous employer.)
6. Who was your immediate supervisor?
7. Is it all right to ask him to evaluate your performance there?
8. What did you like best about your work? Dislike?
9. What was your wage rate?
10. Why did you leave?

11. [Go through this series of questions for **all** previous employers; make sure the applicant explains any significant gaps in his employment history.]
12. Have you worked at any other jobs that we haven't discussed?
13. Where did you live?
14. How dependable is your method of transportation?
15. Do you plan to hold any other jobs during your employment with us?
16. Ask for documents verifying the applicant's identity and right to work.
17. Have you ever been **convicted** of a crime? What were the details surrounding your conviction?
18. Why did you list the particular persons on your application as personal references? (Determine relationship between the applicant and each reference.)
19. Is the application form completely accurate? (If the application form isn't complete, allow the applicant to complete the form.)
20. How much working time did you lose in your previous job? (Verify this with previous employer.)

B. Basic considerations for employment applications. Consider the following for use in your application forms

1. Maintaining a log of all persons who come to the personnel office, containing their name, address and reason for the visit.
2. Requiring a job applicant to complete the form in your personnel office.
3. Requiring the applicant to sign and date the form.
4. Requiring the applicant to indicate the specific job for which he is applying.
5. Requiring the applicant to give a complete job history and explain significant gaps in employment.
6. Including the statement that the employer is an equal opportunity employer.
7. Expressly stating on the application that misrepresentations by the applicant will result in **not** being considered for the position and if hired may be grounds for immediate termination.
8. Including on the application form an express statement that the application will be active only for a specific period of time and that the applicant must reapply to be considered for openings after that date.
9. Requesting personal reference from non-relatives.

10. Immediately preceding the employee's signature including a statement authorizing the employer to make investigations and inquiries of the applicant's personal, employment and other related matters necessary to arrive at an employment decision. Furthermore, make sure the statement releases prior employer and other persons from which the information is to be received or released from any liability.
11. Providing the job applications to anyone who requests one.

You should avoid

1. Inquiries about race, age, color, sex, religion, or national origin.
2. Questions about health not specifically related to essential function of job.
3. Questions about pregnancy.
4. Questions about an applicant's support for or membership in labor organizations.
5. Questions about arrest records. However, you can ask about prior convictions.
6. Questions about garnishments.
7. Any question that you cannot articulate a legitimate, non-discriminatory and job-related reason for needing the information.
8. Making extra notations on the job application form.
9. Indicating that any particular level of education is required for hiring.

C. Disciplinary policy and procedure.

1. Object of disciplinary program
 - a. Discipline should insure fair and equal treatment of all employees.
 - b. All discipline should be based upon corrective/positive approach.
 - c. The action taken must be done as soon as possible.
 - d. The action taken must be appropriate.
2. Written rules of conduct
 - a. Make sure you and your employees know rules.
 - b. Give each employee copies of rules or keep them posted on bulletin board.
 - c. Know difference between major and minor offenses.
3. Timing
 - a. Recognition of problem.
 - b. Immediate action needed.

4. Initial Procedure
 - a. Gain control of situation.
 - b. Resume work.
 - c. List witnesses.
 - d. Investigate incident; write investigation report, if necessary.
 - e. Investigatory suspension.
 5. Verbal warnings
 - a. Use only a teaching tool.
 - b. Should not be part of progressive discipline.
 6. Written warning procedure
 - a. Keep warning forms accessible.
 - b. Complete entire form.
 - c. Copy offense from rules word for word if possible.
 - d. Sign and date form.
 - e. Have employee sign acknowledging receipt of form.
 - f. Give employee a copy of warning.
 - g. Forward additional copy to personnel for insertion in folder.
 7. Disciplinary meeting
 - a. Meeting only should include employee, spokesperson and one witness.
 - b. Always use corrective/positive approach.
 - c. Never discipline in anger.
 - d. Always discipline in private.
 - e. Never discipline before investigating.
 - f. Take action in a timely manner.
 - g. Never discuss disciplinary action with other employees.
 8. Performance problems
 - a. Utilize same basic procedure.
 - b. Use of performance improvement form.
 - c. Follow up.
- D. Termination procedure
1. Authority
 - Code Charter: All employees shall hold office at the pleasure of the

governing authorities and may be discharged by such governing authorities at any time, either with or without cause. The Mayor may place an employee on leave of absence with pay until the board of Aldermen meet, but can't discharge an employee. MCA § 21-3-5

- Commission: All employees shall hold office at the pleasure of the governing authorities and may be discharged by such governing authorities at any time, either with or without cause. MCA § 21-5-9
- Mayor – Council:
 - Mayor may discharge a department head. MCA § 21-8-23
 - Department Heads, with approval of the mayor, may discharge employees for their department subject to the provisions of any ordinance establishing a civil service system. MCA § 21-8-23
 - Council may discharge the clerk of council and deputy clerks. MCA § 21-8-13
- Council – Manager:
 - The City Manager may be removed at any time by a vote of a majority of all the members of the council. MCA § 21-9-27
 - City Manager may remove all department heads and other employees of the city. MCA § 21-9-29

2. Prior disciplinary procedures

- a. Has the employee received the requisite written warnings?
- b. Suspension?
- c. Did the employee have fair advance notice of the standards by which his behavior/performance would be judged?
- d. Did the employee have an opportunity to take corrective action?
- e. Did the employee have a chance to give his or her side of the story?

3. Prior documentation

- a. Would the employee's termination offend public policy?
 - (1) Terminated for jury duty or exercising political beliefs?
 - (2) Terminated for refusing to participate in any activity which would constitute a violation of the law?
 - (3) Terminated to retaliate against employee's reporting any alleged violation (e.g., EEOC or Workers' Compensation) to authorities?
- b. If the employee was accused of dishonesty or serious misconduct, did a fair and honest investigation support the allegations?
 - (1) Are there any other employee suspects?

- (2) Are the witnesses credible?
- (3) Is the action suited to the infraction?
- (4) Is the employee's conduct sufficient to justify termination at this time?
- (5) Are there extenuating circumstances or mitigating factors which justify a lesser penalty?
- (6) Does the employee's prior disciplinary record support termination?
- (7) Have other employees engaged in similar conduct been terminated?
- (8) Are both the documentation and the decision to terminate timely?
- (9) Is the decision substantiated with facts rather than solely subjective opinion?
- (10) Is the articulated reason for the discharge the real reason rather than pretext?
- c. Termination for poor work performance
 - (1) Do training records indicate poor work performance?
 - (2) Are performance evaluations based on objective criteria directly related to job skills?
 - (3) Does the employee have a satisfactory or better job appraisal, work commendations, recent promotions, raises or bonuses which negate the articulated reason for discharge?
- 4. Protected groups
 - a. Race
 - b. Sex
 - (1) Generalized presumptions of weakness or frailty?
 - (2) Reproductive concerns?
 - (3) Childbearing or child rearing concerns?
 - (4) Unwanted sexual advances or harassment?
 - c. Marital status
 - (1) Presumption that employee will not want to travel or work a shift because married?
 - (2) Terminated because of anti-nepotism policy?
 - d. National origin and ancestry

- e. Religion
- f. Age (over 40)
 - (1) Generalized presumption that "time is passing him by" or that he is incapable of keeping up with technological innovations?
 - (2) Generalized presumptions of weakness or frailty?
 - (3) Attempts to cut direct costs by terminating employees with greater benefits and seniority?
- g. Disability
- h. Veteran status
- 5. Termination procedure
 - a. Does the employee have a property interest in job?
 - (1) If so, must have cause to terminate.
 - (2) Must allow employee notice and hearing.
 - (3) May want to suspend pending results of hearing.
 - b. Employees should be given all wages and paid benefits at time of discharge.
 - c. The employee's complete disciplinary record should be reviewed with employee at termination.
 - d. Employee should be given a written reason for termination.

ACQUISITION OF PROPERTY
(Real and Personal)
MS Attorney General's Office

Listed below are the statutes that allow municipalities to purchase real and personal property. Note that MCA § 43-37-3 has to be followed for any purchase of real property that uses public funds for the purchase.

MCA Section 17-3-11	Acquiring Property for Convention Centers
MCA Section 17-5-5	Acquisition of buildings and property for public works
MCA Section 17-9-1	Leasing of lands in name of the municipal corporation for oil, gas and mineral exploration and development
MCA Section 21-17-1	General Powers of municipality (includes authority to acquire property)
MCA Section 21-27-7	Acquisition of water works
MCA Section 21-27-23	Acquisition of personal and real property for operation of public utility systems
MCA Section 21-27-167	Acquisition of property for waste collection purposes
MCA Section 21-33-69	Lands struck off to municipality for failure to pay municipal taxes
MCA Section 21-33-73	Acquisition of property at state and county tax sales
MCA Section 21-37-1	Acquisition of property for town hall, schools, fire and police stations and all necessary buildings for offices and court of municipality and such other purposes
MCA Section 21-37-21	Acquisition of private cemeteries
MCA Section 21-37-23	Establishing and operating parking facilities
MCA Section 21-37-47	Acquisition of property by eminent domain (see also MCA Section 11-27-81 - Quick Take procedure)
MCA Section 21-37-49	Acquisition of lands sold to state for delinquent taxes

MCA Section 21-38-5	Acquisition (leasing and subleasing) from the United States for parks and recreation
MCA Section 29-1-71	Lands needed for national defense project
MCA Section 31-7-13	Acquisition of commodities and equipment (personal property) (see monetary thresholds)
MCA Section 31-7-59	Purchases of commodities by municipality from United States General Services Administration
MCA Section 31-8-1	Acquisition of real property through rental contracts
MCA Section 33-1-3	Support of Mississippi National Guard
MCA Section 35-3-3	Land acquisition and building construction funds for benefit of veterans' hospitals or homes
MCA Section 37-7-473	Disposal by school district to municipality for certain purposes
MCA Section 37-29-267	Acquisition of lands for junior colleges
MCA Section 39-3-1	Acquisition of lands for library purposes
MCA Section 43-35-17	Eminent domain authority (for urban renewal purposes)
MCA Section 43-37-3	Acquisition of real property using public funds
MCA Section 55-9-1	Acquisition of land for recreational purposes
MCA Section 57-1-23	Acquisition of property for economic development purposes
MCA Section 57-3-9	Acquisition of property in furtherance of agriculture and industry programs
MCA Section 57-5-17	Acquisition of property for industrial park development
MCA Section 57-5-21	Eminent domain authority for industrial park development
MCA Section 61-3-15	Acquisition of airports by airport authority
MCA Section 61-3-17	Eminent domain authority by airport authority
MCA Section 61-5-5	Acquisition of property for airport purposes

MCA Section 61-5-7	Eminent domain authority for airport property
MCA Section 61-9-1	Power to incorporate airport (including authority to acquire land for airport outside of municipal limits)
MCA Section 65-25-9	Acquisition of bridges and property
MCA Section 65-25-33	Powers of municipality, generally, with respect to bridges
MCA Section 77-5-23	Municipal electric authority powers
MCA Section 77-5-155	Powers of electric district
MCA Section 77-5-157	Eminent domain authority by electric district
MCA Section 77-5-405	Powers of municipality regarding electric power
MCA Section 77-5-707	Powers of municipality for joint agency regarding electric power
MCA Section 77-5-725	Powers of joint agency regarding electric power
MCA Section 77-6-15	Municipal gas authority powers
MCA Section 77-6-27	Acquisition of property by gas authority

DISPOSITION OF PROPERTY

(Real and Personal)

MCA Section 3-5-17	Lease to United States Government for national defense project
MCA Section 17-17-127	Lease/Sale agreements for property for solid waste disposal projects
MCA Section 17-17-345	Government contracts and cooperation with authorities in furtherance of the Mississippi Regional Solid Waste Management Authority Act
MCA Section 17-25-25	Disposal of personal property belonging to municipality <i>(See below for detailed procedure)</i>
MCA Section 21-17-1	General Powers of municipality (including authority to sell/lease property)
MCA Section 21-17-5	“Home rule” authority (provided not in direct conflict with Miss. Constitution or statutes)
MCA Section 21-19-49	Conveyance of buildings and property to school districts
MCA Section 21-19-59	Airports for college’s use
MCA Section 21-27-33	Disposal of public utility systems
MCA Section 21-33-75	Sale or lease of land after tax redemption period has expired
MCA Section 21-37-53	Disposition of land not purchased with public funds
MCA Section 21-37-55	Disposition of land in slum, blighted or urban renewal areas to urban renewal agencies by certain municipalities
MCA Section 21-39-21	Disposition of lost, stolen, abandoned or misplaced personal property
MCA Section 29-1-15	Conveyances to state by municipalities and counties for hospitals and other public purposes
MCA Section 31-8-7	Leasing for construction of buildings; State and federal agencies
MCA Section 33-1-3	Support to Mississippi National Guard

MCA Section 43-35-15	Municipal powers regarding urban development
MCA Section 57-1-23	Municipal authority regarding economic development property
MCA Section 57-1-45	Disposal of economic community development
MCA Section 57-5-13	Sale of all or part of industrial park property
MCA Section 57-7-1	Disposal of surplus airport land or other lands not needed for airport or other governmental purposes
MCA Section 61-3-19	Disposal of airport property by airport authority
MCA Section 61-5-9	Disposal of airport property
MCA Section 61-5-91	Lease of airport grounds
MCA Section 77-5-23	Municipal electric authority powers
MCA Section 77-5-155	Powers of electric district
MCA Section 77-5-725	Powers of joint agencies regarding electric power
MCA Section 77-6-15	Municipal gas authority powers

Disposal of personal property – MCA § 17-25-25

- (1) *General.* The governing authority of a county or municipality may sell or dispose of any personal property or real property belonging to the governing authority when the property has ceased to be used for public purposes or when, in the authority's judgment, a sale thereof would promote the best interest of the governing authority. For purposes of this section, the term "personal property," includes, but is not limited to, equipment, vehicles, fixtures, furniture, firearms and commodities.
- (2) *Public sale.* At least ten (10) days before bid opening, the governing authority shall advertise its acceptance of bids by posting notices at three (3) public places located in the county or municipality that the governing authority serves. One (1) of the three (3) notices shall be posted at the governing authority's main office. The governing authority may designate the manner by which the bids will be received, including, but not limited to, bids sealed in an envelope, bids made electronically or bids made by any other method that promotes open competition. The proceeds of the sale shall be placed in a properly approved depository to the credit of the proper fund.

- (3) *Private sale.* Where the personal property does not exceed One Thousand Dollars (\$ 1,000.00) in value, the governing authority, by a unanimous approval of its members, may sell or dispose of the property at a private sale. The proceeds of the sale shall be placed in a properly approved depository to the credit of the proper fund.
- (4) *Public auction.* The governing authority of a county or municipality may sell or dispose of any surplus personal or real property at a public auction that shall be conducted by an auctioneer or auction company that meets the standards established by the State Department of Audit and is hired by the governing authority of a county or municipality.
- (5) If the governing authority finds that the fair market value of the personal property or real property is zero and this finding is entered on the minutes of the authority, then the governing authority may dispose of such property in the manner it deems appropriate and in its best interest, but no official or employee of the governing authority shall derive any personal economic benefit from such disposal.
- (6) If the property may be of use or benefit to any federal agency or authority, another governing authority or state agency of the State of Mississippi, or a state agency or governing authority of another state, it may be disposed of in accordance with Section 31-7-13(m)(vi).
- (7) Nothing contained in this section shall be construed to prohibit, restrict or to prescribe conditions with regard to the authority granted under Section 17-25-3.

BLIGHTED PROPERTY 2016 Supplement

MCA § 21-19-11 provides a municipality an avenue to clean property that has been declared to be a menace to the public health, safety, and welfare of the community.

Determining if Property/Parcel of Land is a Menace - MCA § 21-19-11

- Determination – Conduct Hearing
 - The property owner is always entitled to Due Process of Law and to a hearing to determine if the property is a menace.
 - Municipality can conduct a hearing on its own motion to set the hearing.
 - Or upon the receipt of a petition signed by a majority of the neighbors that live within 400 feet of the blighted parcel.
- Notification
 - Notice must be provided to property owner by U.S. Mail two (2) weeks before the hearing date.
 - Mail to address of the subject property.
 - Mail to the address where the ad valorem tax bill for the blighted property is sent.
 - Recommended to send the notice by regular mail and certified mail so that a receipt of notice is available.
 - Notice must be given to all owners of subject property.
 - Notice must be given to the owner deriving title through the deceased property.
 - There is no requirement that lienholders receive notice, but is recommended.
 - Recommended to send a notice addressed to “Occupant” if the property is rented.
 - Notice must be posted for at least two (2) weeks prior to the hearing date on the blighted property alleged to be in need of cleaning AND at city hall or the usual place in the municipality where the municipality posts such notices.
 - The language within the notice must include language that informs the property owner that if at the hearing the property is deemed in need of cleaning the city will have the authority to enter the blighted property for up to one (1) year from the hearing date without another hearing as long as notice is posted on the blighted property AND at city hall at least seven (7) days prior to the blighted property being reentered for cleaning.

- A copy of the notice mailed and the notice posted must be recorded in the minutes of the governing authority in conjunction with the hearing that is mandated.
- Conduct Hearing
 - Purpose of the hearing is to determine whether the property is a menace to the public health, safety and welfare of the community.
 - Decision may be appealed within 10 days of the hearing. MCA § 11-51-75.
- Cleaning Property
 - If the owner does not clear violations after the property has been determined to be a menace, then the city can use its employees or contract to clean the property. Do not begin the cleaning process until the 10-day period of appeal has expired. MCA § 11-51-75.
 - The municipality will have the authority to clean the land which includes:
 - Cutting grass and weeds
 - Filling cisterns
 - Removing rubbish
 - Abandoned or dilapidated fences
 - Outside toilets
 - Abandoned or Dilapidated Buildings
 - Slabs
 - Personal Property (shall not be subject to MCA § 21-39-21)
 - Other debris
 - Draining of cesspools and standing water
 - The municipality will only be allowed without further notice and hearing to enter the property six (6) times in the twelve-month period following the hearing to remove abandoned or dilapidated buildings, slabs, dilapidated fences and outside toilets.
 - The municipality will only allowed without further notice and hearing to enter the property twelve (12) times within a twenty-four month period to conduct yard work and remove personal property.
 - Work can be done by the city or a third party. Bid procedures for construction projects should be followed for cleaning of lots if a third party is used to clean the lot.

- Cost and Penalty Levied Against Property Owner
 - The governing authority may by resolution adjudicate the actual cost of the cleaning of the property and may also impose a penalty on the land owner. The penalty must not exceed One Thousand Five Hundred Dollars (\$1,500.00) or fifty percent (50%) of the actual cost, whichever is greater. (Cost + Greater Penalty = Amount Owed by Property Owner).
 - Actual costs include actual cost of work of cleaning but also may include any administrative and legal cost incurred by the municipality.
 - The expenses of cleaning the property must not exceed an aggregate amount of Twenty Thousand Dollars (\$20,000.00) per year except for the removal of hazardous substances, or the fair market value of the blighted property that was cleaned, whichever is less.
 - The aggregate cost of removing hazardous substances will be the actual cost of such removal to the municipality and shall not be subject to the Twenty Thousand Dollar (\$20,000.00) per year limitation.
 - The municipality may assess the same penalty for each time the property or land is cleaned.
 - The penalty shall not be assessed against the State of Mississippi upon request for reimbursement under MCA § 29-1-145, nor shall a municipality clean a parcel owned by the State without first giving notice.
 - The cost and penalty may become a civil debt against the property owner, or at the option of the governing authority an assessment against the formerly blighted property.
 - If the governing authority declares (by resolution) that the cost and penalty will be collected as a civil debt, then the governing authority may sue the owner of the property. The governing authority can also request as part of its award, court costs, reasonable attorney's fees, and interest from the date the property was cleaned.
 - If the governing authority does not declare a civil debt then the assessment shall be a lien against the property and may be enrolled in the office of the circuit clerk of the county as other judgments are enrolled, and the tax collector of the municipality shall, upon order of the board of the governing authorities, proceed to sell the land to satisfy the lien as now provided by law for the sale of lands for delinquent municipal taxes.
 - All assessments levied shall become delinquent at the same time municipal ad valorem taxes become delinquent (February 1) and the same procedures should be followed as if there are delinquent taxes owed.
 - The lien against the property shall be an encumbrance upon the property and shall follow title of the property.

- Appeal
 - All decisions may be appealed in the same manner other appeals from municipal boards or courts are appealed.

*Nothing in this Section shall prevent any municipality from enacting criminal penalties for failure to maintain property so as not to constitute a menace to the health, safety, and welfare of the public.

PROPERTY ACCOUNTING SYSTEM
MS Municipal Audit and Accounting Guide, 2010 Edition
Office of the State Auditor

Real and personal property belonging to the municipality must be accounted for in the municipality's fixed asset records. The following fixed assets accounting system is prescribed for this purpose. The complete Fixed Assets Manual is located on the Audit Department website www.osa.ms.gov.

Introduction to Fixed Assets

Fixed assets are those assets of a long-term nature intended to be held or used by the municipality. This definition generally includes:

- land,
- infrastructure,
- buildings,
- improvements other than buildings,
- equipment and
- furniture

The importance of developing and maintaining a complete and accurate accounting of fixed assets cannot be emphasized too strongly. The municipal governing authority is responsible for the custody of its assets (MCA § 21-17-5). This protective custody cannot be accomplished without complete and accurate records.

Another reason for developing and maintaining complete and accurate fixed asset records is to allow for accurate financial reporting. The value of fixed assets for all local governments is substantial and usually far greater in value than current assets. When records are not adequate, an audit opinion will be *qualified* for fixed assets, which means the auditor does not have enough evidence to offer an opinion.

Capital assets are major assets that benefit more than a single fiscal period. By definition, any asset that benefits more than one fiscal period potentially could be classified as a capital asset. As a practical matter, however, municipalities should capitalize only their higher cost assets. Municipalities must also maintain adequate control over all assets, including lower cost capital assets. Therefore, different thresholds (dollar values) have been established for recording fixed assets for legal compliance purposes and capitalizing assets for reporting purposes.

All deletions of fixed assets, regardless of method, shall be entered on the minutes of the governing board or council.

A ledger for each fixed asset is used for providing detailed information about the various assets. These subsidiary records are to be used for accountability of general fixed assets of the local government. Each ledger sheet should contain a description of the asset, including any identifying markings, its cost or estimated fair market value at acquisition, the date purchased, the location of

the assets and the identification number, if applicable, which appears on the asset. Sample ledgers for fixed assets are shown in Exhibits C through I. Any changes, such as changes in location, should be recorded in the ledgers. At all times, the total of all individual ledger pages should equal the total on the "Fixed Assets Ledger," Exhibit B.

Classification of Fixed Assets

The following types of classifications should be used to account for fixed assets:

Land -- *Land* includes the amount of investment held in real estate other than buildings and/or other improvements. All land, as herein defined, should be capitalized without regard to its size or value.

Buildings -- *Buildings* include all local government-owned buildings, except those in such poor condition that they cannot serve any present or future useful purpose. Permanently installed fixtures to or within the building are considered a part of the building. The costs of major improvements to a building, such as additions or renovations, should be capitalized and added to the value of the building.

Infrastructure -- *Infrastructure* includes long-lived capital assets that normally are stationary in nature and normally can be preserved for a significantly greater number of years than most capital assets. Examples of infrastructure assets include roads, bridges, tunnels, drainage systems, water and sewer systems, dams and lighting systems.

Improvements Other Than Buildings -- This is a fixed asset account which reflects acquisition value of permanent improvements other than buildings, which add value to land. Examples are fences, retaining walls, sidewalks and pavements.

Construction-in-progress -- *Construction-in-progress* includes all partially completed projects for the construction of an asset. The cost of construction-in-progress should not be capitalized until the construction is completed. In the interim, the cost of construction-in-progress should be recorded as an expenditure of the appropriate capital projects fund.

Equipment (Road Equipment and Other Furniture and Equipment) -- *Equipment* includes movable property of significant value having a useful life that extends beyond one year. Equipment with a value of \$1,000 and over should be capitalized. See "Equipment Accounting Procedures" for exceptions. A local government may consistently exercise the option to capitalize selected items of lesser value. Each local government should establish policies with respect to those items of equipment of lesser value that are to be capitalized.

Leased Property Under Capital Leases -- Lease purchase agreements are contractual agreements which are termed "leases," but which, in substance, amount to purchase contracts.

Data Elements of Fixed Assets

Data elements consist of identifying characteristics that will be recorded for fixed assets. It is important that the municipality initially identify the data elements to satisfy both internal and external reporting requirements.

The municipality must capture the following required data elements for all fixed assets:

- Major asset class
- Fund number
- Acquisition date
- Description of asset (Manufacturer, year model, model number, etc.)
- Vendor Serial number
- Property control number
- Location
- Warrant (check) number
- Method of Acquisition (Purchased, constructed, donated, etc.)
- Acquisition cost or value
- Method of disposition
- Minute book and page number authorizing purchase or disposition
- Date of disposition
- Trade-in Amount
- Sale Proceeds
- Special conditions
- Other relevant information (related board orders, court/investigation cases, etc.)

In addition to the required data elements listed above, the municipality must capture the following required data elements for assets that exceed capitalization thresholds:

- Useful life of asset
- Salvage value of asset
- Function
- Percentage of use by function if not 100%
- Current year depreciation expense
- Accumulated depreciation

Guidelines to Develop Cost of Fixed Assets

The following are guidelines to use in determining the total acquisition cost of fixed assets which are to be used in establishing a value for the asset and which are to be recorded in the subsidiary ledgers:

Land (Exhibit C)

The acquisition cost of all parcels of land includes all expenditures in connection with its procurement, including the following:

- Purchase price
- Appraisal and negotiation fees
- Title search fees
- Surveying fees
- Cost of consents
- Payment of damage claims
- Clearing land for use
- Demolishing or removing structures
- Filing costs

Receipts from the sale of land subsequent to the acquisition of the land should be credited against the cost recorded in the subsidiary ledger.

Land should be recorded at cost or, if donated to the municipality, at fair market value. It will be maintained on the inventory, regardless of purchase price.

Buildings (Exhibit D)

The acquisition cost of buildings, structures and improvements to buildings includes all expenditures in connection with the acquisition and construction including the following:

- Purchase price or cost of construction
- Fixtures attached to the structure
- Professional fees (architect and/or engineering fees, etc.)
- Cost of permits and licenses
- Payment of damage claim
- Insurance premiums

All buildings and building improvements are to be included in this classification regardless of value for legal compliance purposes. Buildings and building improvements with a cost in excess of \$50,000 should be capitalized for reporting purposes. The straight line method should be used to calculate depreciation expense based on a useful life of 40 years and a 20% salvage value. Any building or building improvement with a value less than the required capitalization threshold will be an expense in the year of acquisition. A memo amount should be recorded in the fixed asset records to document cost.

The acquisition cost of buildings, structures and improvements to buildings should be reduced by receipts for the sale or salvage of materials initially charged to cost of acquisition or construction costs. These would include discounts, allowances and rebates secured, and amounts recovered through the surrender of liability and/or casualty insurance.

Buildings should be recorded at cost or at fair market value (of the building at the time it was donated to the municipality). All buildings, including portable and temporary building structures, will be maintained on the inventory, regardless of purchase price.

Additions to buildings are new and separate units, or extensions of existing units, and are considered fixed assets. The cost of additions to existing assets should be capitalized and added to the value of existing assets.

Alterations to buildings are changes to the physical structure of fixed assets that neither materially add to the value of an asset nor prolong its expected life. As such, alterations should not be capitalized.

Infrastructure (Exhibit E)

Acquisition cost for infrastructure includes the following expenditures:

- Construction costs (i.e. contract amounts, payroll, fringe benefits, rental value for equipment, etc.)
- Legal fees
- Engineering fees
- Right of way costs
- Payment of damage claims connected with construction
- Materials

All infrastructure is to be included in this classification regardless of its value for both legal compliance and reporting purposes. The straight line method should be used to calculate depreciation expense for roads based on a useful life of 20 years and a 30% salvage value. The straight line method should be used to calculate depreciation expense for concrete bridges, based on a useful life of 50 years and no salvage value, and timber bridges, based on a 30 year useful life and no salvage value.

Improvements Other Than Buildings (Exhibit E)

Acquisition cost includes all expenditures in connection with their acquisitions, including the following:

- Purchase price, contract price or job order cost
- Professional fees (architects, attorneys, appraisers, engineers, financial advisors, etc.)
- Payment of damage claims
- Insurance premiums

All Improvements Other Than Buildings are to be included in this classification regardless of value for legal compliance purposes. Improvements Other Than Buildings with a cost in excess of \$25,000 should be capitalized for reporting purposes. The straight line method should be used to calculate depreciation expense based on a useful life of 20 years and a 20% salvage value. Improvements Other Than Buildings with a value less than the required capitalization threshold

will be an expense in the year of acquisition. A memo amount should be recorded in the fixed asset records to document cost.

Acquisition cost of improvements other than buildings, if applicable, should be reduced by receipt for the sale of materials initially charged to the cost of acquisition.

The category for improvement other than buildings is the classification created for the capital outlay of infrastructures (roads, bridges, parking lots, sidewalks and lighting) and other improvements other than buildings. A theoretical distinction between capital outlay and maintenance operation for improvements other than buildings is difficult to determine. The following definitions and guidelines are to assist the municipalities in distinguishing between maintenance and capital outlay:

- *Maintenance* is defined as expenditures that neither materially add to the value of an asset nor appreciably prolong its life. Rather, maintenance keeps an asset in an ordinary, efficient operating condition. As such, maintenance costs should not be capitalized.
- *Capital outlay* is defined as expenditures resulting in the acquisition of/or addition to fixed assets that materially add to the value of an asset and prolong its life. Capital outlay should be capitalized.

All new construction, reconstruction, major repairs, resurfacing and altering of surfaces costing in excess of \$1,000 should be reported as capital outlay.

Construction-in-Progress (Exhibit F)

Construction-in-Progress represents a temporary capitalization of labor, materials, equipment and overhead cost of a construction project. The cost is accumulated the same as building cost and improvements other than building cost.

When the project is completed, cost in the Construction-in-Progress account is classified to one or more of the other major asset classes.

Equipment (Mobile Equipment and Other Furniture and Equipment) (Exhibits G and H)

The acquisition cost of equipment includes all expenditures in connection with its procurement, including the following:

- Purchase price
- Transportation charges
- Installation cost
- Other expenditures required to place the asset in its intended state of operation

All Mobile Equipment with a value of \$1,000 or more and those items required to be included regardless of value are to be included in this classification for legal compliance purposes. Mobile Equipment with a cost in excess of \$5,000 should be capitalized for reporting purposes. The straight line method should be used to calculate depreciation expense based on a useful life of 5 years for vehicles and equipment and 10 years for heavy equipment and a 10% salvage value.

Mobile Equipment with a value less than the required capitalization threshold will be an expense in the year of acquisition. A memo amount should be recorded in the fixed asset records to document cost.

Equipment with a value of \$1,000 and a useful life expectancy of at least one year should be reported on inventory.

Leased Property Under Capital Leases (Exhibit I)

Capital leases for municipalities are authorized by Section 31-7-13(e), Miss. Code Ann. (1972). If the purchases are under this authority, they must obtain the following information:

The municipality should have the company from which the equipment and/or furniture was purchased to furnish it with an amortization table. The amortization table should have the payment date, interest rate, total payment, interest, principal and contract payable for each year of the lease purchase. It is important to have the cash price, the amount of each annual payment, commission and other cost associated with the lease purchase. Pertinent information about the company that sold the furniture and/or equipment to the municipality should be kept on file, i.e., name of company, location, etc.

A lease purchase ledger, Exhibit I, must be prepared at the beginning of the capital lease-sale agreement on each capital lease. The principal of the lease-purchase should be the amount recorded. It should be filed separately from the equipment inventory sheets until title has been transferred to the municipality. At that time, it should be added to the equipment and/or furniture inventory.

Equipment Accounting Procedures

All municipalities are required to have and maintain complete and current inventory lists of each property item with a cost to the municipality of \$1,000 or more. Donated equipment is recorded based on its fair market value.

Some equipment should be included on a municipality's inventory list, regardless of the price paid by the municipality to acquire the item or the fair market value of the items. Weapons, audio visual equipment, power tools, refrigerators, televisions, lawn maintenance machinery, chain saws, air compressors, welders, generators and similar type items are examples of equipment to be considered when the municipality adopts its policy.

Items acquired through surplus property shall be added to a municipality's inventory list at fair market value; that is, surplus property items are added at the appraised value.

In the event a municipality is required to include an item on its property inventory list using the item's fair market value, the municipality will be required to maintain adequate documentation to justify how the fair market value was obtained.

A municipality may include other property items on its inventory list, regardless of price, provided the policy is consistently applied and recorded in the board's minutes.

Municipalities are free to label property items not included on their inventory lists with tags entitled "Property of _____ (Name of Municipality)." Items deleted from property inventory lists must have their inventory numbers removed from the items. Items required by this rule to be included on property inventory lists will continue to be labeled with numbered tags or other permanently affixed numbering such as enamel paint.

For the purposes of these rules, "property" is defined as all furniture, vehicles, equipment and other personal property having a useful life expectancy of at least one year and with a cost of \$1,000 or more. "Property" does not include the following: carpeting, draperies, installed floor-to-ceiling partitions, window shades or blinds, mattresses and box springs, hot water heaters, installed drinking fountains, museum accessions, library books, films or archival collections.

Other Fixed Assets Accounting Procedures

All other fixed assets, property rights and/or limitations not accounted for within the system defined in this chapter should be accounted for in supplemental accounting records. The supplemental accounting records should be designed in accordance with local policy to provide a permanent record of rights and limitations. Examples of an "other fixed asset rights and limitations" are mineral rights and land use reversion clauses.

Capital Assets Financial Reporting Procedures

In addition to accounting for property for compliance with the state auditor's property accountability regulations, municipalities must also maintain records for financial reporting purposes. The municipality's legal reporting requirements and additional reporting initiatives of the board or council will require the adoption of additional property record policies.

These policies include capital asset thresholds for financial reports, useful lives of property, and salvage values of property. Capital asset threshold refers to the value a piece of property must have for it to be included in the financial report, useful life is the amount of time a piece of property is productive, and salvage value is the worth of the property at the end of its useful life .

Financial reporting policies should be developed with a clear understanding of legal requirements, cost and benefits. For example, Section 21-35-31 and State Auditor's regulations may qualify a municipality for a financial audit report that does not require property reporting. In this case these additional records may not be required. This office recommends municipalities consult with the preparers and auditors of their financial report and the users of their financial statements to determine their financial reporting policies and capital assets accounting requirements.

Recommended Thresholds, Useful Lives, and Salvage Values for Financial Reporting

This office recommends the following capital asset thresholds, useful lives and salvage values for financial reporting purposes.

Capital Asset Thresholds:

Land	N/A
Infrastructure	N/A
Furniture, Vehicles, and Equipment	\$ 5,000
Improvements other than Buildings	\$25,000
Buildings	\$50,000

Useful Lives:

Computer Equipment and Peripherals	3 years
Vehicles and Equipment	5 years
Heavy Equipment (backhoes, dozers, front-end loaders, tractors, etc.)	10 years
Furniture and Fixtures	7 years
Improvements other than Buildings	20 years
Buildings	40 years
Infrastructure:	
Roads	20 years
Concrete bridges	50 years
Timber bridges	30 years

Salvage Values:

Computer Equipment	1 %
Furniture	10%
Vehicles and Heavy Equipment	10%
Improvements other than Buildings	20%
Buildings	20%
Roads	30%
Bridges	0%

Recommended Depreciation Rates For Financial Reporting

Depreciation of property accounted for financial reporting (within the “Capital Asset Threshold”) is also necessary. Depreciation is defined as the allocation of the cost of the asset over its useful life. Factors to consider in the calculation of depreciation are: cost, useful life, salvage value.

Depreciation may be calculated in different ways but the easiest and most efficient is the straight-line method. A full year’s depreciation expense should be taken for all purchases and sales of capital assets during the fiscal year. Depreciation may be calculated at the end of the fiscal year.

Listed below are the suggested useful lives, salvage value and depreciation rate for fixed assets:

Type of Asset	Useful Life	Salvage Value % of cost	Depreciation Rate
Buildings	40	20%	2.5 %
Improvements Other Than Buildings	20	20%	5 %
Infrastructure			
Roads	20	30%	5 %
Bridges-Concrete	50	0%	2 %
Bridges-Timber	30	0%	3.33%
Equipment			33.33%
Computer Equipment	3	1%	
Furniture & Fixtures	7	10%	14.30%
Moveable	5	10%	20 %
Mobile			
Cars, Trucks	5	10%	20 %
Heavy Equipment	10	10%	10 %

Property Number System

There are many methods of numbering fixed assets. The primary rule in any numbering scheme is to select a logical and uniform procedure.

Categorize the several classifications of general fixed assets and assign blocks of numeric codes to each category.

SAMPLE CLASSIFICATION SYSTEM

<u>General Fixed Asset Categories</u>	<u>Property Number</u>
Equipment:	
Mobile Equipment	001 - 199
Office Machinery and Equipment	200 - 399
Furniture and Fixtures	400 - 599
Other Equipment	600 - 699
Buildings	700 - 799
Improvements Other Than Buildings	800 - 899
Land	900 - 999

Determine a means of tagging equipment. The identification tags may be self-adhesive metal tags, stencils or other suitable tags on which a permanent number can be affixed and the tag attached to an item of equipment.

Note: Only items of equipment are to be physically tagged with property numbers. For internal control purposes, fixed assets such as buildings, improvements other than buildings and land are assigned property numbers in the accounting records. However, the asset is not physically tagged with this number.

Order the identification tags well in advance of the date on which the initial inventory of fixed assets is to begin.

Each fixed asset should be assigned a unique fixed asset property control number. When assigning a number to "land and buildings," use only the property number. When assigning a number to "equipment and improvements other than buildings," the number should indicate both the department to which the asset is assigned and the property number of the asset within the appropriate asset category.

SAMPLE PROPERTY NUMBERS

<u>Department Code</u>	<u>Property Number</u>
140 (Municipal Clerk's Office)	201 (Office Machine -

Department heads should assign a property control number to each fixed asset inventoried. The control number assigned should then be entered on the fixed asset inventory form along with a detailed description of the asset (Exhibits G through I). An identification tag should be attached to each item of equipment inventoried.

Property Tagging System

Physical tagging is one of the most important aspects of physical asset control. The municipality should investigate the many commercial methods of attaching property numbers. Different tagging procedures should be used depending upon the type of equipment to be tagged.

Select the next sequential fixed asset property number of the appropriate category of asset to be tagged. Enter the number on the fixed asset ledger (Exhibits G through I). Provide the necessary information concerning each item to be inventoried.

Attach the identification tag or stencil the identification number on each item of equipment. The following are guidelines for tagging equipment:

<u>Illustrative Items of Equipment</u>	<u>Suggested Location of Tag</u>
Adding machines, typewriters,	Back of machine calculators and similar office equipment
Air compressors, welders, generators,	Near manufacturer's etc. I.D.tag
Air conditioners, freezers, refrigerators,	Right side of upper cover vending machines, etc.

Copy machines, printing equipment, etc.	Near manufacturer's I.D. tag
Desks, tables, etc.	Top or right front leg
Files, safes and other storage equipment	Top right front cover
Automobiles, trucks and other automotive equipment	Stencil or print number on inside of door

Upon completion of the inventory, recheck to be sure asset property numbers were assigned to each item included in the inventory.

Marking of Vehicles

MCA § 25-1-87 requires motor vehicles to have the name of the municipality marked in 3 inch letters on the sides and 1 ½ inch letters on the rear, or a 12 inch municipal decal on the sides. This must be a permanent marking and in a contrasting color. There is provision for certain unmarked vehicles, if authorized in the governing authority minutes and if notification is made to the State Auditor. Verification of legal marking is made by the State Auditor. Municipalities found with improperly marked vehicles may have their sales tax revenue suspended.

Annual Inventory System

At the end of each fiscal year a thorough inventory of all fixed assets owned by the municipality must be made. The board or council should assign general responsibility to oversee the inventory to the finance officer, comptroller, city administrator, municipal clerk or other responsible officer. The purpose of the inventory is necessary to verify the existence of all fixed assets. However, other information, such as the condition of the asset may be documented.

The municipality's auditor should also be consulted prior to inventory. Auditors may observe the inventory and request additional procedures.

Inventory Procedure:

At the close of each fiscal year, furnish each department head with a supply of blank forms for the fixed asset inventory (Exhibit A).

Each department head should list each item of equipment in his department, including a brief description of the item, its condition, and its property number, taken from the actual piece of equipment.

Return completed inventory forms to the municipal clerk's office.

Verify the information listed on the new inventory forms with previous inventory records. Include any changes in fixed assets, such as land, buildings and other improvements.

If a fixed asset included in the previous inventory is not listed in the new inventory, investigate the reason for the discrepancy.

If any property number tags are missing, replace them.

Note in the records any transfers between departments not previously recorded.

Correct the permanent inventory records (land, buildings, improvements other than buildings, construction-in-progress, road equipment, other furniture and equipment, and lease purchases) to reflect actual changes in the inventory.

Prepare fixed asset ledger based on the inventory (Exhibit B).

Exhibit A

ANNUAL INVENTORY OF PROPERTY - SAMPLE FORMAT

Page ____

INVENTORY AND VALUATION OF PROPERTY

_____(FIXED ASSET)

September 30, 20__

DEPARTMENT/DISTRICT: _____

Description	Serial/Model Number	Property Control Number	Date Purchased	Cost or Other Basis
TOTAL				\$

Exhibit B

FIXED ASSET SUBSIDIARY LEDGER

[illegible]

Exhibit C**FIXED ASSET INVENTORY LEDGER
LAND ACQUISITIONS****PROPERTY NO.:** _____

ACRES		LOCATION				LEGAL DESCRIPTION
Method of Acquisition	Date	Check No.	Amount	M.B. No.	Page No.	
() Purchased						
() Constructed						
() Donated (FMV)						
() Other						
Total Acquisition Cost						
Improvements:						
Total Cost						
Type Deed				Volume Recorded	Page	Date
Abstract of Title						Date
Appraised By					Amount	Date
Capitalized By					Amount	Date

DISPOSAL

How Disposed Of		Book Value	Date
Sold or Disposed Of		Amount	Date
Notes and Remarks			

Exhibit D**FIXED ASSET INVENTORY LEDGER BUILDING ACQUISITIONS****PROPERTY NO.:** _____

Description of Building						
Location						
Occupied By						
Method of Acquisition	Date	Check No.	Amount	M.B. No.	Page No.	Remarks
() Purchased						
() Constructed						
() Donated (FMV)						
() Other						
Total Acquisition Cost						
Improvements:						
Total Cost						
Appraised By					Amount	Date
Capitalized By					Amount	Date

DISPOSAL

How Disposed Of		Book Value	Date
Sold or Disposed Of		Amount	Date
Remarks			

Exhibit E

**FIXED ASSET INVENTORY LEDGER
INFRASTRUCTURE & IMPROVEMENTS OTHER THAN BUILDINGS**

PROPERTY NO.: _____

Description of Improvements						
Location						
Method of Acquisition	Date	Check No.	Amount	M.B. No.	Page No.	Remarks
() Purchased						
() Constructed						
() Donated (FMV)						
() Other						
Total Acquisition Cost						
Improvements:						
Total Cost						
Appraised By					Amount	Date
Capitalized By					Amount	Date

DISPOSAL

How Disposed Of		Book Value	Date
Sold or Disposed Of		Amount	Date
Remarks			

Exhibit F

FIXED ASSET INVENTORY LEDGER CONSTRUCTION IN PROGRESS

PROPERTY NO.: _____

Description of Project						
Project/Phase	Date	Check No.	Amount	M.B. No.	Page No.	Remarks
Total Cost						

DISPOSAL

To	Cost	Date
Remarks		

Exhibit G

FIXED ASSET INVENTORY LEDGER MOBILE EQUIPMENT ACQUISITIONS

DEPARTMENT: _____

PAGE NO.: _____

DEPARTMENT HEAD: _____

[illegible]

Exhibit H

FIXED ASSET INVENTORY LEDGER
OTHER FURNITURE AND EQUIPMENT ACQUISITIONS

DEPARTMENT: _____

PAGE NO.: _____

DEPARTMENT HEAD: _____

[illegible]

Exhibit I

FIXED ASSET INVENTORY LEDGER LEASE-PURCHASE ACQUISITIONS

DEPARTMENT: _____ **PAGE NO.:** _____

DEPARTMENT HEAD: _____

[illegible]

PUBLICATION REQUIREMENTS

2016 Supplement

During the course of a year, the City Clerk will be obligated to make periodic publication notices in compliance with State Statutes. The following sections taken from the Mississippi Code of 1972, Annotated (MCA), will serve as a guide to the Clerk and perhaps enable him/her to completely comply with the publication requirements. It is suggested, however, that each Clerk or municipal officer charged with this responsibility conduct a careful search of the Code to insure that no section has been overlooked, updated or ignored.

GENERAL CODES:

ORDINANCES – MCA § 21-13-11

- Published at least one (1) time in a newspaper published in the municipality
- If no newspaper is published in the municipality, then in a newspaper published in the county that has general circulation in the municipality
- If no newspaper is published in the county, then in a newspaper published in the State of Mississippi having general circulation in the county
- Ordinance will not be in force until one month after passage and upon publication.
- The substance of the ordinance may be published in lieu of the full text –
MCA § 21-17-19
 - Statement must be less than 300 words
 - The full text of the ordinance must be posted at city hall, the main public library or at the courthouse; and in one other public place in the municipality

PUBLICATION OF SUBSTANCE OF PUBLIC MEASURE; FULL TEXT TO BE POSTED – MCA § 21-17-19

Whenever a municipality is required to publish in a newspaper any public measure or amendment thereto, the substance of the measure may be printed in lieu of the full text.

- Section shall not apply to publication of the annual budget or amendments to the budget
- The substance shall be an explanatory statement summarizing the full text of the measure
- The statement shall not exceed three (300) words
- Copy of the full text of the measure shall be posted (a) at city hall, (b) at the main public library in the municipality, or at the courthouse; (c) and at one (1) other public place in the municipality
- Clerk shall furnish any resident of the municipality a copy of the full text upon request

CHANGE NAME OF MUNICIPALITY – MCA § 21-1-7

The Mayor and Board of Aldermen may change the name of the municipality by:

- Prepare in writing the proposed change
- Publish proposal for three (3) weeks in a newspaper published in the municipal
- If no newspaper published in the municipality, county, or of general circulation in the municipality then the proposal shall be posted in at least three (3) public places for three (3) weeks

CHANGE DATE OF BOARD MEETINGS – MCA § 21-17-17

The governing authority of any municipality may by ordinance duly adopted change the day of the week as their regular monthly or bimonthly meeting date. Before adoption of the ordinance, the ordinance shall:

- Be published once a week for at least three (3) consecutive weeks in a newspaper published in or having general circulation within the municipality

ZONING CODES:

BUILDING AND OTHER CODES – MCA § 21-19-25

Any municipality may adopt building codes, plumbing codes, electrical codes, gas codes, sanitary codes and any other codes by ordinance.

- Publish notice of the adoption of the code in some newspaper of the municipality for one (1) time
- If no newspaper in the municipality, then post at three (3) or more public places within the municipality

PROCEDURE FOR ESTABLISHING, AMENDING, ETC. OF REGULATIONS AND ZONE BOUNDARIES - MCA § 17-1-15

A municipality shall provide for the manner in which the comprehensive plan, zoning ordinance, subdivision regulations and capital improvements program shall be determined, established and enforced.

- A public hearing is required prior to the adoption of the plan, ordinance, regulations of programs become effective
- At least fifteen (15) days' notice of the time and place of such hearing shall be published in an official paper, or a paper of general circulation, in such municipality or county

ELECTIONS:

APPOINTMENTS AND ELECTIONS TO FILL VACANCIES – MCA § 23-15-857

Unexpired term is less than six (6) months:

- When it shall happen that there is any vacancy in a city, town or village office which is elective, the unexpired term of which shall not exceed six (6) months, the same shall be filled by appointment by the governing authority or remainder of the governing authority of said city, town or village. The municipal clerk shall certify to the Secretary of State the fact of such appointment, and the person or persons so appointed shall be commissioned by the Governor.

Unexpired term is greater than six (6) months:

- When it shall happen that there is any vacancy in an elective office in a city, town or village the unexpired term of which shall exceed six (6) months, the governing authority or remainder of the governing authority of said city, town or village shall make and enter on the minutes an order for an election to be held in such city, town or village to fill the vacancy and fix a date upon which such election shall be held.
- Such order shall be made and entered upon the minutes at the next regular meeting of the governing authority after such vacancy shall have occurred, or at a special meeting to be held not later than ten (10) days after such vacancy shall have occurred, Saturdays, Sundays and legal holidays excluded, whichever shall occur first.
- Such election shall be held on a date not less than thirty (30) days nor more than forty-five (45) days after the date upon which the order is adopted.
- Notice of such election shall be given by the municipal clerk by notice published in a newspaper published in the municipality. Such notice shall be published once each week for three (3) successive weeks preceding the date of such election. The first notice to be published at least thirty (30) days before the date of such election.
- Notice shall also be given by posting a copy of such notice at three (3) public places in such municipality not less than twenty-one (21) days prior to the date of such election.

MUNICIPAL BONDS:

INITIATING PROCEDURES FOR ISSUANCE OF BONDS – MCA § 21-33-307

Before issuing any bonds ... the governing authority of the issuing municipality shall adopt a resolution declaring its intention so to do, stating the amount of bonds proposed to be issued and the purpose for which the bonds are to be issued, and the date upon which the aforesaid authority proposes to direct the issuance of such bonds.

- Such resolution shall be published once a week for at least three (3) consecutive weeks in at least one (1) newspaper published in such municipality.

- The first publication of such resolution shall be made not less than twenty-one (21) days prior to the date fixed in such resolution for the issuance of the bonds, and the last publication shall be made not more than seven (7) days prior to such date.
- If no newspaper be published in such municipality, then such notice shall be given by publishing the resolution for the required time in some newspaper having a general circulation in such municipality and, in addition, by posting a copy of such resolution for at least twenty-one (21) days next preceding the date fixed therein at three (3) public places in such municipality.
- If ten percent (10%) of the qualified electors of the municipality, or fifteen hundred (1,500), whichever is the lesser, shall file a written protest against the issuance of such bonds on or before the date specified in such resolution, then an election shall be called.
- Notice of such election shall be signed by the clerk of the municipality and shall be published once a week for at least three (3) consecutive weeks

SALE OF BONDS TO BE ADVERTISED – MCA § 31-19-25

All bonds issued pursuant to any laws of this state ... shall be advertised for sale on sealed bids

- Such advertisement shall be published at least two (2) times in a newspaper published in the county
- The first publication in each case shall be made at least ten (10) days preceding the date fixed for reception of bids and shall give the time and place of sale.

FINANCE:

BUDGET & PROPOSED TAX LEVY HEARING – MCA § 27-39-203 and § 21-35-5

Note that the two Code Sections contradict each other, but all municipalities must publish the notice for the budget and tax levy hearing in a newspaper.

MCA § 27-39-203 requires municipal governing authorities to hold a public hearing on the proposed budget and tax levies and publish notice of said hearing.

- Advertisement must be published once a week for the two week period preceding the adoption of the budget; and the hearing must be no less than seven days after the day of the first advertisement for all municipalities that will have a proposed tax increase and for all municipalities with a population greater than one thousand five hundred (1,500). [amended 2015]
- Advertisement may be posted in three (3) public places in the municipality for any municipality with a population less than one thousand five hundred (1,500) and will not have a proposed tax increase. [amended 2015]
- Specifies the form and wording of public notice. Additional wording required in a reappraisal year.
- Notice shall be no less than one-fourth (1/4) page in size

- Type shall be no smaller than eighteen (18) point
- Shall be surrounded by 1/4" solid black border
- Shall not be in legal section or classified advertisement section of newspaper
- Shall appear in a newspaper that is published five (5) days a week, unless the only newspaper in county is published less than five (5) days a week
- Shall run once each week for the two (2) weeks preceding the public hearing with the first notice not less than seven (7) days before the hearing.
- **If the municipality is located in a county completing its countywide reappraisal update during the current fiscal year and has experienced an increase in the assessed valuation of the property, the advertisement shall include the following statement:**

“A millage rate of ____ will produce the same amount of revenue from ad valorem taxes as was collected the prior year. The millage rate for the prior year was ____.”

MCA § 21-35-5 requires municipal governing authorities to hold a public hearing on the proposed budget

- Hearing must be one week prior to the adoption of the budget
- Hearing must be held outside normal working hours
- Notice must be given one (1) time either by advertisement in the local newspaper or posted in three (3) public places for municipalities with a population less than 1,500

BUDGET – ADOPTED MCA § 21-35-5

Upon adoption of the budget, the governing authority shall publish or post the final adopted budget one (1) time during the month of September.

- Population greater than 1,500 shall publish the final budget at least one (1) time
- Population less than 1,500 shall post the final budget in three (3) public places in said municipality
- Copies should be available for public inspection at City Hall

MUNICIPAL TAX LEVY CERTIFICATION – MCA § 21-33-47

Upon adoption of the municipal tax levy by resolution, the clerk shall:

- Certify the levy to the Tax Collector of the municipality and county
- Certify the levy to the Department of Revenue
- Publish the resolution in its entirety in a newspaper published in the municipality, at least one time, within ten (10) days after its adoption

- If no newspaper is published in the municipality, then a copy of resolution, in its entirety, shall be posted in at least three (3) public places in the municipality, within ten (10) days after its adoption

TAX LEVY FOR STREET AND CEMETERY PURPOSES: CERTAIN MUNICIPALITY – MCA § 21-33-89

A municipality having a population of less than one thousand (1,000) shall have the authority to assess, levy and collect an additional ad valorem tax not exceeding two mills for street maintenance, upkeep and construction purposes, and/or an additional ad valorem tax not exceeding two mills for cemetery improvement, upkeep and maintenance purposes.

- Levy requires a special election and has to be approved by a majority of the qualified voters
- Notice of which election shall be given in some newspaper having a general circulation in such municipality not less than twenty nor more than thirty days prior to such election; one publication of such notice shall be sufficient

REVISION OF MUNICIPAL BUDGET – MCA § 21-35-25

Any amendments ... to an originally adopted budget which exceed ten percent (10%) of the total amount appropriated or authorized to be expended in a particular department fund shall be published or posted within two (2) weeks of the action in a newspaper in the same manner as the final adopted budget.

- Published or posted notice shall contain:
 - Description of the amendment
 - Amount of money and funds affected
 - Detailed statement explaining the need and purpose of the amendment
 - Vote of each member of the governing authority

ANNUAL TAX RECEIPT REPORT – MCA § 27-101-21

A report of all tax revenues and other government fees shall be reported to the State Department of Audit via email within 90 days of the end of the fiscal year. See the Financial Management Chapter for a copy of the form.

ANNUAL AUDITS – MCA § 21-35-31

A synopsis of the audit or report, in a format prescribed by the State Auditor, shall be published within thirty (30) days of acceptance by the governing authority of each municipality in a newspaper published in the municipality.

- Publication shall be made one (1) time
- Newspaper shall only charge one-half (1/2) of the legal rate prescribed by law for such legal publications

MUNICIPAL DEPOSITORIES – MCA § 27-105-305 and § 27-105-353

The board of aldermen of every municipality is required to select a depository in the manner provided by law for the selection of county depositories.

- The term of the depository shall be two years
- Advertise in the newspaper in December
- Accept Bids in January

SALE, CONVEYANCE, OR LEASE OF REAL PROPERTY – MCA § 21-17-1

A municipality may sell, convey or lease any real property that has ceased to be used for municipal purposes

- The governing authority of the municipality shall publish at least once a week for three (3) consecutive weeks, in a public newspaper of the municipality in which the real property is located, or if no newspaper be published as such, then in a newspaper having general circulation therein, the intention to lease or sell, as the case may be, the municipally owned real property and to accept sealed competitive bids for the leasing or sale

APPROPRIATION OF FUNDS TO FAIR ASSOCIATIONS – MCA § 21-19-51

Municipality may contribute, appropriate or donate to fair associations, domiciled in their respective county, a sum not to exceed Ten Thousand Dollars (\$10,000.00) per annum for the purpose of advertising, displaying, exhibiting or promoting the agricultural or industrial resources of said municipality of its respective county.

- Publish notice of intention in a newspaper published or having general circulation in the municipality for three (3) weeks ending not less than ten days prior to the making of the contribution
- If twenty (20%) percent of the adult taxpayers petition against the contribution, then the contribution shall not be made without an election

PURCHASING:

PURCHASE OF SUPPLIES AND EQUIPMENT – MCA § 31-7-13 (C)

Purchases which involve an expenditure of more than Fifty Thousand Dollars (\$50,000.00), exclusive of freight and shipping charges:

- May be made from the lowest and best bidder after advertising for competitive bids once each week for two (2) consecutive weeks in a regular newspaper published in the county or municipality in which such an agency or governing authority is located
- The date as published for the bid opening shall not be less than seven (7) working days after the last published notice

PURCHASE LAW FOR CONSTRUCTION PROJECTS – MCA § 31-7-13 (C)

Purchases which involve an expenditure of more than Fifty Thousand Dollars (\$50,000.00), exclusive of freight and shipping charges for construction projects:

- May be made from the lowest and best bidder after advertising for competitive bids once each week for two (2) consecutive weeks in a regular newspaper published in the county or municipality in which such an agency or governing authority is located
- If the purchase involves a construction project in which the estimate cost is in excess of Fifty Thousand Dollars (\$50,000.00), such bids shall not be opened in less than fifteen (15) working days after the last notice is published
- If the construction projects estimated cost is less than Fifty Thousand Dollars (\$50,000.00), such bids shall not be opened in less than seven (7) working days after the last published notice.

PUBLIC UTILITIES – INCLUDING SOLID WASTE:

UTILTIY RATES SET BY ORDINANCE – MCA § 21-27-23 and § 21-13-11

MCA § 21-27-23 allows a municipality to establish, maintain and collect rates for the facilities and services offered by any utility system owned by the municipality. If the rates are set by an ordinance then the publication requirements for ordinances (MCA § 21-13-11) shall be followed. The actual utility rates do not have to be set by ordinance, but can be set by resolution.

SOLID WASTE FUND REVENUE/EXPENSE REPORT – MCA § 17-17-348

Governing authorities, before the first day of the fiscal year, shall publish a detailed, itemized report of all revenues, costs and expenses incurred during the immediately preceding fiscal year in operating the garbage or rubbish collection or disposal system.

The report shall disclose:

- Total dollar amount of revenues received or dedicated for operation of the garbage or rubbish collection or disposal system
- The identity of each source of funding and the dollar amount from each source of funding including ad valorem taxes, fees and other sources
- Total dollar amount expended to operate the garbage or rubbish collection or disposal system
- Names and addresses of all businesses and persons with whom the municipality has contracted to perform or provide garbage or rubbish collection or disposal, the dollar amount of expenditures made under each contract
- Itemized list of all other expenditures to operate and administer the garbage or rubbish collection or disposal system

The specifications for the notice:

- Not less than one-eighth (1/8) page in size
- Type shall be no small than ten (10) point
- Solid black border of one-fourth (1/4) inch
- Placed in regular section of paper, not in the section for legal or classified matters
- Published in a newspaper of general circulation and one of general interest and readership in the community
- Published one (1) time

SOLID WASTE FUND – INCREASE FEE OR AD VALOREM TAX MCA § 21-19-2

Before the adoption of any resolution or ordinance to increase the ad valorem tax or fees or charges, the governing authority shall publish a notice advertising their intent.

- Notice shall specify the purpose of the proposed increase and the proposed percentage increase in total revenues or shall contain a copy of the resolution stating the intent to increase the ad valorem tax assessment or fees
- Published in a newspaper having a general circulation in the municipality
- Published for three (3) consecutive weeks before the adoption of the order
- Shall be in print no less than eighteen (18) point
- Shall be surrounded by a one-fourth (1/4) inch black border
- Shall not be placed in the legal section of the newspaper
- Shall notify each person furnished garbage and/or rubbish collection and/or disposal service of any increase in the ad valorem tax or fees or charges

MUNICIPAL WATER SYSTEM – CONSUMER CONFIDENCE REPORT / ANNUAL DRINKING WATER QUALITY REPORT MCA § 41-26-6

Each community public water system (CWS) shall prepare and deliver to their customers an annual consumer confidence report as stipulated in the National Primary Drinking Water Regulations as published under Title 40 Code of Federal Regulations Section 141.151-155.

All CWSs must deliver to their customers annual reports on the quality of water delivered by the system and characterize the risks (if any) from exposure to contaminants detected in the drinking water in an accurate and understandable manner. All CWSs are required to mail or otherwise directly deliver these reports.

MUNICIPAL WATER SYSTEM – NOTICE OF NONCOMPLIANCE MCA § 41-26-13

A public water system shall notify the county or district health department, the board and the administrator if:

- The system is not in compliance with the MS Primary Drinking Water Regulations
- The system fails to perform monitoring required by regulations adopted by the board
- The system is subject to a variance granted for an inability to meet a maximum contaminant level requirement
- The system is subject to an exemption
- The system fails to comply with the requirements prescribed by a variance or exemption

Notice Requirements:

- Shall be provided to the MS State Department of Health (DOH) at least once every three (3) months. The DOH shall publish the notice on their website
- Shall publish a notice in a newspaper of general circulation of the municipality that the drinking water quality reports are available on the DOH website, including the address of the website.
- The notice shall not be placed in the legal section of the newspaper
- The notice shall be included in at least one (1) water bill of the system every three (3) months.

**MUNICIPALITY MAY SELL OR LEASE PUBLIC UTILITY SYSTEM
MCA § 21-27-33**

Municipalities are empowered and authorized, if they so desire, to sell, lease, or otherwise dispose of any or all electric, water, gas or other municipally-owned public utility systems

- Notice of intention to make such sale shall be given by publication, once a week for three consecutive weeks in a legal newspaper published in such municipality

TAX COLLECTION AND REDEMPTION

Publication requirements for tax sales, land redemptions, notice of delinquent personal property sales, etc., may be found in the Taxation Chapters.

OTHER PUBLICATION REQUIREMENTS

The above is not a complete list of all publication requirements for municipalities. These are most frequently required. On any activity conducted by your city, again as stated in the Introduction, always carefully check the Code to determine if a requirement for publication is required.

PURCHASE LAW
Office of the State Auditor
2016 Supplement

Headings have been assigned to untitled sub-sections of the legal text for identification purposes. Notations are provided for reference, emphases, and clarification. Underlines and bold print are for emphases.

The current “Purchase Law Update” may be found at the Mississippi State Auditor’s web site www.osa.ms.gov by selecting “Resources” then “Purchase Law Summary” under the heading “Purchasing”. Actual text of the Mississippi code may be found at the Secretary of State’s web site at www.sos.ms.gov by selecting “Education and Publications”, then “Mississippi Code Search”, and then clicking the link for “Search the Mississippi Code at Michie’s Legal Resources”. Mississippi Attorney General’s opinions may be found at www.ago.state.ms.us by selecting “Opinions Database” and entering search terms.

DEFINITIONS

ENTITY DEFINITIONS

MCA § 31-7-1. The following terms are defined for the purpose of this chapter to have the following meanings:

Purpose - To clarify law

- (a) “**Agency**” shall mean any state board, commission, committee, council, university, department or unit thereof created by the Constitution or statutes if such board, commission, committee, council, university, department, unit or the head thereof is authorized to appoint subordinate staff by the Constitution or statute, except a legislative or judicial board, commission, committee, council, department or unit thereof; except a charter school authorized by the Mississippi Charter School Authorizer Board; and except the Mississippi State Port Authority.
- (b) “**Governing authority**” shall mean boards of supervisors, governing boards of all school districts, all boards of directors of public water supply districts, boards of directors of master public water supply districts, municipal public utility commissions, governing authorities of all municipalities, port authorities, Mississippi State Port Authority, commissioners, and boards of trustees of any public hospitals, boards of trustees of public library systems, district attorneys, school attendance officers and any political subdivision of the state supported wholly or in part by public funds of the state or political subdivision thereof, including commissions, boards, and agencies created or operated under the authority of any county or municipality of this state. The term “governing authority” shall not include economic development authorities supported in part by private funds, or commissions appointed to hold title to and oversee the development and management of lands and buildings which are donated by private

individuals to the public for the use and benefit of the community and which are supported in part by private funds. The term “governing authority” also shall not include the governing board of a charter school.

- (c) **“Purchasing agent”** shall mean any administrator, superintendent, purchase clerk or other chief officer so designated having general or special authority to negotiate for and make private contract for or purchase for any governing authority or agency.
- (d) **“Public funds”** shall mean and include any appropriated funds, special funds, fees or any other emoluments received by an agency or governing authority.
- (e) The term **“Office of General Services”** shall mean the Department of Finance and Administration. Provided that when purchases are made for the Legislature or functions under its jurisdiction, it shall mean the Legislative Budget Office.

ITEMS COVERED DEFINITIONS

Note

- **Commodities Include Software A.G. 2/29/88, Jeremy J. Eskridge**
- **Commodities excludes “commodities for resale”**
- **“Certified Purchasing Office” regulated by Office of Purchasing and Travel, MCA § 31-7-9**

- (a) The word **“commodities”** shall mean and include the various commodities, goods, merchandise, furniture, equipment, automotive equipment of every kind, and other personal property purchased by the agencies of the state and governing authorities, **but not commodities purchased for resale or raw materials converted into products for resale.**
 - (i) The term **“equipment”** shall be construed to include: automobiles, trucks, tractors, office appliances and all other equipment of every kind and description.
 - (ii) The term **“furniture”** shall be construed to include: desk, chairs, tables, seats, filing cabinets, bookcases and all other items of a similar nature as well as dormitory furniture , appliances, carpets and all other items of personal property generally referred to as home, office, or school furniture.
- (b) **“Construction”** shall mean the process of building, altering, improving, renovating or demolishing a public structure, public building, or other public real property. It does not include routine operation, routine repair or regularly scheduled maintenance of existing public structures, public building or other public real property.
- (c) **“Purchase”** shall mean buying, renting, leasing or otherwise acquiring.
- (d) **“Certified Purchasing Office”** shall mean any purchasing office in which fifty percent (50%) or more of the purchasing agents hold a certification from the University Public Purchasing Certification Council or other nationally recognized purchasing certification and in which, in the case of a state agency purchasing office, in addition to the national certification, one hundred percent (100%) of the purchasing officials hold a certification from the State of Mississippi's Basic or Advanced Purchasing Certification Program.

- (e) **"Certified Mississippi Purchasing Agent"** means a state agency purchasing official who holds a certification from the Mississippi Basic Purchasing Certification Program as established by the Office of Purchasing, Travel and Fleet Management.
- (f) **"Certified Mississippi Procurement Manager"** means a state agency purchasing official who holds a certification from the Mississippi Advanced Purchasing Certification Program as established by the Office of Purchasing, Travel and Fleet Management.

EMERGENCY PURCHASE DEFINITION

Note: See MCA § 31-7-13 J & K for Procedure

The term **"emergency"** shall mean any circumstances; caused by fire, flood, explosion, storm, earthquake, epidemic, riot, insurrection or caused by any inherent defect due to defective construction, or when the immediate preservation of order or of public health is necessary by reason of unforeseen emergency, or when the immediate restoration of a condition of usefulness of any public building, equipment, road, or bridge appears advisable, or in the case of a public utility when there is a failure of any machine or other thing used and useful in the generation, production or distribution of electricity, water or natural gas, or in the transportation or treatment of sewage; or when the delay incident to obtaining competitive bids could cause adverse impact upon the governing authorities or agency, its employees or its citizens; or in the case of a public airport, when the delay incident to publishing an advertisement for competitive bids would endanger public safety in a specific (not general) manner, result in or perpetuate a specific breach of airport security, or prevent the airport from providing specific air transportation services.

OTHER DEFINITIONS

All definitions essential to purchase law understanding are not listed under the definition law, MCA § 31-7-1. The following "other" definitions may be found as referenced.

Competitive and Competitive Bid
Lease Purchase Equipment
Minority

-See MCA § 31-7-13 (b)
-See MCA §s 31-7-13 (e) & 31-7-10
-See MCA § 31-7-13 (s)

MAIN PURCHASE LAW

SCOPE OF LAW

Purpose -Who and What the Law Applies To
Notes -Excludes Garbage, Sewer & Solid Waste Contracts- See
MCA § 31-7-13 (m) (xxii)
-Special Solid Waste Procedure- See MCA § 31-7-13 (r)

MCA § 31-7-13. All agencies and governing authorities shall purchase their commodities and printing; contract for garbage collection or disposal; contract for solid waste collection or disposal; contract for sewage collection or disposal; contract for public construction; and contract for rentals as herein provided.

(a) BIDDING PROCEDURE FOR PURCHASES NOT OVER \$5,000.00

Purpose - Clarify No Bids Required

Purchases which do not involve an expenditure of more than Five Thousand Dollars (\$5,000.00), exclusive of freight or shipping charges, may be made without advertising or otherwise requesting competitive bids.

However, nothing contained in this paragraph (a) shall be construed to prohibit any agency or governing authority from establishing procedures which require competitive bids on purchases of Five Thousand Dollars (\$5,000.00) or less.

(b) BIDDING PROCEDURE FOR PURCHASES OVER \$5,000.00 BUT NOT OVER \$50,000

Purpose -Two Quote Bids Required

Note - Must Document Best Bids – See MCA § 31-7-13 (d)

Purchases which involve an expenditure of more than Five Thousand Dollars (\$5,000.00) but not more than Fifty Thousand Dollars (\$50,000.00), exclusive of freight and shipping charges may be made from the lowest and best bidder without publishing or posting advertisement for bids, provided at least two (2) competitive written bids have been obtained.

- Any state agency or community/junior college purchasing commodities or procuring construction pursuant to this paragraph (b) may authorize its purchasing agent, or his designee, to accept the lowest competitive written bid under Fifty Thousand Dollars (\$50,000.00). Any governing authority purchasing commodities pursuant to this paragraph (b) may authorize its purchasing agent, or his designee, with regard to governing authorities other than counties, or its purchase clerk, or his designee, with regard to counties, to accept the lowest and best competitive written bid.
- Such authorization shall be made in writing by the governing authority and shall be maintained on file in the primary office of the agency and recorded in the official minutes of the governing authority, as appropriate.
- The purchasing agent or the purchase clerk, or their designee, as the case may be, and not the governing authority, shall be liable for any penalties and/or damages as may be

imposed by law for any act or omission of the purchasing agent or purchase clerk, or their designee, constituting a violation of law in accepting any bid without approval by the governing authority.

- The term “competitive written bid” shall mean a bid submitted on a bid form furnished by the buying agency or governing authority and signed by authorized personnel representing the vendor, or a bid submitted on a vendor's letterhead or identifiable bid form and signed by authorized personnel representing the vendor.
- “**Competitive**” shall mean that the bids are developed based upon comparable identification of the needs and are developed independently and without knowledge of other bids or prospective bids.
- Any bid item for construction in excess of Five Thousand Dollars (\$5,000.00) shall be broken down by components to provide detail of component description and pricing. These details shall be submitted with the written bids and become part of the bid evaluation criteria.
- Bids may be submitted by facsimile, electronic mail or other generally accepted method of information distribution. Bids submitted by electronic transmission shall not require the signature of the vendor’s representative unless required by agencies or governing authorities.

(c) BIDDING PROCEDURE FOR PURCHASES OVER \$50,000.00

Purpose - Advertising For Bids Required

Advertising Notes

- **If No Bids Received, Must Rebid A.G. 9/23/92, William R. Schneller**
- **May Not Count Day Of Publication Or Day Of Opening When Calculating Bid Opening Date A.G. 9/12/88, Pete McGee**
- **Designee May Open Bid A.G. 12/15/93, Thomas H. Dyson**

(i) PUBLICATION REQUIREMENT

1. Purchases which involve an expenditure of more than Fifty Thousand Dollars (\$50,000.00), exclusive of freight and shipping charges, may be made from the lowest and best bidder after advertising for competitive bids once each week for two (2) consecutive weeks in a regular newspaper published in the county or municipality in which such agency or governing authority is located. However, all American Recovery and Reinvestment Act projects in excess of Twenty-five Thousand Dollars (\$25,000.00) shall be bid.
2. The purchasing entity may designate the method by which the bids will be received, including but not limited to, bids sealed in an envelope, bids received electronically in a secure system, bids received via a reverse auction, or bids received by any other method that promotes open competition and has been approved by the Office of Purchase and Travel. However, reverse auction shall not be used for any public contract for design or construction of public facilities, including buildings, roads and bridges.
3. The date as published for the bid opening shall not be less than seven (7) working days after the last published notice;
4. If the purchase involves a construction project in which the estimated cost is in excess of Fifty Thousand Dollars (\$50,000.00), such bids shall not be opened

in less than fifteen (15) working days after the last notice is published and the notice for the purchase of such construction shall be published once each week for two (2) consecutive weeks.

5. All American Recovery and Reinvestment Act projects in excess of Twenty-five Thousand Dollars (\$25,000.00) shall be bid. For any projects in excess of Twenty-five Thousand Dollars (\$25,000.00) under the American Recovery and Reinvestment Act, publication shall be made one (1) time and the bid opening for construction projects shall not be less than ten (10) working days after the date of the published notice.
6. The notice of intention to let contracts or purchase equipment shall state the time and place at which bids shall be received, list the contracts to be made or types of equipment or supplies to be purchased, and, if all plans and/or specifications are not published, refer to the plans and/or specifications on file.
7. If there is no newspaper published in the county or municipality, then such notice shall be given by posting same at the courthouse, or for municipalities at the city hall, and at two (2) other public places in the county or municipality, and also by publication once each week for two (2) consecutive weeks in some newspaper having a general circulation in the county or municipality in the above provided manner.
8. On the same date that the notice is submitted to the newspaper for publication, the agency or governing authority involved shall mail written notice to or provide electronic notification to the main office of the Mississippi Procurement Technical Assistance Program under the Mississippi Development Authority that contains the same information as that in the published notice.
9. Submissions received by the Mississippi Procurement Technical Assistance Program for projects funded by the American Recovery and Reinvestment Act shall be displayed on a separate and unique Internet Web page accessible to the public and maintained by the Mississippi Development Authority for the Mississippi Procurement Technical Assistance Program. Those American Recovery and Reinvestment Act related submissions shall be publicly posted within twenty-four (24) hours of receipt by the Mississippi Development Authority and the bid opening shall not occur until the submission has been posted for ten (10) consecutive days. The Department of Finance and Administration shall maintain information regarding contracts and other expenditures from the American Recovery and Reinvestment Act, on a unique Internet Web page accessible to the public. The Department of Finance and Administration shall promulgate rules regarding format, content and deadlines, unless otherwise specified by law, of the posting of award notices, contract execution and subsequent amendments, links to the contract documents, expenditures against the awarded contracts and general expenditures of funds from the American Recovery and Reinvestment Act.
10. Within one (1) working day of the contract award, the agency or governing authority shall post to the designated Web page maintained by the Department of Finance and Administration, notice of the award, including the award recipient, the contract amount, and a brief summary of the contract in accordance with rules promulgated by the department. Within one (1) working

day of the contract execution, the agency or governing authority shall post to the designated Web page maintained by the Department of Finance and Administration a summary of the executed contract and make a copy of the appropriately redacted contract documents available for linking to the designated Web page in accordance with the rules promulgated by the department. The information provided by the agency or governing authority shall be posted to the Web page for the duration of the American Recovery and Reinvestment Act funding or until the project is completed, whichever is longer.

Note

Notice Information

Effective November 1, 2012, all bid advertisements should be submitted on the NEW agency bid bank webpage. Please visit <http://mscpc.com> and select [Agency Bid Bank](#). After completing the User Registration, you will have the ability to manage your user profile, upload and post current bid advertisements and solicitations as well as receive an automated receipt acknowledgment with actual date, bid title and/or number.

(ii) BIDDING PROCESS AMENDMENT PROCEDURE

- If all plans and/or specification are published in the notification, then the plans and/or specifications may not be amended.
- If all plans and/or specifications are not published in the notification, then amendments to the plans/specifications, bid opening date, bid opening time and place may be made, provided that the agency or governing authority maintains a list of all prospective bidders who are known to have received a copy of the bid documents and all such prospective bidders are sent copies of all amendments.
 - This notification of amendments may be made via mail, facsimile, electronic mail or other generally accepted method of information distribution.
 - No addendum to bid specification may be issued within two (2) working days of the time established for the receipt of bids unless such addendum also amends the bid opening to a date not less than five (5) working days after the date of the addendum.

(iii) FILING REQUIREMENT

- In all cases involving governing authorities, before the notice shall be published or posted, the plans or specifications for the construction or equipment being sought shall be filed with the clerk of the board of the governing authority.
- In addition to these requirements, a bid file shall be established which shall indicate those vendors to whom such solicitations and specifications were issued, and such file shall also contain such information as is pertinent to the bid.

(iv) SPECIFICATIONS RESTRICTIONS

Notes

- ❖ **May Specify Lease Purchase, or Other Best Bid Information**
- ❖ **Software Must be Bid, Specifications May be Restrictive Since It is Not Equipment**
- ❖ **May Not Waive Specifications that Affect the Competitiveness of the Bid Process**

❖ **May Specify Used Equipment by Maximum Age, Miles, Hours, etc.**

1. Specifications pertinent to such bidding shall be written so as not to exclude comparable equipment of domestic manufacture.
 - a. However, if valid justification be presented, the Department of Finance and Administration or the board of a governing authority may approve a request for specific equipment necessary to perform a specific job.
 - b. Further, such justification, when placed on the minutes of the board of a governing authority, may serve as authority for that governing authority to write specifications to require a specific item of equipment needed to perform a specific job.
 - c. In addition to these requirements, from and after July 1, 1990, vendors of relocatable classrooms and the specifications for the purchase of such relocatable classrooms published by local school boards shall meet all pertinent regulations of the State Board of Education, including prior approval of such bid by the State Department of Education.
2. Specifications for construction projects may include an allowance for commodities, equipment, furniture, construction materials or systems in which prospective bidders are instructed to include in their bids specified amounts for such items so long as the allowance items are acquired by the vendor in a commercially reasonable manner and approved by the agency/governing authority. Such acquisitions shall not be made to circumvent the public purchasing laws.

(v) ELECTRONIC BIDS

Agencies and governing authorities may establish secure procedures by which bids may be submitted via electronic means.

(d) LOWEST AND BEST BID DECISION PROCEDURE (i) DECISION PROCEDURE.

Notes

- ❖ **Best Bid Documentation Requirement – All Purchases**
- ❖ **Only Low Bidder May Lower Bid A.G. 9/10/79, C. Ray Scales, Jr.**
- Purchases may be made from the lowest and best bidder.
 - In determining the lowest and best bid, freight and shipping charges shall be included.
 - Life-cycle costing, total cost bids, warranties, guaranteed buy-back provisions and other relevant provisions may be included in the best bid calculation.
 - All best bid procedures for state agencies must be in compliance with regulations established by the Department of Finance and Administration.
 - If any governing authority accepts a bid other than the lowest bid actually submitted, it shall place on its minutes detailed calculations and narrative summary showing that the accepted bid was determined to be the lowest and best bid, including the dollar amount of the accepted bid and the dollar amount of the lowest bid.

- No agency or governing authority shall accept a bid based on items not included in the specifications.

(ii) DECISION PROCEDURE FOR CERTIFIED PURCHASING OFFICES

In addition to the decision procedure set forth in paragraph (d) (i), Certified Purchasing Offices may also use the following procedure:

- Purchases may be made from the bidder offering the best value.
- In determining the best value bid, freight and shipping charges shall be included.
- Life-cycle costing, total cost bids, warranties, guaranteed buy-back provisions, documented previous experience, training costs and other relevant provisions including, but not limited to, a bidder having a local office and inventory located within the jurisdiction of the governing authority, may be included in the best value calculation. This provision shall authorize certified Purchasing Offices to utilize a Request For Proposals (RFP) process when purchasing commodities.
- All best value procedures for state agencies must be in compliance with regulations established by the Department of Finance and Administration.
- No agency or governing authority shall accept a bid based on items or criteria not included in the specifications.

(iii) DECISION PROCEDURE FOR MISSISSIPPI LANDMARKS.

In addition to the decision procedure set forth in paragraph (d)(i), where purchase involves renovation, restoration, or both, of the State Capitol Building or any other historical building designated for at least five (5) years as a Mississippi Landmark by the Board of Trustees of the Department of Archives and History under the authority of MCA §§ 39-7-7 and 39-7-11, the agency or governing authority may use the following procedure:

- Purchases may be made from the lowest and best prequalified bidder.
- Prequalification of bidders shall be determined not less than fifteen (15) working days before the first published notice of bid opening. Prequalification criteria shall be limited to bidder's knowledge and experience in historical restoration, preservation and renovation.
- In determining the lowest and best bid, freight and shipping charges shall be included.
- Life-cycle costing, total cost bids, warranties, guaranteed buy-back provisions and other relevant provisions may be included in the best bid calculation.
- All best bid and prequalification procedures for state agencies must be in compliance with regulations established by the Department of Finance and Administration.
- If any governing authority accepts a bid other than the lowest bid actually submitted, it shall place on its minutes detailed calculations and narrative summary showing that the accepted bid was determined to be the lowest and best bid, including the dollar amount of the accepted bid and the dollar amount of the lowest bid.
- No agency or governing authority shall accept a bid based on items not included in the specifications.

(iv) CONSTRUCTION PROJECT NEGOTIATIONS AUTHORITY.

Notes

❖ Best Bid Negotiations- Construction Only

❖ **May Negotiate Specifications- A.G. 9/19/97, Danny Guice, Jr.**

If the lowest and best bid is not more than ten percent (10%) above the amount of funds allocated for a public construction or renovation project, then the agency or governing authority shall be permitted to negotiate with the lowest bidder in order to enter into a contract for an amount not to exceed the funds allocated.

(e) LEASE PURCHASE AUTHORIZATION Purpose - An Authority to Lease Purchase

Notes

- ❖ **Not an Exemption from Bidding**
- ❖ **School Buses Must Also Comply with MCA §37-41-101, A.G. 4/23/01, Richard L. Thompson**
- ❖ **May Refinance A.G. 3/31/93, W.J. Gamble III**

Definition

For the purpose of this section, the term “equipment” shall mean equipment, furniture and, if applicable, associated software and other applicable direct costs associated with the acquisition.

Authority

Any lease-purchase of equipment which an agency is not required to lease-purchase under the master lease-program pursuant to MCA § 31-7-10 and any lease-purchase of equipment which a governing authority elects to lease-purchase may be acquired by lease-purchase agreement under this paragraph (e).

Alternative Financing Provision

Lease-purchase financing may also be obtained from the vendor or from a third-party source after having solicited and obtained at least (2) written competitive bids, as defined in paragraph (b) of this section, for such financing, without advertising for such bids. Solicitation for the bids for financing may occur before or after acceptance of bids for the purchase of such equipment or, where no such bids for purchase are required, at any time before the purchase thereof.

Maximum Interest Rate (11%)

No such lease-purchasing agreement shall be for an annual rate of interest which is greater than the overall maximum interest rate to maturity on general obligation indebtedness permitted under MCA § 75-17-101, and

Maximum length of Lease

The term of such lease-purchase agreement shall not exceed the useful life of property covered thereby as determined according to the upper limit of the asset depreciation range (ADR) guidelines for the Class Life Asset Depreciation Range System established by the Internal Revenue Service pursuant to the United States Internal Revenue Code and regulations thereunder as in effect on December 31, 1980, or comparable depreciation guidelines with respect to any equipment not covered by ADR guidelines. Any lease-purchase agreement entered into pursuant to this paragraph (e) may contain any of the terms and conditions which a master lease-purchases agreement may contain under the provisions of MCA § 31-7-10(5),

Lease Dependency Clause (canceled if not budgeted)

A lease-purchase agreement shall contain an annual allocation dependency clause substantially similar to that set forth in MCA § 31-7-10(8).

Record Requirement

Each agency or governing authority entering into a lease-purchase transaction pursuant to this paragraph (e) shall maintain with respect to each such lease-purchase transaction the same information as required to be maintained by the Department of Finance and Administration pursuant to MCA § 31-7-10 (13).

State Agency Limit (does not limit Governing Authorities)

However, nothing contained in this section shall be construed to permit agencies to acquire items of equipment with a total acquisition cost in the aggregate of less than Ten Thousand Dollars (\$10,000.00) by a single lease-purchase transaction.

Tax Exemption

All equipment and the purchase thereof by any lessor, acquired by lease-purchase under this paragraph and all lease-purchase payments with respect thereto shall be exempt from all Mississippi sales, use and ad valorem taxes. Interest paid on any lease-purchase agreement under this section shall be exempt from State of Mississippi income taxation.

(g) ALTERNATE BID AUTHORIZATION- Governing Authorities Only**Purpose -Authority and Procedure**

- When necessary to ensure ready availability of commodities for public works and the timely completion of public projects, no more than two (2) alternate bids may be accepted by a governing authority for commodities.
- No purchases may be made through use of such alternate bids procedures unless the lowest and best bidder cannot deliver the commodities contained in his bid.
- In that event, purchases of such commodities may be made from one (1) of the bidders whose bid was accepted as an alternate.

(g) CONSTRUCTION CONTRACT CHANGE AUTHORIZATION**Purpose-Authority to Make****Notes**

- ❖ **Must Record on Minutes, A.G. 9/12/97, Timothy Havard**
- ❖ **Can't Make Retroactive, A.G. 7/15/93, C.R. Montgomery**
- ❖ **Can't Allow Prior to Contract, A.G. 1/25/89, Tim Hancock**
- ❖ **Within Scope of Original Contract & Reasonable, A.G. 9/17/99, Williamson**

In the event a determination is made by an agency or governing authority after a construction contract is let that changes or modifications to the original contract are necessary or would better serve the purpose of the agency or the governing authority, such agency or governing authority may, in its discretion, order such changes pertaining to the construction that are necessary under the circumstances without the necessity of further public bids; provided that such change shall be made in a commercially reasonable manner and shall not be made to circumvent the public purchasing statutes.

Delegation of Authority to Change Contract

In addition to any other authorized person, the architect or engineer hired by an agency or governing authority with respect to any public construction contract shall have the authority, when granted by an agency or governing authority, to authorize changes or modifications to the original contract without the necessity of prior approval of the agency or governing authority when any such change or modification is less than one percent (1%) of the total contract amount. The agency of governing authority may limit the number, manner or frequency of such emergency changes or modifications.

(h) PETROLEUM PURCHASE ALTERNATIVE Purpose- Alternate Procedure

Note - See “Fuel Management Systems” - MCA § 31-7-13 (q)

- In addition to other methods of purchasing authorized in this chapter, when any agency or governing authority shall have a need for gas, diesel fuel, oils and/or other petroleum products in excess of the amount set forth in paragraph (a) of this section, such agency or governing authority may purchase the commodity after having solicited and obtained at least two (2) competitive written bids, as defined in paragraph (b) of this section.
- If two (2) competitive written bids are not obtained the entity shall comply with the procedures set forth in paragraph (c) of this section.
- In the event any agency or governing authority shall have advertised for bids for the purchase of gas, diesel fuel, oils and other petroleum products and coal and no acceptable bids can be obtained, such agency or governing authority is authorized and directed to enter into any negotiations necessary to secure the lowest and best contract available for the purchase of such commodities.

(i) ROAD CONSTRUCTION PETROLEUM PRODUCTS PRICE ADJUSTMENT CLAUSE AUTHORIZATION

Purpose- Alternate Procedure

- Any agency or governing authority authorized to enter into contracts for the construction, maintenance, surfacing or repair of highways, roads or streets, may include in its bid proposal and contract documents a price adjustment clause with relation to the cost to the contractor, including taxes, based upon an industry-wide cost index, of petroleum products including asphalt used in the performance or execution of the contract or in the production or manufacture of materials for use in such performance.
- Such industry- wide index shall be established and published monthly by the State Department of Transportation with a copy thereof to be mailed, upon request, to the clerks of the governing authority of each municipality and the clerks of each board of supervisors throughout the state.
- The price adjustment clause shall be based on the cost of such petroleum products only and shall not include any additional profit or overhead as part of the adjustment.
- The bid proposals or document contract shall contain the basis and methods of adjusting unit prices for the change in the cost of such petroleum products.

(j) STATE AGENCY EMERGENCY PURCHASE PROCEDURE

Purpose- No Time for Bid Procedure

Notes

- ❖ **For Emergency Definition See MCA § 31-7-1 (f)**
- ❖ **Commodities and Repairs Only (Construction Only as a Repair)**
- If the governing board or the executive head, or his designees, of any agency of the state shall determine that an emergency exists in regard to the purchase of any commodities or repair contracts, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interests of the state, then the head of such agency, or his designees, shall file with the Department of Finance and Administration (i) a statement explaining the conditions and circumstances of the emergency, which shall include a detailed description of the events leading up to the situation and the negative impact to the entity if the purchase is made following the statutory requirements set forth in paragraph (a), (b) or (c) of this section, and (ii) a certified copy of the appropriate minutes of the board of such agency requesting the emergency purchase, if applicable. Upon receipt of the statement and applicable board certification, the State Fiscal Officer, or his designees, may, in writing, authorize the purchase or repair without having to comply with competitive bidding requirements.
- If the governing board or the executive head, or his designees, of any agency determines that an emergency exists in regard to the purchase of any commodities or repair contracts, so that the delay incident to giving opportunity for competitive bidding would threaten the health or safety of any person, or the preservation or protection of property, then the provisions in this section for competitive bidding shall not apply, and any officer or agent of the agency having general or specific authority for making the purchase or repair contract shall approve the bill presented for payment, and he shall certify in writing from whom the purchase was made, or with whom the repair contract was made.
- Total purchases made under this paragraph (j) shall only be for the purpose of meeting needs created by the emergency situation. Following the emergency purchase, documentation of the purchase, including a description of the commodity purchased, the purchase price thereof and the nature of the emergency shall be filed with the Department of Finance and Administration.

(k) GOVERNING AUTHORITY EMERGENCY PURCHASE PROCEDURE

Purpose- No Time for Bid Procedure

Notes

- ❖ **For Emergency Definition See MCA § 31-7-1 (f)**
- ❖ **Commodities and Repairs Only (Construction Only as a Repair)**
- If the governing authority, or the governing authority acting through its designee, shall determine that an emergency exists in regard to the purchase of any commodities or repair contracts, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interest of the governing authority, then the provisions herein for competitive bidding shall not apply and any officer or agent of such governing authority having general or special authority thereof in

making such purchase or repair shall approve the bill presented therefor, and he shall certify in writing thereon from whom such purchase was made, or with whom such a repair contract was made.

- At the board meeting next following the emergency purchase or repair contract, documentation of the purchase or repair contract, including a description of the commodity purchased, the price thereof and the nature of the emergency shall be presented to the board and shall be placed on the minutes of the board of such governing authority.

(l) HOSPITAL PURCHASE OR LEASE AUTHORIZATION

Purpose- Lease or Purchase Obligation Authority

Note

❖ See related laws MCA § 31-7-13 (m)(xxviii) & (m)(x) and MCA § 31-7-38

- (i) The commissioners or board of trustees of any public hospital may contract with such lowest and best bidder for the purchase or lease-purchase of any commodity under a contract of purchase or lease-purchase agreement whose obligatory payment terms do not exceed five (5) years.
- (ii) In addition to the authority granted in subparagraph (i) of this paragraph (l), the commissioners or board of trustees are authorized to enter into contracts for the lease of equipment or services, or both, which it considers necessary for the proper care of patients if, in its opinion, it is not financially feasible to purchase the necessary equipment or services. Any such contract for the lease of equipment or services executed by the commissioners or board shall not exceed a maximum of five (5) years' duration and shall include a cancellation clause based on unavailability of funds. If such cancellation clause is exercised, there shall be no further liability on the part of the lessee. Any such contract for the lease of equipment or services executed on behalf of the commissioners or board that complies with the provisions of this subparagraph (ii) shall be excepted from the bid requirements set forth in this section.

(m) EXCEPTIONS FROM BIDDING REQUIREMENTS

Purpose- To Allow Exceptions to Bidding under Special Circumstances

Notes

- ❖ See MCA § 31-9-9 For Exception on State Surplus Property Purchase
- ❖ See MCA § 31-7-1 (e) For Exception on Commodities Purchased for Resale

(i) PURCHASING AGREEMENTS APPROVED BY D.F.A.

[STATE CONTRACTS- See MCA § 31-7-12 for Particulars]

Purchasing agreements, contracts, and maximum price regulations executed or approved by the Department of Finance and Administration.

(ii) OUTSIDE EQUIPMENT REPAIRS. [Except Entire Assemblies]

Repairs to equipment, when such repairs are made by repair facilities in the private sector; however, engines, transmissions, rear axles and/or other such components shall not be included in this exemption when replaced as a complete unit instead of being repaired and the need or such total component replacement is known before

disassembly of the component; however, invoices identifying the equipment, specific repairs made, parts identified by number and name, supplies used in such repairs, and the number of hours of labor and costs therefore shall be required for the payment for such repairs.

- (iii) **IN HOUSE EQUIPMENT REPAIRS. [Except Entire Assemblies]**
Purchases of parts for repairs to equipment, when such repairs are made by personnel of the agency or governing authority; however, entire assemblies, such as engines or transmissions, shall not be included in this exemption when the entire assembly is being replaced instead of being repaired.
- (iii) **RAW GRAVEL OR DIRT.**
Raw unprocessed deposits of gravel or fill dirt which are to be removed and transported by the purchaser.
- (v) **GOVERNMENTAL EQUIPMENT AUCTIONS.**
Motor vehicles or other equipment purchased from a federal agency or authority, another governing authority or state agency of the State of Mississippi, or any governing authority or state agency of another state at a public auction held for the purpose of disposing of such vehicles or other equipment. Any purchase by a governing authority, under the exemption authorized by this paragraph (v) shall require advance authorization spread upon the minutes of the governing authority to include the listing of the item or items authorized to be purchased and the maximum bid authorized to be paid for each item or items.
- (vi) **INTERGOVERNMENTAL SALES AND TRANSFERS. [By Negotiation Only]**
[Allows Donations- A.G. 12/12/97 John B. Toney]
Purchases, sales, transfers or trades by governing authorities or state agencies when such purchases, sales, transfers or trades are made by a private treaty agreement or through means of negotiation, from any federal agency or authority, another governing authority or state agency of the State of Mississippi, or any state agency or governing authority of another state. Nothing in this section shall permit such purchases through public auction except as provided for in paragraph (v) of this section. It is the intent of this section to allow governmental entities to dispose of and/or purchase commodities from other governmental entities at the price that is agreed to by both parties. This shall allow for purchases and/or sale at prices which may be determined to be below the market value if the selling entity determines that the sale at below market value is in the best interest of the taxpayers of the state. Governing authorities shall place the terms of the agreement and any justification on the minutes, and state agencies shall obtain approval for the Department of Finance and Administration, prior to releasing or taking possession of the commodities.
- (vii) **PERISHABLE SUPPLIES OR FOOD. [Perishables Only A.G. 3/19/92 Wilbur O. Colom]**

Perishable supplies or foods purchased for use in connection with hospitals, the school lunch programs, homemaking programs and for the feeding of county or municipal prisoners.

(viii) SINGLE SOLE SOURCE ITEMS

Noncompetitive items available from one (1) source only. In connection with the purchase of noncompetitive items only available from one (1) source, a certification of the conditions and circumstances requiring the purchase shall be filed by the agency with the Department of Finance and Administration and by the governing authority with the board of the governing authority. Upon receipt of such certification the Department of Finance and Administration or the board of the governing authority, as the case may be, may, in writing, authorize the purchase, which authority shall be noted on the minutes of the body at the next regular meeting thereafter. In such situations, a governing authority is not required to obtain the approval of the Department of Finance and Administration. Following the purchase, the executive head of the state agency, or his designees, shall file with the Department of Finance and Administration, documentation of the purchase, including a description of the commodity purchased, the purchase price thereof and the source from whom it was purchased.

(ix) WASTE DISPOSAL FACILITY CONSTRUCTION CONTRACTS [Proposals Required]

Construction of incinerators and other facilities for disposal of solid waste in which products either generated therein, such as steam, or recovered therefrom, such as materials for recycling, are to be sold or otherwise disposed of; however, in constructing such facilities a governing authority or agency shall publicly issue requests for proposals, advertised for in the same manner as provided herein for seeking bids for public construction projects, concerning the design, construction, ownership, operation and/or maintenance of such facilities, wherein such requests for proposals when issued shall contain terms and conditions relating to price, financial responsibility, technology, environmental compatibility, legal responsibilities and such other matters as are determined by the governing authority or agency to be appropriate for inclusion; and after responses to the request for proposals have been duly received, the governing authority or agency may select the most qualified proposal or proposals on the basis of price, technology and other relevant factors and from such proposals, but not limited to the terms thereof, negotiate and enter contracts with one or more of the persons or firms submitting proposals.

(x) HOSPITAL GROUP PURCHASE CONTRACTS.

Supplies, commodities and equipment purchased by hospitals through group programs pursuant to MCA § 31-7-38.

**(xi) INFORMATION TECHNOLOGY PRODUCTS [ITS Contracts]
[Renamed- Previously Central Data Processing Authority (CDPA)]
[Agencies Must Purchase Under ITS rules and MCA §§ 25-53-5 & 25-53-123]
[Junior Colleges Are Subject To ITS Agency Rules for EDP Equipment]**

Purchased with local Ad Valorem Funds, A.G. 10/4/02 David Litchliter and Wayne Stonecypher]

[ITS Offers an “Express Products List” For Quick Limited Purchases]

Purchases of information technology products made by governing authorities under the provisions of purchase schedules, or contracts executed or approved by the Mississippi Department of Information Technology Services and designated for use by governing authorities.

(xii) ENERGY EFFICIENCY SERVICES AND EQUIPMENT.

Energy efficiency services and equipment acquired by school districts, junior colleges, institutions of higher learning and state agencies or other applicable governmental entities on a shared-savings, lease or lease purchase basis pursuant to MCA § 31-7-14.

(xiii) MUNICIPAL ELECTRICAL UTILITY SYSTEM FUEL.

Purchase of coal and/ or natural gas by municipally- owned electric power generating systems that have the capacity to use both coal and natural gas for the generation of electric power.

(xiv) LIBRARY BOOKS AND OTHER REFERENCE MATERIALS.

Purchases by libraries or for libraries of books and periodicals; processed film, video cassette tapes, filmstrips and slides; recorded audio tapes, cassettes and diskettes; and any such items as would be used for teaching, research or other information distribution; however, equipment such as projectors, records, or video equipment, and monitor televisions are not exempt under this subparagraph.

(xv) UNMARKED VEHICLES.

[For Bureau of Narcotics and Department of Public Safety Only]

Purchases of unmarked vehicles when such purchases are made in accordance with purchasing regulations adopted by the Department of Finance and Administration pursuant to MCA § 31-7-9(2).

(xvi) ELECTION BALLOTS.

Purchase of ballots printed pursuant to MCA § 23-15-351.

(xvii) MULTICHANNEL INTERACTIVE VIDEO SYSTEMS.

From and after July 1, 1990, contracts by Mississippi Authority for Educational Television with any private educational institution or private nonprofit organization whose purpose are educational in regard to the construction, purchase, lease or lease-purchase of facilities and equipment and the employment of personnel for providing multichannel interactive video systems (ITSF) in the school districts of this state.

(xviii) PURCHASES OF PRISON INDUSTRY PRODUCTS.

[MDOC, Regional/Private Prisons Only]

Purchases made by the Mississippi Department of Corrections, regional correctional facilities or privately owned prisons involving any item that is manufactured, processed, grown, or produced from the state’s prison industries.

(Limited to MDOC & regional/private prisons effective July 1, 2013. Allowed by state agencies and governing authorities prior to July 1, 2013.)

- (xix) UNDERCOVER OPERATIONS EQUIPMENT. [Law Enforcement Only]**
Purchases of surveillance equipment or any other high-tech equipment to be used by law enforcement agents in undercover operations, provided that any such purchase shall be in compliance with regulations established by the Department of Finance and Administration.
- (xx) JUNIOR COLLEGE BOOKS FOR RENT.**
Purchases by community or junior colleges of textbooks which are obtained for the purpose of renting such books to students as part of a book service system.
- (xxi) CERTAIN SCHOOL DISTRICT PURCHASES.**
Purchases of commodities made by school districts from vendors with which any levying authority of the school district, as defined in MCA § 37-5-1, has contracted through competitive bidding procedures for purchases of the same commodities.
- (xxii) GARBAGE, SOLID WASTE, AND SEWAGE CONTRACTS.**
[Proposals Required- MCA § 31-7-13 (r)]
Contracts for garbage collection or disposal, contracts for solid waste collection or disposal and contracts for sewage collection or disposal.
- (xxiii) MUNICIPAL WATER TANK MAINTENANCE CONTRACTS.**
Professional maintenance program contracts for the repair or maintenance of municipal water tanks, which provide professional services needed to maintain municipal water storage tanks for a fixed annual fee for a duration of two (2) or more years.
- (xxiv) PURCHASES OF MISSISSIPPI INDUSTRY FOR THE BLIND PRODUCTS.**
[Agencies must, when feasible, purchase from Mississippi Industries for the Blind - MCA § 31-7-15]
Purchases made by state agencies or governing authorities involving any item that is manufactured, processed or produced by the Mississippi Industries for the Blind.
- (xxv) PURCHASES OF STATE ADOPTED TEXTBOOKS.**
Purchases of state-adopted textbooks by public school districts.
- (xxvi) CERTAIN PURCHASES UNDER THE MISSISSIPPI MAJOR ECONOMIC IMPACT ACT.**
Contracts entered into pursuant to the provisions of MCA § 57-75-9 (2) and (3).
- (xxvii) USED HEAVY OR SPECIALIZED MACHINERY OR EQUIPMENT FOR INSTALLATION OF SOIL AND WATER CONSERVATION PRACTICES PURCHASED AT AUCTION.**
Used heavy or specialized machinery or equipment used for the installation and implementation of soil and water conservation practices or measures purchased subject to the restrictions provided in MCA §§ 69-27-331 through 69-27-341. Any purchase by the State Soil and Water Conservation Commission under the

exemption authorized by the subparagraph shall require advance authorization spread upon the minutes of the commission to include the listing of the item or items authorized to be purchased and the maximum bid authorized to be paid for each item or items.

(xxviii) HOSPITAL LEASE OF EQUIPMENT OR SERVICES.

Leases by hospitals of equipment or services if the leases are in compliance with paragraph (l)(ii).

(xxix) PURCHASES MADE PURSUANT TO QUALIFIED COOPERATIVE PURCHASING AGREEMENTS.

Purchases made by certified purchasing offices of state agencies or governing authorities under cooperative purchasing agreements previously approved by the Office of the Purchasing and Travel and established by or for any municipality, county, parish, or state government or the federal government, provided that the notification to potential contractors includes a clause that sets forth the availability of the cooperative purchasing agreement to other governmental entities. Such purchases shall only be made if the use of the cooperative purchasing agreements is determined to be in the best interest of the governmental entity.

(xxx) SCHOOL YEAR BOOKS.

Purchases of school yearbooks by state agencies or governing authorities; provided, however, that state agencies and governing authorities shall use for these purchases the RFP process as set forth in the Mississippi Procurement Manual adopted by the Office of Purchase and Travel.

(xxxi) DESIGN-BUILD METHOD AND DUAL-PHASE DESIGN-BUILD METHOD OF CONTRACTING.

Contracts entered into under the provisions of MCA § 31-7-13.1, 37-101-44 or 65-1-85.

(xxxii) TOLL ROADS AND BRIDGE CONSTRUCTION PROJECTS.

Contracts entered into under the provisions of MCA § 65-43-1 or 65-43-3.

(xxxiii) CERTAIN PURCHASES UNDER MCA § 57-1-221.

Contracts entered into pursuant to the provisions of MCA § 57-1-221.

(xxxiv) CERTAIN TRANSFERS MADE PURSUANT TO THE PROVISIONS OF MCA § 57-105-1(7).

Transfers of public property or facilities under MCA § 57-105-1(7) and construction related to such public property or facilities.

(xxxv) CERTAIN PURCHASES OR TRANSFERS ENTERED INTO WITH LOCAL ELECTRICAL POWER ASSOCIATIONS. [State Parks]

Contracts or agreements entered into under the provisions of MCA § 55-3-33.

(n) TERM CONTRACT AUTHORIZATION.

Purpose- Contract for Unlimited Purchases

All Contracts for the Purchase Of: General Term contracts

(i) All contracts for the purchase of commodities, equipment and public construction (including, but not limited to, repair and maintenance), may be let for periods of not more than sixty (60) months in advance, subject to applicable statutory provisions prohibiting the letting of contracts during specified periods near the end of terms of office. Term contracts for a period exceeding twenty-four (24) months shall also be subject to ratification or cancellation by governing authority boards taking office subsequent to the governing authority board entering the contract.

Term Contracts with Price Adjustment Clauses

(ii) Bid proposals and contracts may include price adjustment clauses with relation to the cost to the contractor based upon a nationally published industry- wide or nationally published and recognized cost index. The cost index used in a price adjustment clause shall be determined by the Department of Finance and Administration for the state agencies and by the governing board for governing authorities. The bid proposal and contract documents utilizing a price adjustment clause shall contain the basis and method of adjusting unit prices for the change in the cost of such commodities, equipment and public construction.

(o) PURCHASE LAW VIOLATION PROHIBITION AND VENDOR PENALTY.

Purpose- Prohibits Circumvention and Invoice Splitting

Note- Imposes Penalty on Vendor

No contract or purchase as herein authorized shall be made for the purpose of circumventing the provisions of this section requiring competitive bids, nor shall it be lawful for any person or concern to submit individual invoices for amounts within those authorized for a contract or purchase where the actual value of the contract of commodity purchased exceeds the authorized amount and the invoices shall constitute a misdemeanor punishable by a fine of not less than Five Hundred Dollars (\$500.00) nor more than One Thousand Dollars (1,000.00), or by imprisonment for thirty (30) days in the county jail, or both such fine and imprisonment. In addition, the claim or claims submitted shall be forfeited.

(p) ELECTRICAL UTILITY PETROLEUM- BASED EQUIPMENT PURCHASE PROCEDURE.

Purpose- Price Variations Due to Petroleum Content

When in response to a proper advertisement thereof, no bid firm as to price is submitted to an electric utility for power transformers, distribution transformers, power breakers, reclosers or other articles containing a petroleum product, the electric utility may accept the lowest and best bid although the price is not firm.

(q) FUEL MANAGEMENT SYSTEM BIDDING PROCEDURE.

Purpose- Bidding This Service, Regardless of Purchase Amounts

Note

- ❖ See MCA § 31-7-13 (h) For Contracts with Individual Purchases Over \$5,000
- ❖ State Contract May Be Available, See MCA § 31-7-12
- Any governing authority or agency of the state shall, before contracting for the services and products of a fuel management of fuel access system, enter into negotiations with not fewer than two (2) sellers of fuel management or fuel access

systems for competitive written bids to provide the service and products for the systems.

- In the event that the governing authority or agency cannot locate two (2) sellers of such systems or cannot obtain bids from two (2) sellers of such systems, it shall show proof that it made a diligent, good-faith effort to locate and negotiate with two (2) sellers of such systems. Such proof shall include but not be limited to publications of a request for proposals and letters soliciting negotiations and bids.
- For purposes of this paragraph (s), a fuel management or fuel access system is an automated system of acquiring fuel for vehicles as well as management reports detailing fuel use by vehicles and drivers, and the term “competitive written bid” shall have meaning as defined in paragraph (b) of this section.
- Governing authorities and agencies shall be exempt from this process when contracting for the services and products of fuel management or fuel access systems under the terms of a state contract established by the Office of Purchasing and Travel.

(r) SOLID WASTE CONTRACTS PROPOSAL PROCEDURE.

Purpose- To Require For This Service

Note

❖ **See MCA § 31-7-13 (m) (xxii) For Routine Bid Requirement Deletion**

- Before entering into any contract for garbage collection or disposal, contract for solid waste collection or disposal or contract for sewage collection or disposal, which involves an expenditure of more than Fifty Thousand Dollars (\$50,000.00), a governing authority or agency shall issue publicly a request for proposals concerning the specifications for such services which shall be advertised for in the same manner as provided in this section for seeking bids for purchases which involve an expenditure of more than the amount provided in paragraph (c) of this section.
- Any request for proposals when issued shall contain terms and conditions relating to price, financial responsibility, technology, legal responsibilities and other relevant factors as are determined by the governing authority or agency to be appropriate for inclusion; all factors determined relevant by the governing authority or agency or required by this paragraph (r) shall be duly included in the advertisement to elicit proposals.
- After responses to the request for proposals have been duly received, the governing authority or agency shall select the most qualified proposal or proposals on the basis of price, technology and other relevant factors and from such proposals, but not limited to the terms thereof, negotiate and enter contracts with one or more of the persons or firms submitting proposals. If the governing authority or agency deems none of the proposals to be qualified or otherwise acceptable, the request for proposals process may be reinitiated.
- Notwithstanding any other provisions of this paragraph, where a county with at least thirty-five thousand (35,000) nor more than forty thousand (40,000) population, according to the 1990 federal decennial census, owns or operates a solid waste landfill, the governing authorities of any other county or municipality may contract with the governing authorities of the county owning or operating the

landfill, pursuant to a resolution duly adopted and spread upon the minutes of each governing authority involved, for garbage or solid waste collection or disposal services through contract negotiations.

(s) MINORITY SET ASIDE AUTHORIZATION.

Purpose - Allow Purchase Set Asides

Note

- ❖ **Subject To DFA Regulation**
- ❖ **Does Not Include Women**
- ❖ **Disparity Study Required to be Constitutional per MS Supreme Court**

Notwithstanding any provision of this section to the contrary, any agency or governing authority, by order placed on its minutes, may, in its discretion, set aside not more than twenty percent (20%) of its anticipated annual expenditures for the purchase of commodities from minority businesses; however, all such set-aside purchases shall comply with all purchasing regulations promulgated by the Department of Finance and Administration and shall be subject to bid requirements under this section. Set-aside purchases for which competitive bids are required shall be made from the lowest and best minority business bidder. For the purpose of this paragraph, the term “minority business” means a business which is owned by a majority of persons who are United States citizens or permanent resident aliens (as defined by the Immigration and Naturalization Service) of the United States, and who are Asian, Black, Hispanic, and Native American, according to the following definitions:

- (i) “Asian” means persons having origins in any of the original people of the Far East, Southeast, Asia, the Indian subcontinent, or the Pacific Islands.
- (ii) “Black” means persons having origins in any black racial group of Africa.
- (iii) “Hispanic” means persons of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race.
- (iv) “Native American” means persons having origins in any or the original people of North America, including American Indians, Eskimos and Aleuts.

(t) CONSTRUCTION PUNCH LIST RESTRICTION.

Purpose- Limits Number of “List Of Problems To Correct”

The architect, engineer or other representative designated by the agency or governing authority that is contracting for public construction or renovation may prepare and submit to the contractor only one (1) preliminary punch list of items that do not meet the contract requirements at the time of substantial completion and one (1) final list immediately before final completion and final payment.

(u) PROCUREMENT OF CONSTRUCTION SERVICES BY STATE INSTITUTIONS OF HIGHER LEARNING

Purpose – To clarify privately funded IHL construction project bid requirements

Contracts for privately financed construction of auxiliary facilities on the campus of a state institution of higher learning may be awarded by the Board of Trustees of State Institutions of Higher Learning to the lowest and best bidder, where sealed bids are solicited, or to the

offeror whose proposal is determined to represent the best value to the citizens of Mississippi, where requests for proposals are solicited.

(v) INSURABILITY OF BIDDERS FOR PUBLIC CONSTRUCTION OR OTHER PUBLIC CONTRACTS.

Purpose – To no longer require bidders to purchase insurance in order to submit a bid, with proof of insurance required within 5 business days of bid acceptance

In any solicitation for bids to perform public construction or other public contracts to which this section applies including, but not limited to, contracts for repair and maintenance, for which the contract will require insurance coverage in an amount of not less than One Million Dollars (\$1,000,000.00), bidders shall be permitted to either submit proof of current insurance coverage in the specified amount or demonstrate ability to obtain the required coverage amount of insurance if the contract is awarded to the bidder. Proof of insurance coverage shall be submitted within five (5) business days from bid acceptance.

(w) PURCHASE AUTHORIZATION CLARIFICATION.

Nothing in this section shall be construed as authorizing any purchase not authorized by law.

SPECIAL LAWS

STATE CONTRACTS: MCA § 31-7-12

STATE AGENCIES- MANDATORY USE PROVISION

Purpose- State Agencies Must Use State Contracts

(1) Except in regard to purchases of unmarked vehicles made in accordance with purchasing regulations adopted by the Department of Finance and Administration pursuant to Section 31-7-9 (2), all agencies shall purchase commodities at the state contract price from the approved source, unless approval is granted by the Department of Finance and Administration to solicit purchases outside the terms of the contracts; however, prices accepted by an agency shall be less than the prices set by the state contract. Prices accepted by an agency shall be obtained in compliance with paragraph (a), (b), or (c) of MCA § 31-7-13. It shall be the responsibility of the Department of Finance and Administration to ascertain that the resulting prices provide a cost effective alternative to the established state contract.

GOVERNING AUTHORITIES

Purpose - Optional Use Authority Without Bidding

Note

- ❖ **May Buy From Anyone Selling Exact Same Item For Same or Less Price**
- ❖ **Does Not Include ITS (EPL) Contracts – See MCA § 31-7-13(m)(xi)**

Governing authorities may purchase commodities approved by the Department of Finance and Administration from the state contract vendor, or from any source offering the identical commodity, at a price not exceeding the state contract price established by the Department of Finance and Administration for such commodity, without obtaining or advertising for competitive bids. Governing authorities that do not exercise the option to purchase such commodities from the

state contract vendor or from another source offering the identical commodity at a price not exceeding the state contract price established by the Department of Finance and Administration shall make such purchases pursuant to the provisions of MCA § 31-7-13 without regard to state contract prices established by the Department of Finance and Administration, unless such purchases are authorized to be made under subsection (5) of this section.

Purpose- Clarification of Governing Authority Optional Use

Nothing in this section shall prohibit governing authorities from purchasing, pursuant to subsection (2) of this section, commodities approved by the Department of Finance and Administration at a price not exceeding the state contract price established by the Department of Finance and Administration.

Purpose- Clarification That Items Not On State Contract Must Be Bid

The Department of Finance and Administration shall ensure that the prices of all commodities on the state contract are the lowest and best prices available from any source offering that commodity at the same level of quality or service, utilizing the reasonable standards established thereof by the Department of Finance and Administration. If the Department of Finance and Administration does not list an approved price for the particular item involved, purchase shall be made according to statutory bidding and licensing requirements. To encourage prudent purchasing practices, the Department of Finance and Administration shall be authorized and empowered to exempt certain commodities from the requirement that the lowest and best price be approved by order placed on its minutes.

Purpose- County/City Contracts May Be Used By Schools

Any school district may purchase commodities from vendors with which any levying authority of the school district, as defined in MCA § 37-57-1, has contracted through competitive bidding procedures pursuant to MCA § 31-7-13 for purchase of the same commodities. Purchases authorized by this subsection may be made by a school district without obtaining or advertising for competitive bids, and such purchases shall be made at the same prices under the same conditions as purchases of the same commodities are to be made by the levying authority of the school district under the contract with the vendor.

MOTOR VEHICLE LOCAL PREFERENCE: MCA § 31-7-18

Purpose- Allows Qualified Local Bid Preference Procedure

Note

❖ Advertising For Bids Is Required

Purchase of certain motor vehicles. In addition to the method of purchasing authorized in this chapter, governing authorities are hereby authorized to accept the lowest bid received from a motor vehicle dealer domiciled within the county of governing authority for the purchase of any vehicle having gross vehicle weight rating of less than twenty-six thousand (26,000) pounds that shall not exceed a sum equal to three percent (3%) greater than the price or cost which the dealer pays the manufacturer, as evidenced by the factory invoice for the motor vehicle.

In the event said county does not have an authorized motor vehicle dealer, said board or governing authority may, in like manner, receive bids from motor vehicle dealers in any adjoining county.

No purchase of a motor vehicle under the provisions of this section shall be valid unless the purchase is made according to statutory bidding and licensing requirements. Provided, however, that the governing authorities may choose to purchase a motor vehicle from the authorized state contract dealer without having to advertise and receive bids therefore.

No purchase shall be made in excess of the approved state contract price by any of the aforementioned governing authorities when such authorities are situated wholly or in part in the county wherein the authorized state contract dealer for a particular item is domiciled.

ENERGY EFFICIENCY CONTRACTS: MCA § 31-7-14

Purpose- To authorize a Request for Proposals (RFP) process for obtaining energy efficiency equipment and services

An entity may enter into a lease, energy services contract, energy performance contract, shared savings contract, or lease-purchase contracts for energy efficiency equipment, services relating to the installation, operation and maintenance of equipment or improvements reasonably required to existing or new equipment and existing or new improvements and facilities.

"Energy services" or "energy efficient services" means energy efficiency equipment, services relating to the installation, operation and maintenance of equipment and improvements reasonably required to existing or new equipment and existing or new improvements and facilities, also including alternative fuel vehicles and ancillary equipment.

Acquisition is by RFP. The term of any lease or lease-purchase agreement for energy efficiency services and/or equipment entered into under this section shall not exceed twenty (20) years, commencing on the completion of the installation of equipment or improvements under the contract.

RECIPROCAL PREFERENCE LAW: MCA § 31-7-47

Purpose- To Allow Miss. Bidders Preference

Note

- ❖ **Limited to Reverse of Other Bidders State/Local Law**
- ❖ **Out of State Bidders of Construction Contracts Over \$50,000 Must Provide a Copy of Their State's Preference Law – MCA § 31-3-21**

In the letting of public contracts, preference shall be given to resident contractors, and a nonresident bidder domiciled in a state, city, county, parish, province, nation, or political subdivision having laws granting preference to local contractors shall be awarded Mississippi public contracts only on the same basis as the nonresident bidder's state, city, county, parish, province, nation or political subdivision awards contracts to Mississippi contractors bidding under similar circumstances. Resident contractors actually domiciled in Mississippi, be they corporate, individuals or partnerships, are to be granted preference over nonresidents in awarding of contracts in the same manner and to the same extent as provided by the laws of the state, city, county, parish, province, nation or political subdivision of domicile of the nonresident.

CONSTRUCTION CONTRACTS:

Purpose- Special Provisions for Construction and Public Works

Note - Reference Only, See Cited Laws for Specific Requirements

1. A. **Performance Bonds- MCA § 31-5-51** requires bond for faithful performance in an amount not less than the contract.
- B. **Payment Bonds- MCA § 31-5-51** requires bond for each person for labor and materials used in the job in an amount not less than the contract.
- C. **Liability Insurance- MCA § 31-5-51** requires general liability insurance prior to any state agency contract in excess of \$25,000 or governing authority contract in excess of \$25,000, for coverage in an amount not less than \$1,000,000.
2. **Certificate of Responsibility – MCA § 31-3-21**
Contractors of public projects in excess of \$50,000 must have a “Certificate of Responsibility.” All bids for such projects must show the certificate number on the face of the bid envelope.
3. **Professional Engineering and Architectural Services- MCA § 73-13-45**
A licensed engineer or architect is required to prepare the specifications and estimates, and to supervise the work of public works contracts in excess of \$75,000. Such services are only required for in house public work in excess of \$150,000.
4. **Bid Bonds**
Bid Bonds are not required by law, but may be required by local policy.

PENALTIES:

Purpose- To Enforce Compliance

1. Criminal

- | | |
|-------------------|-------------------------------|
| MCA § 31-7-55 | - Basic Violation |
| MCA § 31-7-23 | - Kickbacks |
| MCA § 31-7-13 (o) | - Vendors (Invoice Splitting) |

2. Civil

- | | |
|-------------------|--|
| MCA § 31-7-57 | - Basic Liability |
| MCA § 31-7-57 (2) | - Interpreted by A.G. 2/21/89 Op to Montgomery that a good faith vendor is entitled to payment. A court order is required. |

AD VALOREM TAX ADMINISTRATION 2016 Supplement

Ad valorem taxes -property taxes levied according to the value of the property - are a main source of income for municipal government. The jurisdiction and power to levy taxes by the board of aldermen is found in MCA §§ 21-33-45 and 27-39-307.

The ad valorem tax administration process involves three main, inter-related activities: assessment of property, setting the ad valorem tax levy, and collecting the ad valorem taxes. This chapter surveys these three activities and discusses special ad valorem tax exemptions.

PROPERTY ASSESSMENT

The Mississippi Constitution requires all property to be assessed uniformly and equitably:

§ 112. Equal taxation; property tax assessments

Taxation shall be uniform and equal throughout the state. All property not exempt from ad valorem taxation shall be taxed at its assessed value. Property shall be assessed for taxes under general laws, and by uniform rules, and in proportion to its true value according to the classes defined herein. The Legislature may, by general laws, exempt particular species of property from taxation, in whole or in part....

The assessment of property is a function of the county tax assessor. When the rolls have been equalized each year the tax assessor will send a copy of the land roll to the municipality for approval.

Classes of Property

The Mississippi Constitution Section 112 and MCA §§ 27-35-1 through 27-35-167 lists five categories of property that are taxed for ad valorem purposes. Real property (land, buildings, and other permanent improvements to the land) is divided into the first two classes of taxable property.

Class I real property is single-family, owner-occupied, residential property. (This is the property class to which homestead exemption is applied.) In order for a property to qualify for Class I, it must meet each of these requirements exactly.

Class II property is all other property that does not meet the exact definition for Class I. Therefore, all agricultural property, rental property, business property, and most vacant property are considered Class II. A parcel of property can be part Class I and part Class II.

Class III property is personal property. This class includes furniture, fixtures, machinery, equipment, and inventory used by a business in its operations. The local tax assessor must list each item in every business, value the item according to DOR rules, and depreciate and revalue each item annually.

Class IV property is public utility property. Examples of public utility property include property owned by pipeline companies, electric companies, telephone companies, railroads, etc. This property is assessed on an annual basis by the DOR.

Class V property is motor vehicle property. When a person purchases a motor vehicle tag in Mississippi, they actually pay three separate items: a registration fee, a privilege license, and an ad valorem tax. The ad valorem tax is based on the value of the car; all values are established statewide by the DOR. Ad valorem tax dollars collected go to support local government functions where the car is domiciled (city, county and school district).

The Ad Valorem Tax Formula

With only minor adjustments for homesteaded real property, the tax formula for ad valorem taxes is the same for all five (5) classes of property:

“true value” X “ratio” = “assessed value”

“assessed value” X “millage rate” = “taxes”

The true value is multiplied by a ratio that is set by state law to yield the assessed value. The ratios are as follows:

Class I.....	10%
Class II	15%
Class III.....	15%
Class IV.....	30%
Class V	30%

True value multiplied by these ratios equals assessed value. It is necessary to understand the difference in market value, true value, and assessed value.

Once the assessed value has been determined, it must be multiplied by the appropriate millage rate for the tax district in which the property is located. The millage rate may vary from one taxing district to another, depending upon what services are rendered in that particular district, in what school district the property is located, and whether or not the property lies within or outside municipalities.

What Is a Mill and How Is it Used?

A mill is one-thousandth of one dollar. Just as you would write \$1.00 for one dollar; and \$.10 for a dime, or one-tenth of a dollar; or \$.01 for a penny, or one-hundredth of a dollar; you would write .001, or one-thousandth of a dollar, for one (1) mill. The expression “54.5 mills” is the same thing as the factor .0545.

Example

Let's say a piece of Class II property is being valued. The assessor appraises the property at \$50,000 of true value. The millage rate in the district where the property is located is 84.56 mills. What is the tax bill?

Facts: \$50,000 = true value
15% = Class II ratio
.08456 = millage rate of 84.56 mills

Formula: "true value" X "ratio" = "assessed value"
"assessed value" X "mileage rate" = "taxes"

Application of Formula to Facts: \$50,000 X 15% = \$7,500
\$7,500 X .08456 = \$634.20

Thus, in this example, the ad valorem tax bill is \$634.20.

Millage rates change annually. These rates are set by the board of aldermen in September for the next fiscal year beginning October 1st.

SETTING THE AD VALOREM TAX LEVY

MCA § 21-33-45 gives general authority to the board of aldermen to administer local ad valorem tax levies. The board must levy ad valorem taxes at the regular September board meeting but no later than September 15th. The ad valorem tax levy is expressed in mills, or a decimal fraction of a mill, and applied to the dollar value of the assessed valuation on the assessment rolls of the municipality, including the assessment of motor vehicles as provided by the Motor Vehicle Ad Valorem Tax Law of 1958 (MCA § 27-51-1 and § 27-39-307 *et seq.*) In general terms, the board of aldermen must multiply the dollar valuation (assessed value) of the municipality times the millage (levy) to produce the necessary dollars to support the budget that has been adopted.

Purposes for Which Ad Valorem Taxes May Be Levied

The purpose of levying ad valorem taxes is to support the budget that has been adopted by the board of aldermen at its September meeting. The budget must be adopted by September 15th and published by September 30th, MCA § 21-35-5. Ad valorem taxes are produced from the assessment rolls, which contain the assessments of municipal property.

In its order adopting the ad valorem tax levy, the board must specify the purpose for each levy, including:

- For general revenue purposes and for general improvements, as authorized by MCA § 27-39-307;
- For schools, including all maintenance levies, whether made against the property within such municipality, or within any taxing district embraces in such municipality, as authorized by MCA § 27-39-307

- For municipal bonds and interest thereon, for school bonds and interest thereon, separately for municipal-wide bonds and for the bonds of each school district.
- For municipal-wide bonds and interest thereon, other than for school bonds.
- For loans, notes or any other obligation, and the interest thereon, if permitted by law.
- For special improvement or special benefit levies, as now authorized by law.
- For any other purpose for which a levy is lawfully made. If any municipal-wide levy is made for any general or special purpose under the provisions of any law other than MCA § 27-39-307 each such levy shall be separately stated in the resolution, and the law authorizing same shall be expressly stated therein.
- For Solid Waste Collection, MCA § 21-19-2
- For Library Fund, MCA § 39-3-5

Limits on the Levying of Ad Valorem Taxes

There are limits placed on the levying of ad valorem taxes. The authority of boards of aldermen to levy taxes is restricted by statutory limits that have been placed on the amount of any increase in receipts from taxes levied. The board is limited when levying ad valorem taxes to a 10% cap. Thus, a board of aldermen may not levy ad valorem taxes in any fiscal year which would render in total receipts from all levies an amount more than the receipts from that source during any one (1) of the three (3) immediately preceding fiscal years...an increase not to exceed ten percent (10%) of such receipts. If the ten percent (10%) cap is exceeded, then the amount in excess over the cap shall be escrowed and carried over to reduce taxes by the amount of the excess in the succeeding fiscal year. Excluded from the ten percent (10%) cap is the levy for debt service (notes, bonds, and interest), the library levy found in MCA § 39-3-5, and any added revenue from newly constructed property or any existing properties added to the tax rolls of the county. The ten percent (10%) cap may be figured by fund groups individually or by the aggregate of all county funds. *See Attachment 1 - 10% Revenue Limitation Worksheet at the end of the chapter.*

Advertising Prerequisite to Budget and Ad Valorem Revenue Hearing

The board of aldermen is required by MCA § 27-39-203 to advertise to the general public its budget hearing and proposed tax levy at which time the budget and tax levies for the upcoming year will be considered. MCA § 21-35-5 requires the governing authority to wait at least one week between the budget hearing and the adoption of the budget.

Notice Requirements – MCA § 27-39-203

- The governing body of all taxing entities shall hold a public hearing at which time the budget and tax levies for the upcoming fiscal year will be considered.

- The public hearing shall be advertised in accordance with the following procedures.
 - The advertisement shall be no less than one-fourth (1/4) page in size
 - Type used shall be no smaller than eighteen (18) point
 - Surrounded by a one-fourth-inch solid black border.
 - The advertisement may not be placed in that portion of the newspaper where legal notices and classified advertisements appear.
 - It is the intent of the Legislature that the advertisement appears in a newspaper that is published at least five (5) days a week, unless the only newspaper in the county is published less than five (5) days a week.
 - It is further the intent of the Legislature that the newspaper selected be one of general interest and readership in the community, and not one of limited subject matter.
 - The advertisement shall state that the taxing entity will meet on a certain day, time and place fixed in the advertisement, which shall be not less than seven (7) days after the day the first advertisement is published, for the purpose of hearing comments regarding the proposed budget and proposed tax levies.
 - Any increase in the projected budget revenues or any increase in the millage rate over the current fiscal year shall be explained by the governing body giving the reasons for the proposed increase.
 - A taxing entity collecting taxes in more than one (1) county shall make the required advertisement by publication in each county where the taxing entity collects taxes.
- All hearings shall be open to the public. The governing body of the taxing entity shall permit all interested parties desiring to be heard an opportunity to present oral testimony within reasonable time limits.
- Each taxing entity shall notify the county or municipal governing body of the date, time and place of its public hearing.
 - No taxing entity may schedule its hearing at the same time as another overlapping taxing entity in the same county, but all taxing entities in which the power to set tax levies is vested in the same governing authority may consolidate the required hearings into one (1) hearing.
 - The county or municipal governing body shall resolve any conflicts in hearing dates and times after consultation with each affected taxing entity.
- Any governing body of a tax entity shall be prohibited from expending any funds for the applicable fiscal year until it has strictly complied with the advertisement and public hearing requirements set forth in this section.

- Notification of the public hearing for the proposed budget and tax levy must be published in a newspaper for two (2) times if there is a proposed tax levy increase for any size municipality or for all municipalities that have a population greater than one thousand five hundred (1,500), MCA § 27-39-203 (amended 2015 session).
- Notification of the public hearing for the proposed budget and tax levy may be posted in three (3) public places in the municipality if the municipality has a population less than one thousand five hundred (1,500) or is not proposing a tax levy increase, MCA § 27-39-203 (amended 2015 session).
- It should be noted that if the ad valorem tax levy is not adopted at the MCA § 27-39-203 public hearing, further advertisements will be required.
- The notice requires an additional statement if the municipality is located in a county that is completing its countywide reappraisal during the current fiscal year.

Notice Types

- **If the proposed tax levies are not in excess of the current fiscal year's certified tax rate, the advertisement shall be in the following form:**

"NOTICE OF A PUBLIC HEARING ON THE PROPOSED BUDGET AND PROPOSED TAX LEVIES FOR THE UPCOMING FISCAL YEAR FOR --
(Name of the taxing entity)

The (name of the taxing entity) will hold a public hearing on its proposed budget and proposed tax levies for fiscal year (insert the year) on (date and time) at (meeting place).

The (name of the taxing entity) is now operating with projected total budget revenue of \$____. (___ percent) or \$____ of such revenue is obtained through ad valorem taxes. For the next fiscal year, the proposed budget has total projected revenue of \$____. Of that amount, (___ percent) or \$____, is proposed to be financed through a total ad valorem tax levy.

The decision to not increase the ad valorem tax millage rate for fiscal year (insert the year) above the current fiscal year's ad valorem tax millage rate means you will not pay more in ad valorem taxes on your home, automobile tag, utilities, business fixtures and equipment and rental real property, unless the assessed value of your property has increased for fiscal year (insert the year)

Any citizen of (name of the taxing entity) is invited to attend this public hearing on the proposed budget and tax levies for fiscal year (insert the year) and will be allowed to speak for a reasonable amount of time and offer tangible evidence before any vote is taken."

- **If the proposed tax levies for the upcoming fiscal year shall exceed the current fiscal year's certified tax rate, the advertisement shall be in the following form:**

"NOTICE OF A TAX INCREASE AND A PUBLIC HEARING ON THE PROPOSED BUDGET AND PROPOSED TAX LEVIES FOR -- (Name of the taxing entity)

The (name of the taxing entity) will hold a public hearing on a proposed ad valorem tax revenue increase for fiscal year (insert the year) and on its proposed

budget and proposed tax levies for fiscal year (insert the year) on (date and time) at (meeting place).

The (name of the taxing entity) is now operating with projected total budget revenue of \$____. (____ percent) or \$____ of such revenue is obtained through ad valorem taxes. For next fiscal year, the proposed budget has total projected revenue of \$____. Of that amount, (____ percent) or \$____ is proposed to be financed through a total ad valorem tax levy.

For next fiscal year, the (name of the taxing entity) plans to increase your ad valorem tax millage rate by ____ mills from ____ mills to ____ mills. This increase means that you will pay more in ad valorem taxes on your home, automobile tag, utilities, business fixtures and equipment and rental real property.

Any citizen of (name of the taxing entity) is invited to attend this public hearing on the proposed ad valorem tax increase, and will be allowed to speak for a reasonable amount of time and offer tangible evidence before any vote is taken."

- **If the municipality is located in a county completing its countywide reappraisal update during the current fiscal year and has experienced an increase in the assessed valuation of the property, the advertisement shall include the following statement:**

"A millage rate of ____ will produce the same amount of revenue from ad valorem taxes as was collected the prior year. The millage rate for the prior year was ____."

Adoption of Tax Levy

- After the hearing has been held, the governing authority may adopt a resolution levying the tax rate as specified in the advertisement, MCA § 27-39-203 (7).
- If the resolution is not adopted at the hearing, the scheduled date, time and place for consideration and adoption of the resolution shall be announced at the public hearing and the governing body shall advertise the date, time and place of the proposed adoption of the resolution in the same manner as provided for the first notice, MCA § 27-39-203 (7).

Approval and Certification of Tax Levy

- MCA § 21-33-47 provides that when the governing authority has made the levy of taxes by resolution:

- The clerk shall certify the tax levy to the tax collector of the municipality and send a copy to the Department of Revenue
- The clerk shall also certify the tax levy to the tax collector of the county and the Chancery Clerk
- The clerk shall publish the resolution levying the taxes within 10 days after it is adopted. If no newspaper is published within the municipality, then a copy of the resolution shall be posted in at least three (3) public places within ten (10) days after its adoption.

SPECIAL AD VALOREM TAX EXEMPTIONS

Homestead Exemption – MCA §§ 27-33-1 through 27-33-79.

There are three types of homestead exemption allowed.

1. Regular Homestead Exemption

For homeowners under age 65, up to \$7,500 of the assessed value of homesteads (not to exceed 160 acres of land) owned and actually occupied as homes by bona fide residents is exempt from the payment of the first \$300.00 of county and school district ad valorem taxes.

2. Special Homestead Exemption

Applicants who are over 65 or disabled are exempt from payment of all ad valorem taxes (city, county and school district) up to \$7,500 of assessed value.

3. Special Homestead – Totally Disabled American Veterans

Starting in 2015, service-connected, totally disabled American veterans who have been honorably discharged from military service and their unmarried surviving spouses are allowed an exemption from all ad valorem taxes on the assessed value of homestead property.

Industrial Exemptions - MCA §§ 27-31-101 through 27-31-117.

At the discretion of the local governing authorities, exemptions from ad valorem taxation of certain properties may be granted to industries, with the exception of school district taxes, finished goods, and rolling stock.

The ad valorem tax exemption granted by a local government to a new enterprise shall continue even though there is a change from a leasehold to a fee title in an enterprise financed with bonds issued for the development of lands for industrial purposes or bonds issued under the Mississippi Small Business Financing Act.

Any request for an exemption must be made in writing by June 1st of the year following the year in which the enterprise is completed, MCA § 27-31-107. The time that such exemption may be granted is for a period not to exceed a total of ten (10) years.

New enterprises which may be granted an exemption from ad valorem taxes are as follows:

- Warehouse and/or distribution centers;
- Manufacturers, processors, and refiners;
- Research facilities;
- Corporate regional and national headquarters meeting minimum criteria established by the Mississippi Development Authority;
- Movie industry studios meeting minimum criteria established by the Mississippi Development Authority;
- Air transportation and maintenance facilities meeting minimum criteria established by the Mississippi Development Authority;
- Recreational facilities that impact tourism meeting minimum criteria established by the Mississippi Development Authority;
- Data/information processing enterprises meeting minimum criteria established by the Mississippi Development Authority;
- Technology intensive enterprises or facilities meeting minimum criteria established by the Mississippi Development Authority; and
- Telecommunications enterprises meeting minimum criteria established by the Mississippi Development Authority.

MCA § 27-31-105 contains the procedure by which applications are made to local governments for ad valorem tax exemptions for additions, expansions, or equipment replacements made with reference to a new enterprise and provides that such exemption may be granted in five-year periods, not to exceed a total of ten (10) years. The properties which are available for exemption from ad valorem taxation are: (1) real property (land and improvements) and (2) personal property (machinery/equipment, furniture/fixtures, raw materials, and work in process).

For new enterprises exceeding a total true value of one hundred million dollars (\$100,000,000), local authorities may grant a fee in lieu of taxes which will be negotiated and given final approval by the Mississippi Development Authority.

The minimum fee allowable cannot be less than one-third (1/3) of the property tax levy, including ad valorem taxes for school district purposes.

The general steps in processing an application for ad valorem tax exemption are:

- The proper and timely filing of the required documents to the local county and municipal authorities is essential.
- The original and three (3) copies of the application, along with the local governing authorities' certified transcripts of resolutions of approval, must be forwarded to the Department of Revenue within thirty (30) days from the date of the Certified Transcript of

the Resolution.

- Upon investigation and determination of the property's eligibility for exemption by the Department of Revenue, the Department of Revenue shall then certify its exemption to the governing authorities by issuing a certificate of approval.
- Upon certification by the Department of Revenue, the local governing authorities, at their discretion, may grant the exemption.
- The local governing authorities, after receipt of the certificate by the Department of Revenue, may enter a final board order declaring such property to be exempted and the date when the exemption begins and expires. Upon proper recording, one (1) copy of the final board order shall be filed with the Department of Revenue.

For further information and application formats, contact the Department of Revenue, Bureau of Exemptions & Public Utilities.

Free Port Warehouses - MCA §§ 27-31-51 through 27-31-61.

State law currently offer eligible warehouses, public or private, a license to operate as a free port warehouse and be exempted from all ad valorem taxes subject to the following:

- Personal property which is consigned or transferred to such warehouse for storage in transit to a final destination outside Mississippi may be exempt, subject to the discretion of the governing authorities over the jurisdiction (city or county) in which the warehouse or storage facility is located.
- Caves or cavities in the earth, whether natural or artificial, do not qualify under the Free Port Warehouse definition.
- Licenses shall be issued by the local governing authorities and shall be in effect as of the first calendar day of the taxable year in which the warehouse applied for the exemption by virtue of submitting the application for licensure, and shall remain in effect for such period of time as the respective governing authority may prescribe.
- Such personal property shall not be deprived of exemption because while in a warehouse, the property is bound, divided, broken in bulk, labeled, relabeled or repackaged.
- Certain required annual inventory reports shall be filed with the county tax assessor.

For further information and application contact your local county tax assessor/collector.

Deferral for Small Enterprise Capital Investment – MCA § 27-41-6

The governing authority of any municipality may defer for a period of up to three (3) years ad valorem tax on real property and /or inventory, with the exception of school taxes, levied upon any new capital investments in land, buildings, or depreciable fixed assets and improvement .

- Business or entity has to have less than fifty (50) employees, and

- New investment must be at least One Hundred Thousand Dollars (\$100,000) in the aggregate, and
- The new investment must provide for the employment of at least five (5) new employees.

The deferral of taxes may be authorized by resolution duly adopted and entered upon the minutes of the governing authorities of the municipality and entered upon the minutes of the municipality following receipt of an application filed with the governing authorities by the business or entity describing in detail:

- The total dollar amount of new capital investments proposed to be made;
- The property for which ad valorem taxation deferral is requested;
- A timetable for completion of the new capital investment project;
- A demonstration that the business or entity is financially sound and is likely to fulfill its commitments; and
- Any other information that the governing authorities of the municipality may require.

ATTACHMENT 1

10% REVENUE LIMITATION

MCA § 27-39-321, was adopted in 1980 for governing authorities to have a process for computing a tax levy when reappraisal has occurred. It states that “no political subdivision may levy ad valorem taxes in any fiscal year which would render in total receipts from all levies an amount more than the receipts from that sources during any one (1) of the immediately preceding three (3) fiscal years, plus, at the option of the taxing authority, an increase not to exceed then percent (10%) of such receipts. Property is categorized according to its inclusion or exclusion with this base.

The following property taxes should be included in the base year calculation:

- Taxes collected on Real Property, Personal Property, and Public Utilities and associated delinquent collections.
- Taxes collected on Mobile Homes and the associated delinquent collections.
- Automobile taxes
- Homestead Exemption Reimbursement

Those revenues excluded from the base are referred to as “exempt collections.” Those are ad valorem taxes which are collected, but are not counted within the 10% ceiling for that. It should be noted that each year’s exempt collections are included in the next year’s base.

Exempt Collections include:

- New assessment (new construction, net increases in automobile assessments, etc.)
- Any existing properties which are added to the tax roll.
- Any properties previously exempted which were not assessed the previous year.

The 10% cap may be exceeded by revenues required to service bonded indebtedness.

Example Formula and Calculation

Prior Year or Base Year Collections X 110% (Collections + 10% Allowed) = Allowable Revenue from Non-Exempt

Allowable Revenue from Non-Exempt + Collections Exempt from 10% Limit = Grand Total Available for Budget Year Revenues

\$1,000,000	Base Year Collections
X 110%	
\$1,100,000	Allowable from Non-Exempt Levies
+ 85,000	Collections Exempt from 10% Limit
\$1,185,000	Grand Total Available for Budget Year Revenues

NOTE: The Base Year Collections may be any one of the previous three years.

Remember, any excess of the 10% revenue from non-exempt levies must be put into escrow immediately upon collection.

The escrowed excess will then be transferred into the various tax levied funds at the beginning of the next fiscal year as the first collections of that year's tax levy. This amount may then be included in the next year's Base Year Collection for the calculation of the 10% limit.

TAX COLLECTIONS

The Municipal Tax Collector is charged with the responsibility of collecting all ad valorem tax levied by the municipality, all special assessments and street improvements as authorized by the governing authorities, and all privilege licenses authorized by State Statute. The Collector's assignment is chiefly office procedure. The function of a well-trained office staff is usually the determining factor in a successful operation. The Municipal Clerk serves as Tax Collector unless the governing authorities appoint a Tax Collector.

PUBLIC RELATIONS

The payment of taxes, real, personal, or license is never a joyous occasion; and most people resent having to pay them at all. A majority of the population, however, realizes the necessity of paying taxes; and if they are informed of the need and made aware of the functions of their tax dollar, they are a little more tolerant. A well-informed and well-trained office staff can be of tremendous value to the Collector's office. A kind word, a friendly smile, and even a sympathetic look from the office staff can often bridge the gap of distaste for paying taxes. A great majority of taxpayers, however resentful, will fulfill their obligations if they are greeted in a courteous and respectful manner and if they are aware of the need for their participation in the overall program of development. A friendly office, a courteous office and a well-informed office will help provide that awareness. To coin an old phrase, "Courtesy is Contagious."

TAX COLLECTION – REALTY

Ad valorem tax on real property is perhaps the easiest tax to collect since it is a lien on the property described, MCA § 27-35-1. It has also been described as one of the fairest taxes since it is levied against a known factor. The payee has more voice in the assessment of tax levied against him since he can have direct contact with the assessing party. Any taxpayer with a complaint relative to assessed valuations of property should be directed to the county board of supervisors which is required by state statute to hear such complaints. Sixteenth section leaseholds (lessee interests) are taxed but only the lessee's leasehold interest is sold for taxes, MCA § 27-35-71.

COLLECTION OPTIONS

The municipal tax collector shall collect municipal taxes and the municipal school district taxes during the time and in the same manner and under the same penalties as the county taxes are collected. MCA § 21-33-53

The municipal governing authority may contract with the county board of supervisors for the county tax collector to collect the municipal taxes and to conduct a unified tax sale and for the chancery clerk to collect the delinquent taxes from the tax sale. MCA § 25-7-21 and § 27-41-2.

- This contract will be as an inter-local agreement between the municipal governing authority, the county board of supervisors, the tax collector and the chancery clerk.
- The inter-local agreement should include all items desired in addition to ad valorem tax collections such as collection of special assessments, lot cleanings, mobile homes and motor vehicles.

- The fee for collection shall be five percent (5%) of the taxes collected or an amount authorized between the county and the municipality. MCA § 25-7-21
- Inter-local agreements are authorized for unified tax sales when the county collects municipal taxes and requires related redemptions of property sold for taxes levied by such municipality shall be made through the chancery clerk. MCA § 17-13-9
- The Attorney General must approve the inter-local agreements. Such agreements must be filed with the chancery clerk of each participating county and the Secretary of State. MCA § 17-13-11
- Municipal boards may require the county tax collector to collect its motor vehicle ad valorem taxes for a fee of not less than two percent (2%) of collection. MCA § 27-51-29
- County tax collectors may collect mobile home taxes for the municipality and retain the same commission as is allowed for motor vehicle ad valorem taxes. Taxes on mobile homes on the land rolls shall be collected by the county and city tax collectors as on all other realty. MCA § 27-53-21
- Ad Valorem taxes collected by the county tax collector are to be reported and settled to the municipality by the 20th day of the month following collection. MCA § 27-51-25

BILLING AND DISTRIBUTION

- Upon receipt of the tax roll from the county Assessor, the Collector should review the rolls for errors and omissions. If any are detected these should be reported back to the County Assessor for correction.
- Once the city tax collector is satisfied that the roll is accurate and complete, it should be presented to the city clerk who in turn should present it to the city governing body for acceptance.
- Upon acceptance by the governing body the city tax collector then should proceed to compute the tax bills, using the millage rate applicable to his taxing district. The municipality may contract with the county assessor/collector to print the tax receipts for the municipality.
- As a part of the billing procedure the Collector must recap the assessment roll, verify the computed bills and add any special improvement assessments authorized by the governing authorities.
- Upon completion of the billing cycle, the process of mailing statements to individuals is activated. The mailing of tax statements by the Collector is a courtesy, not a necessity as far as taxes being due and payable. AG Opinion, Slade, January 25, 1982.
- As a part of this distribution, the Collector should supply requested statements to escrow-holding mortgage companies before mailing to individual property owners.

RE-TEST FOR 10% CAP ON INCREASE IN TAX REVENUE

Once the roll and levy are set and approved, the Clerk should do the calculations necessary to determine if the possibility exists that the municipality might exceed that 10% cap on increase in property tax revenue. *(See Attachment 1 at the end of the Tax Administration Chapter on the 10% Revenue Limitation for an explanation on calculating the cap. If additional information is needed on this computation, the State Department of Audit can assist you.)* State law provides that collections in excess of the 10% cap must be escrowed and applied against the next year's budget needs. The computation should also be done in late September to determine if amounts have been collected which must be escrowed in accordance with the statutes. MCA § 27-39-321

COLLECTION

Collection procedures are fairly routine during the early part of the collecting period. County tax assessors assess property on a calendar year, and billing routine is begun shortly after the approval of the tax roll during October. Usually most collecting authorities begin collecting taxes during December but no later than December 26th (MCA § 27-41-1). In all areas, taxes are considered delinquent after February 1st and are subject to a standard interest rate of one percent (1%) per month from this time. MCA § 27-41-9.

1. As payments are received in the Collector's office, a receipt is issued to the payee. At the close of each day's business each employee must check his cash drawer and verify his cash collections against his copies of the paid receipts.
2. Some municipalities may employ a central cashier system whereby all bills are paid, including water, building permits, etc. This system confines the handling of money to a select few and eliminates errors that can occur when several employees are dealing with the same cash drawer. When the cashier closes out the day, the validated receipts are dispersed to the applicable departments for distribution and posting.
3. Tax collector shall give signed receipt showing by whom, and on what, taxes are paid. The tax collector shall not accept payment of current year taxes for real property which has been sold for taxes until such sales are redeemed. The tax collector has no liability for errors made for good faith effort to comply with this section. MCA § 27-41-31
4. Tax Collector may accept payment by credit card provided the full amount legally due is remitted to the city without discount or cost, so long as payment by credit card is a voluntary option for payment and the city recoups any charges that may be made for the service. There is no authority for a city to accept a discounted amount or to pay service charges or other charges for credit card services. AG Opinion, Pepper, January 24, 1997. (Also see Accepting Credit Cards Chapter)
5. There is no authority for a municipal governing authority to forgive or reduce the amount of ad valorem taxes, penalties and interest due on property. AG Opinion, O'Donnell, February 7, 2003
6. The United States Postal Service postmark shall be considered the date that a payment is made if it received with sufficient postage and correctly addressed. MCA § 25-1-107

7. When the due date for any payment shall fall on a Saturday, Sunday or legal holiday then the payment shall be received by the Tax Collector on the first working day after such day or days without any interest being owed by the taxpayer. MCA § 27-41-9
8. Subsequent changes by the county to the accepted roll should be supported by written documentation from the county assessor/collector.

PARTIAL PAYMENTS

Any municipality that does not have an inter-local agreement with the county and collects their taxes may, by order spread upon the minutes, allow for the acceptance of partial payments for ad valorem taxes (excluding motor vehicle taxes), MCA § 27-41-1. If partial payments are allowed by the municipality, the partial payments shall be made as follows:

1. One-half (1/2) of all ad valorem taxes due shall be paid on or before February 1.
2. One-fourth (1/4) of all ad valorem taxes, interest and penalty due shall be paid on or before May 1.
3. One-fourth (1/4) of all ad valorem taxes, interest and penalty due shall be paid on or before July 1.
4. If any unpaid balance exists on August 1, then the lands shall be sold at the land sale on the last Monday in August for said unpaid balance.
5. Taxes paid on the installment method are subject to interest at the rate of 1 percent per month from February 1 to the date of payment.
6. Failure to pay one installment matures all installments. MCA § 27-41-13
7. Installments may be reinstated by payment of the delinquent installment and interest. MCA § 21-41-17
8. Allowing taxpayers to pay taxes in installments is an attempt to reduce the burden to the taxpayer.
9. The original tax receipt should be retained until the entire balance due has been collected.
10. The payment of taxes for debt service on the installment method is only allowed when the Board specifically approves same in accordance with MCA § 27-41-3.

POSTING

As the Collector's office receives the paid receipts, either from his own office or from the central cashier's office, the amount collected is broken down and distributed to the applicable accounts. This allows a daily total of accounts collected to be reconciled and credited. A daily distribution sheet may be utilized to show how the collected amount was distributed. Each day's receipts are posted to their respective accounts, and all ledgers, etc., are posted as paid. Special care should be taken in the posting and maintaining of all accounts. An unposted account or an account posted in error can be very embarrassing and may cause many problems at a later time.

TAX COLLECTION – PERSONAL

The personal property roll may be handled in basically the same fashion as the realty roll. The computing and billing is usually done as a part of the overall billing cycle and mailed along with the realty tax bills. The collecting of personal property tax bills is handled the same way as the realty tax bills. The accounts are posted and maintained the same as the realty tax bills.

NOTICES AND REMINDERS

Shortly after February 1, some Collectors may wish to start a series of collection procedures involving the use of statements, reminders and letters. These can be beneficial to both:

1. The Collector, whose primary concern is to collect the money charged to him; and
2. The taxpayer, who, by paying before total delinquency, will save considerable money in interest and damage costs.

The notices, letters, etc. can be designed to supply vital information concerning delinquency and penalties confronting the taxpayer.

DELINQUENT TAXES AND TAX SALE

REAL PROPERTY

A. Taxes; when due and delinquent

MCA § 27-41-1 requires that all state, county, municipal and school ad valorem taxes shall be due, payable and collectible by the tax collector and shall be paid on or before the first day of February next succeeding the date of the assessment and levying of such taxes.

Any municipality that does not have an inter-local agreement with the county and collects their taxes may, by order spread upon the minutes, allow for the acceptance of partial payments for ad valorem taxes (excluding motor vehicle taxes). If partial payments are allowed by the municipality, the partial payments shall be made as follows:

- (a) One-half (1/2) of all ad valorem taxes due shall be paid on or before February 1.
- (b) One-fourth (1/4) of all ad valorem taxes, interest and penalty due shall be paid on or before May 1.
- (c) One-fourth (1/4) of all ad valorem taxes, interest and penalty due shall be paid on or before July 1.

If any unpaid balance exists on August 1, then the lands shall be sold at the land sale on the last Monday in August for said unpaid balance.

B. Interest on Taxes Due

MCA § 27-41-9 requires a person that fails to pay his taxes by February 1st, to be assessed interest at the rate of one percent (1%) per month, or fractional part thereof, to the date of payment of such taxes. The Collector should also be aware that the unpaid amount after the initial partial payment is subject to one percent (1%) per month. MCA § 27-41-9(1)

When the due date for any payment shall fall on a Saturday, Sunday or legal holiday then the payment shall be received on the first working day after such day or days without any interest being owed by the taxpayer.

The Governor of the state may by proclamation before, on or after the due date of such tax payments extend the time for the imposition of this penalty for a period not to exceed sixty (60) days, and if necessary, for two (2) additional periods not to exceed sixty (60) days each. The proclamation shall be spread in the minutes of the municipality at the next regular meeting of the board.

The U. S. Postal Service postmark shall be considered the date that a payment or report is made if the payment has sufficient postage and is correctly addressed. MCA § 25-1-107

C. Tax Sale Dates

MCA § 27-41-55 requires a sale of all delinquent taxes on the last day of August. A municipality may hold a tax sale on the first Monday of April upon approval of the Board of Aldermen for the optional tax sale. If a municipality holds an April tax sale, it would still conduct the August tax sale for delinquent partial payments and parcels that were not included in the April sale.

The advantage to conducting an April sale would be to insure the municipality would receive a large majority of its tax revenue in a timely manner during the fiscal year. In conducting an April sale, the Collector should be aware that he can sell only those unpaid accounts where no partial payment has been received.

D. Tax Sale Procedures

Under the provisions listed in MCA § 27-41-55 through 27-41-81, and authorized for municipalities under the provisions listed in MCA § 21-33-63, all ad valorem taxes on real property which are not paid by February 1 and August 5 are considered to be in arrears. Real property tax affected must be listed and advertised in the manner prescribed by the provisions of the Code and sold at public auction. The sale is to be conducted on the first Monday in April and/or the last Monday in August. Unlike personal property, collection on real property tax is an established procedure. The Collector may not vary from this procedure and remain within the confines of the Code. The following are basic steps involved in land sale and collection procedures as this writer interprets them.

1. PRE-SALE CHECKLIST

On or before February 15 and August 5, the Collector will compile a list of unpaid realty taxes for publication in a local newspaper. This list will be compiled in such a way as to conform to the provisions of MCA § 27-41-55, which govern the listing of unpaid realty taxes for publication. *As a caution, the Collector's attention is directed to the information contained in the section entitled "Property Struck to Municipality" governing the advertising of property that was previously struck to the municipality.*

a. Compiling List

The Collector must list all unpaid realty taxes on the list for publication, with the exceptions for "Property Struck to Municipality." This list will reflect the name of the property owner, legal description as reflected on the tax roll, and the amount of the tax and penalty due. Accuracy is extremely vital and very essential due to legal technicalities surrounding a tax sale. After compiling the list, every word and figure should be verified to insure complete accuracy.

b. Publication

Publication of the tax sale list must be made in a local newspaper for two consecutive weeks. First publication MUST NOT BE LESS THAN 14 DAYS prior to the date of sale. Since the tax sale list is usually lengthy and demands accuracy, contact should be made with the newspaper staff, and agreements should be reached as to the corrections and deletions. In the event there is no newspaper in the county of the municipality, the tax collector shall publish in a newspaper published in the judicial district of the county and shall also post the advertisement at City Hall and in each ward of the municipality. MCA § 27-41-57

c. Deletions

After the first publication is released, the Collector should delete all the parcels for which payment has been received in the interim between listing and first publication. Deletions, of course, are at the option of the editor, however, publication fees are limited to \$1.50 per listing in accordance with MCA § 25-7-21(3).

d. Publication Fees

MCA § 25-7-21(3) provides that the publishers, payable by the delinquent taxpayer, and to be collected and paid over by the tax collectors a fee of \$1.50 for each separate publication advertising lands for sale for taxes.

2. SALES PROCEDURES

MCA § 27-41-59 provides the specifics for conducting the land sale.

- Date: First Monday in April and/or the Last Monday in August
- Time of sale: 8:30 a.m. until 4:30 p.m. and from day to day at the same time and location until completion of the sale.
- Location: Designated location authorized by the governing authorities. The designated location must be a part of the official minutes of the municipality, MCA § 21-33-63.
- Parcels shall be sold in the order of the advertisement (alphabetically by name or numerical by parcel number) MCA § 27-41-55

a. Method of Conducting Sale

- The Collector, or his authorized deputy, will read the publication notice as it appears in the newspaper.
- The properties will be sold in the order listed. He will read the sale data in the exact manner that it appears on the tax bill, first calling out the receipt number, full name

of the property owner, entire legal description, tax amount due, and ending with “what am I bid?”

- When bidding has reached the point where the Collector is satisfied that no further bidding is evident, he will pronounce the property sold and announce the name of the buyer.
- In no instance will the Collector accept less than the amount of taxes and damages.
- A purchaser may bid an amount in excess of the taxes and damages.
- He will continue to sell each parcel, in turn, to the highest bidder or bidders.

b. Excess Bids

A purchaser may be an amount in excess of the taxes and damages. Any excess bid will not be refunded to the purchaser if the property is redeemed. It will be deposited into the general fund of the municipality. MCA § 27-41-77

- If the land is redeemed, the excess bid shall be retained by the municipality.
- If the land matures to the purchaser, the property owner may request to be paid the amount of the excess bid.
- If the property owner does not request payment of the excess bid within two (2) years from the expiration of the period of redemption, the excess bid shall be retained by the municipality.
- When a person presents a claim for the excess bid, within the time period provided, certified by the municipal clerk, the board shall order a warrant to be issued on the general fund of the municipality.

c. Who May Purchase

- City employees (or spouses) may not purchase at city sale.
Ethics Opinion #96-036E
- Elected officials and public servants may not purchase at a tax sale conducted by the city of employment. Ethics Opinion #05-043-E
- Tax collector (or spouse) may not purchase land at his own sale.
MCA § 27-45-23 and McLeod v. Burkhalter (Miss. 1879) 57 Miss 65
- Heir can purchase at tax sale. AG Opinion to Craig, 2/26/92
- Exceptions to heir purchases – tenant in common; position of trust.
AG Opinion to Jones, 9/27/96

d. Listing Buyer

After each parcel is sold, the Collector will enter on the receipt or ledger sheet the name of the buyer. This listing should be placed on all receipts, statement forms, ledgers, roll books, etc., in order to completely record the sale on all applicable forms. The Collector will continue in this manner, selling each parcel until all parcels are sold. In the event

of a bid over and above the amount of taxes and damages, the Collector will list this amount as an excess bid and will continue to separate this excess bid on all forms and lists.

e. Property Struck to Municipality

In the event no bid is received on a parcel, the Collector will strike off to the municipality; and the records will indicate the municipality to be buyer of record. Caution: An Attorney General opinion dated July 24, 1978 specifies that property struck to the municipality at a tax sale should not be advertised at the next year's tax sale publication, UNLESS it has been redeemed. Property which was struck to the municipality in the preceding year will automatically be struck to the municipality and certified to the City Clerk by the Tax Collector each succeeding year until redemption or maturity. MCA § 21-33-69 and MCA § 27-41-59

When a parcel has been struck to the municipality and an interested party comes to redeem the property, all the delinquent taxes and current taxes including interest and penalties must be paid by the redeemer at the same time. MCA § 27-35-63 and AG Opinion to McLeod, June 11, 1999.

f. Continuing Sale

In the case of a lengthy sale that cannot be completed within legal hours, the Collector will adjourn the sale until the following day.

- The sale may be continued from day to day until all parcels have been sold.
- At his discretion the Collector may hold sale open until all money has been collected from the buyers and until the list of land sold for taxes has been completed. By holding the sale open, the Collector is in a better position to make any corrections of errors that may appear in the listing.
- At the conclusion of the sale, the Collector may wish to inform the buyers the approximate time that he will be ready to receive payment for the parcels purchased.
- At this time the collector should stress the fact that unless payment is received from the purchaser of record within a reasonable time period or if the purchaser is unable to meet his obligation, the property may be resold to competitive bidders or struck to the municipality.
- One other option the Collector has to collect from unpaid purchasers is to enter suit against the purchaser.

g. IRS Forms 1099 and W-9

The IRS requires interest income over \$10.00 paid by a public body to a tax buyer in any given year be reported to the IRS. The municipality shall issue a Form 1099-INT to each purchaser receiving \$10.00 or more each year in interest income. The municipality shall also file the FORM 1099-INT with the IRS. A purchaser at a

municipal tax sale should file a W-9 form with the municipal tax collector prior to purchasing in the tax sale.

h. Suggested Land Sale Procedures List for Each Bidder

As a buyer or buying agent at the (year) (Municipality) Tax Sale, I understand and agree to abide by the following procedures:

1. The sale will be conducted daily between the hours of 8:30 a.m. and 4:30 p.m. with breaks and intermissions to be determined by the (municipality) tax collector.
2. All buyers or buying agents must pre-register with the (municipality) tax collector's office before they will be able to participate in the sale process.
3. Upon registration, each buyer or agent will be issued a list of the lands to be sold at the sale and a buyer's card with a number that will represent the number to be used by the purchaser to bid on property. These lists and cards are the property of (municipality) and must be returned to the tax collector before you leave each day. (You will only be given one printout and card).
4. Parcels will be sold in parcel number order as listed on the print out. Parcels will not be sold out of order.
5. Payment for parcels purchased at the sale must be in cash or certified bank check. Purchasers will be allowed to go to a local bank to get certified bank checks for payments. All payments must be made upon check-out in the tax collector's office unless provisions have been made to wire the payment to a local bank. All wired payments must be remitted in the form of a certified bank check to the (Municipality) Tax Collector's office no later than 12:00 noon the day after the sale has concluded. If payment is not in the (Municipality) Collector's office by the specified time, the sales for that buyer may be considered null and void and the (Municipality) Tax Collector has the authority to immediately reopen the sale and sell the parcels to another buyer.
6. As a land sale purchaser, you must understand that you do not get excess bids back. The only money you will receive upon redemption of the property you purchased is the original starting amount listed on your buyer's sheet plus interest. Again, if you bid more than the amount listed on your buyer's sheet, you will forfeit that money.
7. Please keep the room as quiet as possible to allow everyone the ability to communicate. Small children will not be allowed. Please turn off all cell phones during the sale.
8. You may check out at any time during the sale by returning your buyer's card to collector personnel and paying for your purchases in the tax collector's office. ONCE YOU CHECK OUT OF THE SALE, YOU ARE FINISHED; YOU WILL NOT BE ALLOWED TO PURCHASE ADDITIONAL PROPERTIES.

9. If you or your spouse is an elected official or employee of (Municipality) you have been warned that you may be in violation of the MS Ethics Law if you participate in this tax sale.

Date: _____

Purchasing Property for: _____

Agent's Name _____ Purchaser's Code: _____

E. Post-Sale Procedures

As soon as possible following completion of the tax sale, interest, damages, and publication fees are added to the tax amount to be collected. A list of land sold for taxes is prepared from the tax sale record. This list must be completely accurate. The Tax Collector should use extreme caution in determining accuracy. The courts, in confirming title, will not hesitate to void a sale for any minor or insignificant detail that was erroneously overlooked in preparing the list of land sold for taxes.

a. Tax Sale List

In preparing the tax sale list, the Collector, using preprinted forms, simply fills in the pertinent information taken from the sale receipts. This information must include receipt number, name of property owner, legal description, purchaser of property, and the amount of taxes plus interest, cost and damages. In the event of an excess bid, the Collector will enter this on the list in the proper location and designate it as an excess bid amount. The excess bid will be listed by the Municipal Clerk and shall be paid into the municipal treasury. If the property is redeemed or set aside for any reason the municipality shall retain the sum. However, if the property is not redeemed within the two (2) year period the previous owner may request the excess amount and has up to two (2) years after the redemption period expires to do so. If the previous owner does not make this request the board of aldermen shall order a warrant to issue the funds on the general fund. MCA § 27-41-77

The Municipal Clerk shall deliver a certified list of land sold to individuals and struck to the city to the Chancery Clerk of the County on or before the second Monday of May (April sale) and on or before the second Monday in October (August sale). MCA § 27-41-79

b. Collection of Sales

Following completion of the list of land sales and a careful accuracy check, the receipts are totaled, and recapped; the purchasers are then notified that payment can be made. After payment is made, the Collector will issue an official receipt to payee. "The tax collector shall, upon payment of the purchase price, deliver to the purchaser of lands sold for taxes a receipt showing the amount paid, a description of the land sold, the

amount of taxes due thereon, and the date of the sale; and such receipt signed by the tax collector shall be evidence of the purchase of said land by said purchaser. The state auditor shall prescribe the form to be used for said receipt. MCA § 21-41-75” As the Collector’s copies of the paid receipts are processed, he will post all accounts as paid, indicating payment made by purchaser, and file receipts as a permanent record.

c. Failure of purchaser to pay

If the purchaser of land sold at the tax sale shall not immediately pay the amount of his bid, the collector shall offer the land again; and if some person will not then bid the amount of taxes and costs, it shall be struck off to the municipality; but the first purchaser shall be liable for the amount of his bid, to be collected by suit by the tax collector in the name of the municipality.

If the land was struck to the municipality and the first purchaser pays after bringing suit, the tax collector shall notify the chancery clerk of the county, and the clerk shall strike the said lands from the records of land sold to the municipality, and shall enter said land on the list of lands sold to individuals. MCA § 27-41-73

F. Supplemental Sales

If from any cause a sale of any land for taxes shall not be made at the time appointed by law for the sale, it may be sold thereafter, in the same or a subsequent year, at any time designated by order of the board/council. Notice of a sale so ordered shall be given by advertising it in the same manner prescribed by law for the sale of land for taxes; and the same shall be made at the same place and subject to all the provisions of the law. The supplemental sale shall not be construed as giving the tax collector any discretion to postpone the sale of lands from the time appointed by law for such sales. MCA § 27-41-65 and 27-41-67

PERSONAL PROPERTY

A. Processing Delinquent Accounts

There are many and varied ways in which the Collector may process his delinquent accounts. In a great number of accounts, agreements can be reached and methods of payments can be arranged, thereby eliminating the need for the embarrassment of seizure and distress sale. All Collectors should keep in mind that their purpose is to collect the tax due, using the best and most effective solution available to them. It is suggested that all avenues of collection be considered and that seizure and sale be a last resort effort.

It is considered better, by far, to play a game of catch-as-catch-can and collect the tax due by means of notices, statements, letters, and personal contact than resort to seizure and sale measures. The latter situation creates animosity and discord toward the municipality that may never be entirely overcome. Even though it is the ultimate aim of the Collector to collect the taxes due, by applying concern and compassion he may not only collect all taxes

in default, but in the process lay a very solid foundation of good public relations...an end result that is very necessary in successful municipal affairs.

B. Collection Procedures

Personal property taxes are delinquent and subject to collection the same as real taxes after February 1. “Upon default of the payment of any taxes upon the due date prescribed in this chapter, the tax collector shall proceed immediately to collect all taxes then remaining in default and unpaid, by distress and sale of any personal property liable therefor ... MCA § 27-41-15” Based on the quoted portion of the statute outlined above, the ultimate collection for unpaid taxes should not become a great problem. A few basic steps should be taken prior to the enforcement of this provision of the code. The following steps provide a suggested outline of collection procedures.

There are two different provisions for collection of delinquent personal property allowed by state law.

MCA § 27-41-15 states that the tax collector shall proceed immediately to collect all taxes then remaining in default and unpaid, by distress and sale of any personal property liable therefor. The municipality may also use the procedure in MCA § 27-41-101 through 27-41-109. This will be discussed later in the chapter.

1. Procedures Allowed By MCA § 27-41-15

A. Letter Of Notification

Step one in the collection of delinquent personal property taxes is to ascertain that the taxpayer is aware of the tax due by him and his liability to pay these taxes. This can be accomplished by a simple form letter setting out the tax due plus all accumulated damages. This letter should be sent certified mail, return receipt, to assure that the taxpayer has been informed of his responsibility.

B. Personal Contact

If there has been no response to the notice after a reasonable period of time has elapsed following the form letter, the Collector or his deputy may make personal contact with the taxpayer. This personal contact may first be accomplished by phone and later in person, if necessary. The purpose of this personal contact is to collect the amount due or to inform the taxpayer of his default in payment and his obligation to pay under penalty of distress and sale.

C. Final Notification

The next phase of the collecting procedure may vary with different Collectors. Some Collectors may wish to write a final letter informing the taxpayer of the Collector’s intent to seize sufficient amount of personal property to satisfy the tax liability. (A copy of this letter should be retained for the collector’s files.) Others may consider the personal contact to be sufficient notification of possible seizure and ultimate sale of personal property. Regardless of the method used, and in order

to eliminate as much criticism as possible, the taxpayer should be informed of the Collector's intent and a record made of the notification.

D. Posting Of List

The final phase in the collecting proceedings, prior to seizure, is to post notice of intent to sell in three public places, one of which will be City Hall. This notice should contain the delinquent taxpayer's name, a brief description of the property to be seized, and the amount due plus all interest, cost, and damages. This notice is required to be posted five (5) days prior to date of sale. It is suggested that a copy of this list be sent by registered mail, return receipt request, to each taxpayer involved, prior to posting. This action will prove beneficial in most cases, due to the fact the taxpayer may finally begin to realize the seriousness of the situation. In all probability, payment will be made. It should be pointed out that all expenses involved in the legal notification proceedings, including cost of registered mail, may be listed as a cost item to collection and may be added to the tax due amount.

E. Private Collection Agent

An alternative to municipal tax collectors to collect delinquent ad valorem taxes by distress and sale of personal property, the board of aldermen of any municipality, in its discretion, may contract with a private attorney or private collection agent in the manner provided in MCA § 21-17-1.

2. Procedures In Accordance With MCA § 27-41-101 Through 27-41-109

A. Letter Of Notification

Step one in the collection of delinquent personal property taxes is to ascertain that the taxpayer is aware of the tax due by him and his liability to pay these taxes. This can be accomplished by a simple form letter setting out the tax due plus all accumulated damages.

B. Demand Letter

The tax collector shall give written notice to the taxpayer demanding the payment of the ad valorem taxes and penalties on personal property in default within twenty (20) days from the date of the delivery of the notice. The notice shall be sent by certified or registered mail to the taxpayer, or delivered by an employee of the tax collector either to the taxpayer or someone of suitable age and discretion at the taxpayer's place of business or residence. If the notice is delivered in person, the taxpayer or other person that the notice was delivered to should sign for the notice. A copy of the signed notice of delivery should be kept in the files. MCA § 27-41-101

C. File Tax Lien

If any person liable for the payment of ad valorem taxes on personal property fails or refuses to pay the taxes after receiving the notice and demand, the tax collector

may file a notice of a tax lien with the circuit clerk of the county in which the taxpayer resides or owns property which shall be enrolled as a judgment on the judgment rolls. The amount of the judgment shall be a debt due the municipality and remain as a lien on the property for up to seven (7) years. A new tax lien shall be filed at the end of each seven (7) year period. MCA § 27-41-101

D. Issue Warrant

The tax collector may issue a warrant to the sheriff commanding him to immediately seize and sell the real and personal property of the person owning the property in which the judgment is enrolled for the payment of the amount of the ad valorem tax on personal property and the cost of executing the warrant. MCA § 27-41-103

E. Issue Jeopardy Warrant

If the tax collector has cause to believe that the collection of ad valorem taxes due by any taxpayer will be jeopardized by delay, he may immediately file with the circuit clerk a notice of tax lien for ad valorem taxes on personal property and issue a jeopardy warrant under official seal directed to the sheriff. MCA § 27-41-105

F. Sheriff To Seize Property

The sheriff, upon receipt of a warrant or a jeopardy warrant, shall immediately seize any property of the taxpayer named in the warrant. He shall execute the warrant and return it to the tax collector, and pay to him the money collected by virtue thereof by the date specified therein, but not to exceed sixty (60) days. The sheriff shall be entitled to the fees for his services and is to collect them in the same manner. Real property shall be disposed of according to MCA § 13-3-163 and personal property shall be disposed of according to MCA § 13-3-165.

LAND SALE REDEMPTION PROCEDURES

Delinquent ad valorem and special improvement taxes shall be sold, after advertisement pursuant to law, by the Tax Collector on the first Monday of April and/or the last Monday of August of each year. (MCA § 27-41-59). A list of the land sold for taxes by the Tax Collector for the municipality shall be made, as required, by the Tax Collector and filed with the Municipal Clerk and the Chancery Clerk of the county after the sale. This is then subject to redemption in the manner as prescribed for the redemption of land sold for taxes. The redemption process is found in MCA § 21-33-59 through 21-33-75 and MCA § 27-45-1 through 27-45-29.

REDEMPTION PROCESS

A tax sale list of land sold for municipal taxes, ad valorem, special improvement, and the municipal separate school district, either to the municipality or to an individual, shall be recorded in an indexed record book, which shall be kept in the office of the Municipal Clerk. (MCA § 21-33-63) All redemptions (or tax sale releases) shall also be recorded in the above record entitled “LAND SOLD FOR TAXES.”

A. WHO MAY REDEEM

1. The owners, any person acting for him with his consent, or any person interested in the property may redeem the same from the tax sale. (MCA § 27-45-3).
2. A redemption works to the benefit of the real owner no matter by whom it is made. Redemption does not confer title.
3. Individuals who purchase the delinquent taxes at a sale prior to or after the sale in question should be allowed to redeem if they so desire. AG Opinion: O’Beirne, April 3, 1991.
4. A purchaser that has not requested a tax deed can redeem subsequent year’s taxes, or can pay current year’s taxes. AG Opinion: Steel, May 8, 2009.
5. The municipality may redeem from the county tax sale the same as any other lien holder in the state whenever property upon which a municipality holds a lien has been sold for county taxes.(MCA § 21-33-73)

B. WHEN REDEMPTION MAY BE MADE

- The owner, with the exception of an infant or a person of unsound mind, may redeem his property at any time within two (2) years from the date of sale. (MCA § 27-45-3) (To assume that two (2) full years elapse, the day of sale must be excluded, since the law does not recognize part of a day when computing time periods.)
- An infant or a person of unsound mind whose property may have been sold for taxes will have the right to redeem within two (2) years after attaining full age or being restored to sanity. (MCA § 27-45-3)

- MCA § 27-41-31(2) prohibits the Tax Collector from accepting payments of current year's taxes when delinquent taxes are owed.
- If a prior or subsequent year's tax purchaser seeks to make payment of current year taxes he is not required to redeem the taxes that he purchased. AG Opinion: Byrd, March 12, 2004.

C. AMOUNT TO REDEEM

Property, regardless of the amount of the purchaser's bid at the tax sale, shall be redeemed after payment of the following to the Municipal Clerk:

1. The amount of all taxes for which the land was sold, with all cost incident to the sale (MCA § 27-45-3); and
2. Five (5) percent damages on the amount of taxes for which the land was sold (MCA § 27-45-3); and
3. Interest on all such taxes and cost at a rate of one and one-half percent (1.5%) per month or any fractional part thereof from the date of such sale (MCA § 27-45-3 and 27-35-63); and
4. All taxes and cost that have accrued on the land since the sale, with interest thereon from the date such taxes shall have accrued, at a rate of one and one-half percent (1.5%) per month or any fractional part thereof (MCA § 27-45-3 and 27-35-63); and
5. In addition, provided for by MCA § 25-7-21, as amended,
 - three percent (3%) on the amount necessary to redeem
 - Recording Fee of ten dollars (\$10.00)
 - Abstracting Fee of one dollar (\$1.00)

Tips for Redemption

- MCA § 27-41-31(2) prohibits the Tax Collector from accepting payments of current year's taxes when delinquent taxes are owed.
- If a prior or subsequent year's tax purchaser seeks to make payment of current year taxes he is not required to redeem the taxes that he purchased. AG Opinion: Byrd, March 12, 2004.
- If payment is not tendered in full, the property cannot be redeemed.
- If a payment is received by personal check and the check is later dishonored, the redemption is void until the taxpayer redeems the property within the time allowed by law, with sufficient funds. AG Opinion: Edens, November 19, 1993. The property will mature if the proper amount is not received prior to the expiration of the redemption period.
- The U. S. Postal Service postmark shall be considered the date that a payment is made if the mail has sufficient postage and is correctly addressed. MCA § 25-1-107 and AG Opinion to Crawford, 9/19/97

D. TAX RELEASE

The municipal Tax Collector shall issue a tax release from delinquent taxes to the redeeming party upon payment of delinquent taxes, penalties, interests and fees.

MCA § 27-45-3 requires each release to be recorded in the land records. This recording will be in the municipal tax sale records and shall also be sent to the Chancery Clerk to record and index in the general index of deeds and in the appropriate sectional or subdivision index. The recorded tax release cancels the title of the tax sale purchaser. See "Tax Release Form" in Forms Section

SETTLEMENT PROCESS

It shall be the duty of the City Clerk to establish within the city depositories an account styled, Land Redemption Account, to pay to the purchaser and officers entitled to compensation, the full amount due them, as provided by law and dispensed as follows within twenty (20) days after the end of each month (MCA § 27-45-1). The total amount of the redemption should be deposited into this account for each redemption and should be dispersed monthly.

A. Purchaser

It is the duty of the Municipal Clerk to pay to the purchaser of the property sold for taxes the full amount due him, as provided by law. This amount includes:

- a. The amount of delinquent tax for the year paid for by the buyer (MCA § 27-45-3); and
- b. Interest on the delinquent tax at a rate of one percent (1%) per month or fractional part thereof from February 1st. (MCA § 27-41-9); and
- c. Publisher's fee (per subscription at a rate of \$1.50 per publication) (MCA § 25-7-21(3); and
- d. Interest on all taxes and cost at the rate of one and one-half percent (1.5%) per month or fractional part thereof from the date of sale. (MCA § 27-45-3)

B. Municipal General Fund

The balance of the redemption cost shall be deposited in the municipal general fund, they are as follows:

- a. Damages on delinquent taxes at a rate of five percent (5%) (MCA § 27-45-1); and
- b. City's actual postage fees (MCA § 27-43-3); and
- c. Publisher's actual fees (MCA § 27-43-3); and
- d. Accrued taxes for year(s) delinquent (MCA § 27-35-63 and 27-45-3) if struck to the municipality; and
- e. One and one-half percent (1.5%) interest on accrued delinquent taxes (MCA § 27-35-63 and 27-45-3); and
- f. Filing affidavit - \$1.00 (MCA § 27-43-3 & 27-43-4); and

- g. Recording each parcel in tax sale book - \$1.00 [MCA § 25-7-21(4)(a)]; and
- h. Property owner's identity search - \$50.00 (MCA § 27-43-3); and
- i. Issue of first notice - \$2.00 (MCA § 27-43-3); and
- j. Mailing of first owner's notice - \$1.00 (MCA § 27-43-3); and
- k. Issue of second notice - \$5.00 (MCA § 27-43-3); and
- l. Mailing of second owner's notice - \$2.50 (MCA § 27-43-3); and
- m. Each issue of lienor's notice - \$7.00 (MCA § 27-43-11); and
- n. A redemption fee of three percent (3%) on the total of all the applicable fees [MCA § 25-7-21(4)(f)].

C. Sheriff's Fees:

- a. Each Sheriff's notice – \$35.00 (MCA § 27-43-3)

D. Chancery Clerk Fees:

- a. Recording each tax release - \$10.00 [MCA § 25-7-21(4)(d)]; and
- b. Abstracting each tax release in subdivision index - \$1.00 [MCA § 25-7-21(4)(d)].
- c. Recording tax deed - \$10.00 (MCA § 25-7-21)
- d. Abstracting tax deed in subdivision index - \$1.00 (MCA § 25-7-21)

Tips for the Land Redemption Account:

The Land Redemption Account should be a separate checking account used only for the accounting of the redemption of delinquent tax sales.

- Do not co-mingle these funds with other funds
- Bank charges to this fund should be paid by the "General Fund" and not the Land Redemption Fund
- Do not take a redemption and fail to collect and deposit the entire amount shown on the release
- Do not take partial payments on a redemption
- Make deposits in this account every day that you take a redemption
- Reconcile the account monthly
- Disperse the prior month's collections by the 20th of the next month. Payments should be made to the purchaser, municipal general fund, municipal school district (if applicable) and the chancery clerk.

E. IRS FORM 1099 INT

The IRS requires interest income over \$10.00 paid by a public body to a tax buyer in any given year be reported to the IRS. The municipality shall issue a Form 1099-INT to each purchaser receiving \$10.00 or more each year in interest income. The municipality shall also file the FORM 1099-INT with the IRS. A purchaser at a municipal tax sale should file a W-9 form with the municipal tax collector prior to purchasing in the tax sale.

NOTIFICATION PROCESS

PRIOR TO REDEMPTION TIME (Notices to Owners and Lienholders)

MCA § 27-43-3 requires the municipal tax collector to give notice to the owner of delinquent taxes prior to the maturity through personal service (sheriff notice if owner resides in MS), certified mail and newspaper publications. A tax deed can be voided if all three notices are not performed and documentation recorded of each.

1. 1st Notice: (within 180 days and not less than 60 days)

The Municipal Clerk shall, within one hundred eighty (180) days and not less than sixty (60) days prior to the expiration of the time of redemption with respect to land sold, either to individuals, or to the State, be required to issue notice to the record owner of the land sold as of 180 days prior to the expirations of the time of redemption. (MCA § 27-43-1 and 27-43-5). See “Notice to Owners” in Forms section for example of the notice.

How Notice Served or Mailed

- a. The Clerk shall issue the notice to the Sheriff of the county of the reputed owner’s residence, if he is a resident of the State of Mississippi, and the Sheriff shall be required to serve personal notice as summons issued from the courts are served, and make his return to the Municipal Clerk issuing same. (MCA § 27-43-3)
 - Sheriff or deputy sheriff must personally deliver the notice to the property owner. It cannot be delivered by a private process server a police officer or a constable according to Rule 4 of the MS Rules of Civil Procedure.
 - The notice cannot be posted at the property if the owner not present.
 - After reasonable diligence, a copy of the summons can be served with the defendant’s spouse or some other person of the defendant’s family above the age of 16 who is willing to receive service.
 - If the summons is left with the spouse or other family member, a copy of the summons has to be mailed (by first class mail, postage prepaid) to the person to be served at the place where a copy of the summons and complaint were left. This service is deemed complete of the 10th day after such mailing.
 - The court can void the tax sale if this process is not properly executed.

- b. The Clerk shall also mail (by registered or certified mail) a copy of notice to the reputed owner at his usual street address, if same can be ascertained after diligent search and inquiry, or to his post office address if only that can be ascertained, and he shall note such action on the tax sales record. (MCA § 27-43-3).

- Notice shall be mailed to each owner individually. If return receipt is not returned signed by each individual owner, a clerk should resend the notice by certified mail.

Example: Tax Receipt in the names of John and Jane Doe. A notice should be sent to John Doe and a separate notice should be sent to Jane Doe.

- c. MCA § 27-43-3 allows the Clerk to collect the following fees for the first notice:

- Fifty Dollar (\$50.00) fee for examining the records to ascertain the record owner of the property;
- Two Dollars (\$2.00) for issuing the notice,
- One Dollar (\$1.00) for mailing the same and noting such action on the tax sale record,
- Thirty five Dollars (\$35.00) for the Sheriff to serve the notice.

2. 2nd Notice (1st Notice Returned Undelivered and Sheriff's Return not Found) Fees:

- a. In the event the notice by mail is returned undelivered and the personal notice as required for the first notice that was to be served by the Sheriff is returned not found, then the Clerk shall make further search and inquiry to ascertain the reputed owner's street or post office address. If the reputed owner's street or post office address is ascertained after the additional search and inquiry, the Clerk shall again issue notice as was required for the first notice set out and make notation on land sale record. MCA § 27-43-3
- b. For issuing a second notice, the Clerk shall be allowed a Five Dollar (\$5.00) fee, and for mailing the same and noting such action on the tax sales record, a Two Dollar and Fifty Cents (\$2.50) fee, and for serving the second notice, the Sheriff shall be allowed a Thirty Five Dollars (\$35.00) fee. MCA § 27-43-3
- c. If personal notice is again issued and it is again returned not found and if notice by mail is again returned undelivered, then the Clerk shall file an affidavit to that effect and shall specify therein the acts of search and inquiry made by him in an effort to ascertain the reputed owner's street and post office address and that affidavit shall be kept and documented as a public record in the Clerk's office. MCA § 27-43-3. (See Affidavit in Sample Forms). Also refer to the "Affidavit" Section for additional information.

3. 3rd Notice (To Holder of Liens); Fees.

- a. It shall be the duty of said Municipal Clerk to examine the records of deeds, mortgages and deeds of trust in the office of the Chancery Clerk to ascertain the names and addresses of all mortgagees, beneficiaries and holders of vendors liens of all lands sold

for taxes, and shall, within the time fixed by law for notifying owners, send by certified mail to all such lienors. MCA § 27-43-5. See “Notice to Lien Holder” in Forms Section

- b. For examining the records to ascertain the names and addresses of lienors, the Municipal Clerk shall be allowed a Seven Dollar (\$7.00) fee in each instance for each lien when a lien is found of record, and said fees shall be taxes against the owner of said land, if same is redeemed, and if not redeemed, then said fees are to be taxes as part of the cost against the purchaser. MCA § 27-43-11
- c. A failure to give the required notice to such lienors, shall render the tax title void as to such lienors, and as for them only, and the purchaser shall be entitled to a refund of all such taxes paid the state, county, or other taxing district after filing his claim as provided by law. MCA § 27-43-11

4. 4th Notice (Publication 45 Days Prior to Redemption Time); Fees.

- a. The Clerk shall also be required to publish the name and address of the reputed owner of the property and a legal description of such property in a public newspaper of the county in which the land is located, or if there is no newspaper published as such, then in a newspaper having a general circulation in such county. The publication shall be made at least forty-five (45) days prior to the redemption period’s expiration. MCA § 27-43-3. See “Notice for Publication” in Forms Section
- b. The Clerk shall also be allowed the actual cost of publication. MCA § 27-43-3

AFFIDAVITS

MCA § 27-43-3 requires the municipal clerk to file an affidavit when further search and inquiry does not reveal the owners street and post office address. The clerk shall specify in the affidavit the acts of search and inquiry made by him in an effort to obtain the address of the owner.

- The affidavit shall be retained as a permanent record in the clerk’s office and such action shall be noted on the tax sales record.
- If the notice is returned a second time, the clerk should conduct further search and inquiry. If the clerk is still unable to ascertain the owners address then a second affidavit should be filed and retained as a permanent record and noted on the tax sales record book.
- It is recommended that a clerk have a working file for each parcel of land which consists of the title work, certified mail receipts, Sheriff’s returns, returned mail and affidavit. This file is kept as a permanent record in the clerk’s office. All notices should also be documented in the tax sales record book.

Notification Errors cited in court cases.

These errors resulted in the governing authority to appear in court and the tax deed was set aside. Some cases resulted in damages charged to the municipality for the errors. (MS Delinquent Taxes by Arthur Johnston, Esq.)

- Not notifying a lienor, an owner, or a partial owner.

- Sending lien holder's notice to an address which is not the most current for that lienor.
- Posting notice to owner on property without getting personal service under Rule 4 and also failing to mail, by first class mail, the notice to owner to the place where the notice was left.
- Constable, police officer, or private process server serving notice to owner.
- In the case of joint owners, serving one notice addressed to both, or serving only one owner, or the return receipt signed by only one owner.
- Publishing notice in the newspaper after the 45th day prior to the expiration of the period of redemption.
- Failing to check prior years' tax receipts and homestead exemption applications as part of the Clerk's further search and inquiry efforts.
- Failing to file a First and Second Affidavit of Further Search and Inquiry or filing an Affidavit which does not properly and correctly document the Clerk's efforts at further search and inquiry.
- Failing to list the correct name of the lienor's borrower on the Notice of Lienor.
- Failing to list the book and page number of the lienor's deed of trust and listing a legal description of the property on the Notice of Lienor.
- Sending a duplicate of the Notice to Owners to the lienholder instead of the separate Notice to Lienors containing the statutorily required language.

MATURITY OF TAX SALE

1. When the period of redemption has expired, the Municipal Clerk shall, on demand, execute deeds of conveyance to individuals purchasing land at tax sales (MCA § 27-45-23) See "Tax Deed" in the Sample Forms
2. Fees, Assessed to Purchaser.
 - a. All fees authorized under MCA § 27-43-3, relating to notice of owners.
 - b. Per affidavit or certificate filed with the Chancery Clerk, a one dollar (\$1.00) fee. MCA § 27-43-4
 - c. For recording Tax Deed, a fee of Ten dollars (\$10.00) MCA § 25-7-21
3. Statutes provide that such conveyance shall be attested by impressing the seal of the office of the Municipal Clerk on the instrument, and that it shall be recordable when acknowledged as land deeds are recorded. MCA § 27-45-23
4. The City Clerk is to notify and certify a list to the state land commissioner within 30 days after the end of the redemption period of all lands struck off to the municipality for taxes which were not redeemed. MCA § 27-45-21

5. The City Clerk may make a duplicate release or conveyance if the original is lost or destroyed but shall mark the release or conveyance as “Duplicate”. MCA § 27-45-25

VOID TAX SALES

The Board or Council may, by resolution spread on the minutes, find and declare a tax sale void if facts are presented showing that the sale was in error. Statutory authority to void tax sales are:

- When the landowner mistakenly pays taxes on incorrect land of another, and his land was sold. The tax collector may collect and refund any difference and give the taxpayer a receipt. The Tax Collector is to release the land sold to the landowner. MCA§ 27-45-13
- If an owner produces receipt of tax collector indicating payment of taxes before the sale but within the 2 years after the tax sale and pays all subsequent accrued taxes, the clerk is to release the land sold to the owner. MCA § 27-45-17
- If the tax collector sells land for which payment has already been made, such sale is void and purchaser is due a refund of the purchase price. MCA § 27-41-63
- The Clerk’s failure to send notices as prescribed by law voids the tax sale and the purchaser is to be refunded the purchase price. MCA § 27-43-3 and AG Opinion to Beckett, December 30, 2008
- Taxes which have previously matured to the State of Mississippi are void. AG Opinion to Wilkinson, August 23, 1995
- Taxes which have sold in a tax sale after a bankruptcy is filed.
- Taxes assessed on un-leased 16th section property are likely void, as are such taxes sold on 16th section property where the lease has expired or been terminated by the school district. AG Opinion to Griffith, November 27, 1991.
- When the sale to the state is void on account of uncertain description or passed to the state under an otherwise void tax sale, the state land commissioner is to give a list of such stricken (void) sales to the chancery clerk and county assessor. The assessor is to assess the taxes for the proper year or years in the same manner as property which has escaped taxation. The collector then collects the taxes in the same manner as provided by law. MCA § 29-1-31

HOMESTEAD CHARGEBACKS

MCA § 27-33-37(l) provides for the Tax Collector to reassess and list, as subject to all taxes, the property described in the homestead exemption application upon final rejection by the Department of Revenue.

- The Homestead Exemption Chargeback shall be approved by the Board and spread in the minutes.
- The additional taxes due shall become due and payable on or before February 1 of the year following the notice of reassessment.

- If not paid, the tax collector sells the property in the same manner and time as the regular tax sale.
- The lien for additional taxes due to a rejection of homestead exemption will not attach to the property or impose a liability on the new owner, as long as the new owner is the purchaser and didn't have notice of the rejection. AG Opinion to Harmon, September 29, 2006.

REFUNDS

The Mississippi Code gives the tax collector specific authority to refund taxes paid in error.

- Motor vehicles destroyed by fire, tornado, flood, collision, accident, or actor of Providence may be credited with proportional part of the taxable year remaining of ad valorem taxes, by no cash refund. MCA §27-51-27
- Owners of mobile homes totally destroyed by fire, tornado, flood or acts of providence may be given proportional credit upon filing petition and proof. MCA § 27-53-31
- Tax erroneously paid may be refunded. The taxpayer must prove he bore the burden of the tax. MCA § 27-73-3
- The tax collector is authorized and empowered to refund any taxes which have been paid in error or otherwise when the taxpayer has paid in excess of the sum property due. Such refunds shall be made out of any monies collected by the tax collector from the same source of revenue or if such source no longer exists, from the general fund collections. The tax collector shall issue a warrant to the claimant and deduct the proper amount from his next settlement. MCA § 27-73-7

Erroneously paid taxes include but are not limited to:

1. Double payments on the same property
 2. Overpayments
 3. Payment on State, United States, vacant or exempt land
 4. Purchase price paid for the redemption of lands erroneously sold for taxes (refund to tax sale purchaser) (Also includes void tax sales)
- All actions for which no other period of limitation is prescribed shall be commenced within three (3) years next after the cause of such action accrued, and not after. This includes applications and suits for refunds of ad valorem taxes paid in error. MCA § 15-1-49
 - A governing authority does not have the power to refund penalties or interest resulting from a taxpayer's failure to pay taxes legally due, regardless of whether a tax statement was mailed or received by the taxpayer. AG Opinion to Barry, August 15, 1997

Bankruptcy is FEDERAL LAW. Under the U. S. Constitution, states do NOT have the authority to regulate bankruptcy. While states regulate liens, when it comes into bankruptcy, it is well established that Federal legislation is supreme. [Russell v. Cheatham, 16 Miss. 703(1847)]. Federal bankruptcy law supersedes all state laws and state constitutional provisions on the subject. [McRaney v. Riley, 128 Miss. 665 (1922)].

SAMPLE FORMS

Clerk.

Municipal Clerk of _____, Miss.

Affidavit for Use when unable to locate owner

AFFIDAVIT

STATE OF MISSISSIPPI
COUNTY OF _____
CITY OF _____

I, _____, City Clerk within and for the City of _____, Mississippi, do hereby certify that the following acts were performed in an attempt to locate the true owner of _____ (here describe lands) _____, their property having been sold for taxes at a land sale held _____, 20____, for the taxes of 20____, to _____ as provided in Section 27-43-3, Mississippi Code of 1972, as amended.
(LIST ACTS HERE)

This the _____ date of _____, 20____.

Clerk.

(SEAL)

STATE OF MISSISSIPPI
COUNTY OF _____

Personally appeared before me, the undersigned Notary Public within and for said County and State, aforesaid, the within named _____, City Clerk, who acknowledged that he signed and delivered the foregoing instrument on the date and year therein stated.

Given under my hand and official seal, this the _____ day of _____, 20____ A.D.

Notary Public

Notice for Publication – At least 45 days prior to maturity

NOTICE TO PROPERTY OWNERS OF THE CITY OF _____,
_____, MISSISSIPPI

YOU ARE HEREBY GIVEN NOTICE THAT THE HEREIN DESCRIBED PROPERTY ASSESSED TO YOU, OR SUPPOSED TO BE OWNED BY YOU, WAS ON THE _____, DAY OF _____, 20____, SOLD FOR THE 20____ UNPAID REALTY TAXES, AND THAT THE TITLE TO SAID PROPERTY WILL BECOME ABSOLUTE IN THE NAME OF THE PURCHASER UNLESS REDEMPTION FROM SAID TAX SALE IS MADE ON OR BEFORE _____, 20____. A TAX SALE DEED WILL BE ISSUED TO THE PURCHASER ON REQUEST AFTER THE _____ DAY OF _____, 20____.

ALL BY AND UNDER AUTHORITY OF SECTION 27-43-3 MISSISSIPPI CODE OF 1972, AS AMENDED.

(NAME OF OWNER *LAST KNOWN ADDRESS OF OWNER* DESCRIPTION OF PROPERTY)

WITNESS MY HAND AND THE OFFICIAL SEAL OF THE CITY OF _____,
MISSISSIPPI, THIS _____ DAY OF _____, 20____.

_____, CITY CLERK

TAX DEED

CITY OF _____
STATE OF _____
COUNTY OF _____

Be it known that _____, Tax Collector of said City of _____ did on the _____ day of _____, A.D., 20____, according to law, sell the following described land, situated in said City of _____ or _____ Municipal Separate School District and Assessed to _____, to-wit:

(Description of Land)

(Sec. Twp. Range)

FOR THE TAXES ASSESSED THERON for the year A.D., 20____, when _____ became the best bidder therefor, at and for the sum of _____ Dollars \$_____, and the same not having been redeemed, I, therefore sell and convey said above described land to the said _____.

Given under my hand and official seal of office this the _____ day of _____, A.D., 20____.

City Clerk

STATE OF MISSISSIPPI
COUNTY OF _____

Personally came and appeared before me, the undersigned authority in and for _____ County, Mississippi, _____ personally known to me as the City Clerk of the City of _____, Mississippi, who acknowledged that he (or she) signed, sealed and delivered the foregoing instrument on the day and year therein written as his (or her) official act and deed, as provided by law, and for the purposes therein written.

Witness my hand and official seal of office on this _____ day of _____, 20____.

Notary Public
(Seal)

_____ County, Miss.

IN CONSIDERATION OF _____ DOLLARS received from _____
the amount necessary to redeem the described property:

DESCRIPTION OF PROPERTY

assessed to _____ and sold to _____ at Delinquent Tax Sale on the _____ day of _____, 20____ for taxes thereon for the year 20____ the said land is hereby released from all claim or title of state or purchaser under said tax sale, in accordance with Section 27-45-3, Mississippi Code of 1972 (as amended).

Witness my hand and official seal of office, this the _____ day of _____, 20____

City Clerk

(SEAL)

By: _____ D.C.

(BE SURE TO HAVE YOUR CITY CLERK RECORD THIS RELEASE)

STATEMENT OF AMOUNT NECESSARY TO REDEEM

I. DELINQUENT TAX AND FEES DUE INDIVIDUAL OR STATE PURCHASER:

- | | | |
|--|----------|----------|
| 1. Amount of year ____ delinquent tax (Section 27-45-3) | \$ _____ | |
| 2. Interest on delinquent tax (Section 27-41-9) | \$ _____ | |
| 3. Publisher's fee (per publication) (Section 25-7-21(3)) | \$ _____ | |
| 4. Subtotal lines 1, 2, and 3. | \$ _____ | |
| 5. Purchaser's interest on line 4, 1 1/2% per month since sale date
(____ months x 1 1/2% x line 4) (Section 27-45-3) | \$ _____ | |
| 6. TOTAL AMOUNT DUE TO PURCHASER (add lines 4 and 5) | | \$ _____ |

II. DAMAGES, FEES AND ACCRUED TAXES DUE TO CITY:

- | | | |
|---|----------|----------|
| 7. Damages 5% on delinquent tax (5% x line 1) (Section 27-45-3) | \$ _____ | |
| 8. City actual postage fee (Section 27-43-3) | \$ _____ | |
| 9. Publisher's actual fee (Section 27-43-3) | \$ _____ | |
| 10. Accrued taxes for year ____ (Section 27-45-3) | \$ _____ | |
| 11. Interest on accrued taxes for year ____ (Section 27-45-3)
(1% x ____ months from tax due date x line 10) | \$ _____ | |
| 12. Accrued taxes for year ____ (Section 27-45-3) | \$ _____ | |
| 13. Interest on accrued taxes for year ____ (Section 27-45-3)
(1% x ____ months from tax due date x line 12) | \$ _____ | |
| 14. TOTAL AMOUNT DUE TO CITY (add lines 7 through 13) | | \$ _____ |

III. SHERIFF'S FEES:

- | | | |
|--|----------|----------|
| 15. 1st notice (Section 27-43-3) | \$ 35.00 | \$ _____ |
| 16. 2nd notice (Section 27-43-3) | \$ 35.00 | \$ _____ |
| 17. TOTAL AMOUNT DUE TO SHERIFF add lines 15 and 16) | | \$ _____ |

IV. FEES DUE TO CITY:

- | | | |
|--|-------------|----------|
| 18. File affidavits (Section 27-43-3 & 4) | \$ 1.00 ea. | \$ _____ |
| 19. Identify record owners (Section 27-43-3) | \$50.00 | \$ _____ |
| 20. Recording list, each subdivision (Section 25-7-21(4)(a)) | \$ 1.00 | \$ _____ |
| 21. Issue 1st sheriff's notice (Section 27-43-3) | \$ 2.00 | \$ _____ |
| 22. Mail 1st owner's notice (Section 27-43-3) | \$ 1.00 | \$ _____ |
| 23. Issue 2nd sheriff's notice (Section 27-43-3) | \$ 5.00 | \$ _____ |
| 24. Mail 2nd owner's notice (Section 27-43-3) | \$ 2.50 | \$ _____ |
| 25. Issue each lienor notice (Section 27-43-11) | \$ 7.00 | \$ _____ |
| 26. Add lines 19 through 25 | | \$ _____ |
| 27. Calculation subtotal lines 6, 14, 17 and 26 [_____] | | \$ _____ |
| 28. Redemption fee 3% x line 27 (Section 25-7-21(4)(f)) | | \$ _____ |
| 29. TOTAL AMOUNT DUE TO CLERK (add lines 26 and 28) | | \$ _____ |

V. CHANCERY CLERK'S FEES: (Optional)

- | | | |
|--|---------|----------|
| 30. Recording each redemption (Section 25-7-21-(4)(d)) ... | \$10.00 | \$ _____ |
| 31. Abstracting each subdivision (Section 25-7-21(4)(e)) ... | \$ 1.00 | \$ _____ |
| 32. TOTAL AMOUNT DUE TO CHANCERY CLERK (add lines 30 and 31) | | \$ _____ |

VI. AMOUNT TO RECEIVE FROM REDEEMER:

- | | | |
|--|--|----------|
| 33. GRAND TOTAL (add lines 6, 14, 17, 29 and 32) | | \$ _____ |
|--|--|----------|

I certify that the above is a true and correct statement of amount necessary to redeem said property, on this the _____ day of _____, 20____

Clerk

By: _____ D.C.

TAX COLLECTOR CALENDAR

All statutes for county tax collections apply to municipal tax collections – MCA § 27-41-5

Dec 26 – Feb 1	Tax Books open for collection	MCA § 27-41-1
Feb 1	First Installment of Partial Payment Due	MCA § 27-41-1
Feb 2	Interest of 1% per month or fraction thereof on all unpaid taxes	MCA § 27-41-9
March 1	Advertise tax sale list for 2 weeks for April tax sale	MCA § 27-41-55
First Monday in April	Conduct April Tax Sale	MCA § 27-41-59
May 1	Second Installment of Partial Payment Due with interest	MCA § 27-41-1
Second Monday in May	Certify April tax sale list to Chancery Clerk	MCA §27-41-79 and MCA § 27-41-81
July 1	Final installment of Partial Payment Due with interest	MCA § 27-41-1
August 5	Advertise tax sale list for Two (2) weeks for August tax sale	MCA § 27-41-55
Last Monday in August	Conduct August Tax Sale	MCA § 27-41-59
	(DOR, Governor, AG may postpone the date of sale	MCA § 27-41-69)
Second Monday in October	Certify August tax sale to chancery clerk	MCA § 27-41-79

Land Redemption: Based on date of tax sale

Between 60 and 180 days prior to the maturity of the tax sale –

Notice to owners – mailed by certified, return receipt	MCA § 27-43-1
Notice to lienholders – mailed by certified, return receipt	MCA § 27-43-5
Sheriff to serve notice if owner lives in MS	MCA § 27-43-3

At least 45 days prior to maturity –

Print notice in the newspaper	MCA § 27-43-3
-------------------------------	---------------

Fees for land redemption:**MCA § 27-43-3**

Examination of records for maturity notices	\$50.00	
Issuing First Notice	\$1.00	
Mailing Notice	\$1.00	
Mailing Lienholder Notice	\$7.00	MCA § 27-43-11
Sheriff to serve first notice	\$35.00	
Issuing Second Notice	\$5.00	
Mailing Second Notice	\$2.50	
Sheriff to serve second notice	\$35.00	
Publication costs –	actual costs of publication	

Chancery Clerk Fees:

Filing Fee	\$1.00	MCA § 27-43-4
Abstracting tax sale list	\$1.00 per parcel	MCA § 25-7-21
Deed to land sold for taxes	\$10.00	MCA § 25-7-21
Abstracting deed	\$1.00	MCA § 25-7-21
Redemption of Land Sale Form	\$10.00	MCA § 25-7-21
Abstracting Redemption Form	\$1.00	MCA § 25-7-21

OFFICIAL TRAVEL
MS Municipal Audit and Accounting Guide, 2010 Edition
Office of the State Auditor
2016 Supplement

MCA § 25-3-41 provides for officers and employees of municipalities to receive reimbursement for travel costs related to official travel that has been authorized. Generally, “official travel” is travel associated with official duties; and “authorized” is documented approval from the governing authority or its designee.

This law sets maximum reimbursement limits for travel where a private motor vehicle is used, grants the Department of Finance and Administration (DFA) the authority to set maximum meal reimbursement amounts, and provides for other travel-related expenses such as lodging, public carrier, etc. to be reimbursed at actual cost. For DFA’s travel information, see their web site at www.dfa.ms.gov.

Travel-related expenses must be documented. This means invoices or similar support must be provided for reimbursements of expenses other than meals and travel by private motor vehicle, and all reimbursed expenses must be defined on a claim form similar to the Department of Finance and Administration's form "Voucher for Reimbursement of Expenses Incident to Official Travel." See Appendix A.

Municipalities are authorized to develop policies relative to official travel. These policies may further limit reimbursement amounts and may require additional information to justify reimbursement.

MCA § 25-3-41 (5) also authorizes municipalities to make travel advances in accordance with Office of the State Auditor rules and regulations. The following rules and regulations have been issued for this purpose.

When Travel Advances May be Made

Before any travel advance is made, the following conditions must exist:

The board must have a policy regarding the use of travel advances. The policy should provide for:

- Compliance with these rules and regulations.
- Compliance with the Department of Finance and Administration's daily limits on expenditures for meals.
- Compliance with MCA § 25-3-41 requirements.
- Designation of administrative heads who will have the authority to authorize travel advances.
- Any local limitations and procedures which are in addition to state laws and regulations.

The person receiving the advance must be an officer or employee (part time or full time) of the municipality.

Source of Travel Advance Funds

Money used for a travel advance must come from a fund that may legally make expenditures for the purpose of the official travel.

The budget of the fund making the travel advance must have an unencumbered balance sufficient to support the related travel expenditures.

A petty cash fund may be authorized to make travel advances.

Travel Advances Must be Used for Travel Related Purposes

This money may not be used for personal expenses or for any purpose other than the actual expenses of the authorized travel.

Accounting for Travel Advances

Officers and employees must account for travel advances within the first five working days after the end of the month in which the official travel occurred. This means:

- All travel advance money not used for travel related expenses must be repaid to the municipality.
- The travel reimbursement form prescribed by the Department of Finance and Administration or a similar form must be completed and submitted. This form must account for all money not refunded.
- Actual receipts are provided for all travel expenses, except meals and travel in personal vehicles. The "Travel Manual" issued by the Department of Finance and Administration, Office of Purchasing and Travel prescribes maximum meal reimbursement amounts.

TRAVEL AUTHORIZATION

In-State _____ Out-of-State _____ Out-of-Country _____ Travel Advance _____ PTE Authorized _____

TO BE COMPLETED BY TRAVELER

Name: _____ Title: _____

Agency Name: _____ Division Name: _____

Travel Date From: _____ To: _____ Destination(s): _____

Conference/Meeting Name: _____

Purpose of Travel: _____

Travel Advance Amount: _____ Prior to Trip Expense Authorized: Yes or No

Total Estimated Cost: _____ Fund Source: General or Special *Complete Payment Info below, if known.*

Total Actual Cost: _____ Difference in Estimated and Actual Cost: _____

Signature: _____ Date: _____

TO BE COMPLETED BY AGENCY / INSTITUTION (As required by individual Agency / Institution)

Funds Certification: _____ Title: _____ Date: _____

Division Approval: _____ Title: _____ Date: _____

Agency Approval: _____ Title: _____ Date: _____

TO BE COMPLETED BY DEPT. OF FINANCE & ADMINISTRATION For Travel Outside the Continental U. S.

Budget Analyst Fund Certification: _____ Date: _____

DFA Executive Director Approval: _____ Date: _____

TO BE COMPLETED BY DEPT. OF FINANCE & ADMINISTRATION For Excess Expenses Incurred on Travel Outside the Continental U. S.

Budget Analyst Fund Certification: _____ Date: _____

DFA Executive Director Approval: _____ Date: _____

PAYMENT INFORMATION

SAAS Agency #: _____ Activity: _____ Trip #: _____

SPAHRS Agency #: _____ Org: _____ Cat: _____

Fund #: _____ Sub Org: _____ Proj: _____

INSTRUCTIONS FOR TRAVEL AUTHORIZATION

1. A separate form must be completed for each traveler and travel type (e.g., in-state, out-of-state, out-of country).
2. Complete all applicable items and obtain approval PRIOR to commencing travel.
3. All travel outside the continental limits of the United States must be approved by the Department of Finance and Administration prior to departure. Travel to Alaska no longer requires such approval, but travel to Hawaii or Puerto Rico does.
4. If actual expenses exceed the estimated expenses on travel outside the continental limits of the United States, the original form shall be resubmitted showing the excess charges and again approved by the Department of Finance and Administration.
5. Be as accurate as possible in estimating costs, including gratuities, taxis, or any other applicable travel expenses.
6. The travel advance should include travel related costs paid by the traveler, not expenses paid directly by the agency (e.g. pre-paid registration, travel account charges). If an advance is not settled within 10 working days after the end of the month in which travel is completed, the traveler's paycheck WILL be held until the debt to the State is resolved. Only two outstanding advances are allowed at any time. Additional advances require DFA approval.
7. The Prior to Trip Expense authorization is granted for any lodging or public transportation purchases to be paid by the traveler prior to traveling.
8. A copy of this approved form along with supporting documentation must be submitted with the travel voucher form 13.20.10 in order to receive reimbursement.
9. For detailed line instructions, see MAAPP manual section 13.20.20.

WORKSHEET

	<u>Estimated Cost</u>	<u>Actual Cost</u>
Airfare	\$ _____	\$ _____
Meals (____ Days @ \$_____/ Day)	\$ _____	\$ _____
Lodging (____ Days @ \$_____/ Day)	\$ _____	\$ _____
Registration Fee	\$ _____	\$ _____
Rental Car (____ Days @ \$_____/ Day)	\$ _____	\$ _____
Mileage:	\$ _____	\$ _____
Other:	\$ _____	\$ _____
	\$ _____	\$ _____
Total	\$ <u>_____</u>	\$ <u>_____</u>

TRAVEL VOUCHER

State of Mississippi: _____
(Agency or Institution)

Name: _____ PIN/WIN #: _____

Address: _____ PID#: _____

Check One:	
Employee	
Contract Worker	
Board Member	

I request reimbursement for subsistence and other authorized expenses paid by me incident to official travel for the State from _____ to _____. The itemized statement follows.
(date) *(date)*

Check Box(es):	In-State		Out-of-State		Out-of-Country		PTE Request	
----------------	----------	--	--------------	--	----------------	--	-------------	--

Prior to Trip Expenses (PTE) Request:	
Lodging	
Public Carrier	

Payment Information <i>(Traveler complete, if known)</i>	
Trip #	
Travel Voucher #	
SAAS Ag #	
SPAHRS Ag #	
Fund #	
Activity / Location	
Org / Sub Org	
Rpt Category	
Project / Sub Proj	

Per Diem in Lieu of Subsistence	
Taxable Meals	
Non-Taxable Meals	
Lodging	
Travel in Private Vehicle	
Travel in Rented Vehicle	
Travel in Public Carrier	
Other:	
Sub Total	
Less: Travel Advance	
Less: PTE Lodging	
Less: PTE Public Carrier	
Net Payment (Overpayment)	

Subject to any difference determined by verification, I certify that the above amount claimed by me for travel expenses for the period indicated is true and accurate in all respects, and that payment for any part has not been received. In the event of overpayment, I agree that any future salary/travel disbursements may be debited to correct the overpayment.

Traveler: _____ Title: _____ Date: _____

Approved by: _____ Title: _____ Date: _____

Verified by: _____ Title: _____ Date: _____

PID#:

348-A

CONTRACTING TO ACCEPT CREDIT CARDS
MS Municipal Audit and Accounting Guide, 2010 Edition
Office of the State Auditor

Authority To Accept Credit Cards

MCA § 17-25-1 authorizes municipalities to accept payment of taxes, fees and other accounts receivable by credit cards, charge cards, debit cards and other forms of electronic payment in accordance with policies established by the State Auditor.

This law requires service fees or charges be assessed to the user of the electronic payment system as an additional charge for processing the electronic payment, so that the user will pay the full cost of using the electronic payment system. These policies were issued for this authority.

Who May Be Contracted With

The governing authority may enter into a contract with one or more credit card issuers, financial institutions or third party credit card processors to accept payments for fees, taxes and other accounts receivable by credit cards, charge cards, debit cards, and other forms of electronic payment.

Contract Requirements

The services to be provided by the processor and the fees for such services must be included in a contract approved by the governing authority.

The contract must allow the addition of the processing service fee to the originating tax, fee or other payment. It is require that the full cost of using electronic forms of payment to be borne by the taxpayer or fee payer.

The contract may be entered into by negotiation; and must be recorded on the governing authority's minutes.

Cost of Service Requirements

The governing authority must determine the amount or percentage service costs to add to each charge for each type of credit card, charge card, debit card, and other forms of electronic payment to be accepted. This service costs must be an amount or percentage that is sufficient so that the user of the electronic payment system will pay the full cost of using such system.

Before charges are assessed, the governing authority must notify the electronic payment user of the amount of the processing fee that is being added to the tax, fee, or accounts receivable bill. The processing fee must be plainly included and identified on the receipt given to the payer.

Receipt and Accounting Requirements

Fee Withholding by Processor Procedure

If the contract calls for the processing fee to be withheld from the amount charged electronically, the processing cost should be noted on the receipt and included in the total charged to the payer. The fee must also be noted in the financial records for verification purposes, but should not be recorded as a revenue receipt in the appropriate journal.

The amount due for payment of the tax, fee or accounts receivable must be recorded and settled as with ordinary cash collections. The processing fee charged and withheld by the processor must be verified to insure proper calculation and collection.

Fee Collected by Municipality Procedure

If the contract calls for the processing fee to be paid by invoice as a claim, the processing cost should be noted on the receipt and included in the total charged to the payer. The fee must also be recorded in the appropriate accounting journal as a receipt for settlement into a separate fund.

A separate column or field must be set up in the accounting records to record the processing fee. The processing fee must be recorded in a manner that will allow identification and reconciliation to the proper processor.

Each invoice from the processor must be itemized and reconciled with the processing costs received and recorded in the accounting records. This reconciliation should verify the correct obligation payable to the appropriate processor for each processing fee. The itemized invoices may then be paid upon approval of the governing authority, as with other claims.

Dishonored Charge Contract Requirements

The contract must clearly indicate that the governing authority is not responsible for processing costs or penalties for credit cards, charge cards, debit cards or any other form of electronic payment. Terms for charges disputed by the card account holder and subsequently dishonored and charged back to the governing authority should be clearly identified in the contract. Such dishonored transactions charged back to the governing authority after initial approval of the payment processor should be handled in generally the same manner as bad checks; and are considered not paid.

Amount of Collection Requirement

For all collections, the governing authority must receive the entire amount that constitutes the ordinary amount due for the tax, fee or accounts receivable without accepting a discounted payment of such tax, fee or accounts receivable.

Collection Agency, etc. Collections – Fee Payment Exception

Municipalities may contract for services to collect delinquent accounts and certain failed to appear cash appearance bonds (See “Contracting with Collection Agencies” in this section of this guide). This authority contains procedures to accept credit cards or electronic funds from the person to pay the delinquent obligation or cash appearance bond.

This procedure allows the municipality to pay the costs of the credit card or electronic funds transfer from the late fee portion of the collection. This exception to these regulations should be carefully considered when entering into contracts for electronic payment processing.

CONTRACTING WITH COLLECTION AGENCIES

MS Municipal Audit and Accounting Guide, 2010 Edition

Office of the State Auditor

MCA § 21-17-1 (6) authorizes the Board/Council to contract with certain collectors for the collection of delinquent payments owed to the municipality (fines, fees, etc.). This law limits collectors with whom the Board/Council may contract, sets conditions on contract provisions, and requires compliance with regulations prescribed by the State Auditor. It also allows the Board/Council to impose specified percentage amounts to be paid by individuals who are delinquent.

These contracting procedures are as follows:

Collectors

The municipal Board/Council may contract with the following collection agents in addition to in-house collection efforts.

- Office of the District Attorney for the circuit court district in which the municipality is located.
- Private Attorneys in good standing with the Mississippi Bar.
- Private Collection Agents or Agencies who meet all licensing requirements for doing business in the State of Mississippi. (Local Privilege License, MCA § 27-17-9)

Collection Fees

- **Imposing Collection Fees**

Collection fees may be set by the Board/Council upon any person obligated for a delinquency or entitled to a failed to appear notice. Successful collection is required.

- **In-House Collection Fees**

In-house means collections made by employees of the municipality.

These fees may be imposed for in-house collections when fines, etc. have been delinquent for ninety (90) days. Fees may be imposed on failed to appear collections authorized under MCA § 63-1-53(4) ninety (90) days after the Commission of Public Safety has suspended the license of the defendant.

- * Up to Twenty Five percent (25 %) of total collection made in state.
- * Up to Fifty percent (50 %) of total collection made out of state.

- **Contract Collection Fees**

These fees are imposed up to the following limits upon any person obligated for delinquent payments or entitled to a failed to appear notice. Delinquency and/or failed to appear must be defined in the order imposing the fees. These fees apply to collections made under contract with district attorneys, qualified attorneys or collection agencies.

- * Up to Twenty Five percent (25 %) of total collection made in state.
- * Up to Fifty Percent (50 %) of total collection made out of state.

Credit Card Use

Delinquent payments and collection fees may be collected by credit card or electronic transfer. The municipality may pay the credit service fee from the collection fee. See MCA § 17-25-1 (and Contracting to Accept Credit Cards Chapter) for other credit card service fee payment authority.

Fee Settlement

Collection fees must be deposited into the General Fund as an unrestricted revenue item.

Bonding Requirements

Collection agents, agencies and attorneys must give bond or surety payable to the municipality in an amount set by the Board/Council. (No special bond required for District Attorneys.)

Collection Agent Contract Terms

- **Nature of Contract**

Contracts may be approved for collection of delinquent payments. Contracts may also be approved for collection of cash appearance bonds from defendants who have failed to appear in court.

All contracts must address collection procedures. Contracts must require collection procedures that comply with all federal and state law.

Special attention should be given to contract understandings related to collections of cash appearance bonds related to failures to appear. For example: these collections are subject to the right of a defendant who is charged with an offense to a trial on the merits of the charge against him/her.

This office strongly recommends all contracts for collections of delinquent payments, and especially contracts for collection of cash appearance bonds related to failures to appear, be reviewed by an attorney representing the municipality (board attorney or board employed attorney).

- **Collection Agent's Compensation**

Compensation for collection and other services must be included in a contract authorized by the Board/Council. The method of compensation is a matter to be determined by the Board/Council to be in the best interest of the municipality. For example, terms of the collection contract may be for payment as a percentage of the successfully collected money, or a flat amount payment for the service. The percentage payment method may be contracted for more or less than the percentage collection fee amount imposed by the Board/Council upon the defendant. Contracts may also provide for payments for specific services such as letter mailings, telephone calls, etc.

- **Collection Agent's Settlements**

Contracts must require total of all collections be turned in to the municipality (Collections may not be reduced for compensation, costs, etc.). The Municipality must provide the contracted collector with a receipt for all collections. Municipal officers must provide necessary information to the Board/Council for claim evaluation purposes (MCA § 21-39-9).

- **Collection Agent's Claims for Payment**

Payments due collection agencies, attorneys, etc. must be paid by a claim properly filed with the clerk of the municipality and approved by the Board/Council pursuant to MCA § 21-39-9.

- **Special Contract Conditions**

Contracts should address circumstances where a person (whose delinquency has been turned over to the collector for collection) pays his/her delinquent payment directly to the municipality rather than the contracted collector.

Care should be taken to assure municipal personnel who collect money are aware of accounts assigned to contract collectors. Subject to the conditions of the contract, such collections may require the addition of delinquency fees and verification of collections for purposes of contract collector obligations.

Contracts should explain that the total delinquent amount is due to be paid to the municipality, and may not be reduced by such things as collector's cost for out of state taxes on collections.

Contracts should also address any other issues that may confuse what is collectable, amounts due and compensation.

EMERGENCY ACCOUNTABILITY PLAN
Office of the State Auditor
2016 Supplement

I. EMERGENCY DEFINITIONS

Emergencies of various types are defined in the Mississippi Code of 1972, Annotated (MCA) for general purposes in Section 33-15-5 and for the purpose of purchasing in Section 31-7-1. Such emergencies include both locally declared emergencies and larger regional, state or national emergencies.

II. EMERGENCY DECLARATIONS

Local emergencies may be declared by the governing bodies of county and municipal governments, individually or jointly, under authority of MCA §§ 33-15-17 and 33-15-31. The need for continuing the local emergency must be reviewed by the local governing body at least every thirty days until the emergency is terminated. During a local emergency, the governing body of a political subdivision may promulgate orders and regulations necessary to provide for the protection of life and property. Such orders and regulations must be in writing and shall be given widespread notice and publicity. MCA § 31-7-13(k) also authorizes local governments to declare emergencies with regard to purchasing commodities and repair contracts.

The Governor may declare a state of emergency or issue a disaster declaration as provided in MCA § 33-15-11. MCA §§ 33-15-11 and 33-15-31 provide the Governor broad authority to issue orders, rules and regulations as well as enter into appropriate agreements to deal with local, regional and state emergencies and disasters when he finds that a local authority is unable to cope with the emergency or upon request of the mayor of a municipality or by the president of the board of a county. The emergency proclamation shall be filed with the Secretary of State and be given widespread notice and publicity.

The President of the United States may declare a state of emergency or issue a disaster declaration under Federal Law. In this case, it is possible that agencies and governing authorities may later seek reimbursement for some or all of their costs.

III. EMERGENCY PLANS

Local governments should refer to their emergency management officer (Civil Defense Director, Emergency Operations Center Director and etc...), the local emergency management plan which is coordinated with the state emergency management plan, and any existent mutual aid agreements with other governmental entities as provided in MCA §§ 33-15-17 and 33-15-19. These plans and agreements should provide information, assistance and contingencies for various emergency needs. MCA § 17-7-1 also provides that whenever, due to an emergency resulting from a natural disaster, it becomes imprudent, inexpedient, or impossible to conduct the affairs of municipal, county or other political subdivisions, the governing body may meet at any place within or without the territorial limits of the local government on the call of the presiding officer or any two (2)

members of the local government.

IV. EMERGENCY OPERATIONS

MCA § 33-15-17 provides that each local organization for emergency management shall have a director who shall be appointed by the governing body of the political subdivision, or political subdivisions acting jointly, and who shall have direct responsibility for the organization, administration and operation of such local organization for emergency management, subject to the direction and control of such governing body. Each local organization for emergency management shall perform emergency management functions within the territorial limits of the political subdivision within which it is organized, and, in addition, shall conduct such functions outside of such territorial limits as may be required pursuant to the provisions of the state emergency management plan.

In carrying out the provisions of this article each county and municipality, or the two (2) acting jointly, or two (2) or more counties acting jointly, where there is joint organization, in which any disaster as described in MCA § 33-15-5 occurs, shall have the power to enter into contracts and incur obligations necessary to combat such disaster, protecting the health and safety of persons and property, and providing emergency assistance to the victims of such disaster.

Each county and municipality is authorized to exercise the powers vested under this section in the light of the extreme emergency situation without regard to time-consuming procedures and formalities prescribed by law pertaining to the performance of public work, entering into contracts, the incurring of obligations, the employment of temporary workers, the rental of equipment, the purchase of supplies and materials, the levying of taxes and the appropriation and expenditure of public funds

Each county and each municipality, or two (2) or more counties acting jointly, shall have the power and authority:

- 1) To appropriate and expend funds, make contracts, obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to the victims of any enemy attack or man-made, technological or natural disasters; and to direct and coordinate the development of emergency management plans and programs in accordance with the policies and plans set by the federal and state emergency management agencies. (*See the FEMA Debris Removal Checklist at the end of the chapter*);
- 2) To appoint, employ, remove, or provide, with or without compensation, air raid wardens, rescue teams, auxiliary fire and police personnel, and other emergency management workers;
- 3) To establish, as necessary, a primary and one or more secondary emergency operating centers to provide continuity of government, and direction and control of emergency operation during an emergency;

- 4) To donate public funds, supplies, labor and equipment to assist any governmental entity in a county or municipality in which a disaster, as described in MCA § 33-15-5, occurs;
- 5) Subject to the order of the Governor, or the chief executive of the political subdivision, to assign and make available for duty, the employees, property or equipment of the subdivision relating to firefighting, engineering, rescue, health, medical and related services, police, transportation, construction, and similar items or services for emergency management purposes either within or outside of the limits of the subdivision;
- 6) Subject to the order of the chief executive of the county or municipality or the Governor, to order the evacuation of any area subject to an impending or existing enemy attack or man-made, technological or natural disaster;
- 7) Subject to the order of the chief executive of the county or municipality or the Governor, to control or restrict egress, ingress and movement within the disaster area to the degree necessary to facilitate the protection of life and property.

V. EMERGENCY ORDERS, RULES AND REGULATIONS

Local governments have authority granted in MCA §§ 33-15-17, 33-15-31 and 31-7-13 to issue rules and regulations applicable to emergencies that are not in conflict with rules and regulations issued by the Governor and the Mississippi Constitution. All orders, rules, and regulations promulgated by the Governor, the Mississippi Emergency Management Agency or by any political subdivision or other agency authorized by this article to make orders, rules and regulations, shall have the full force and effect of law, when, in the event of issuance by the Governor, or any state agency, a copy thereof is filed in the office of the Secretary of State, or, if promulgated by a political subdivision of the state or agency thereof, when filed in the office of the clerk of the political subdivision or agency promulgating the same. MCA § 33-15-31 also suspends all existing laws, ordinances, rules and regulations inconsistent with the necessary management of the emergency during the period of time and to the extent that such conflict, disaster or emergency exists.

IMPORTANT!

MCA § 33-15-31 allows laws, rules and regulations to be set aside as necessary to deal with emergencies. It does not waive constitutional prohibitions which bar things such as:

- 1) Public Officers having an interest in contracts with public entities (Miss. Const. Art. 4 § 109);
- 2) Donations not authorized by statute (Miss. Const. Art. 4 § 66);
- 3) Extra compensation and unauthorized payments (Miss. Const. Art. 4 § 96);
- 4) Release of obligation or liability owed to gov't (Miss. Const. Art. 4 § 100);
- 5) Other requirements or prohibitions of the Mississippi Constitution.

VI. COORDINATION OF MANPOWER AND EQUIPMENT

The Mississippi Emergency Management Agency (MEMA) is authorized by MCA § 33-15-15 to coordinate personnel, equipment and other resources of state agencies and political subdivisions as is necessary to reinforce emergency management agencies in areas stricken by emergency. Local governments are authorized to request aid from other counties and municipalities to furnish needed services as specified in MCA § 33-15-15. MCA § 33-15-17 also allows counties and municipalities to donate public funds, supplies, labor and equipment to assist any governmental entity in a county or municipality in which a disaster, as described in MCA § 33-15-5, occurs. Under the authority of MCA § 33-15-39, county and municipal governing boards, with the approval of the sheriff in a county or the chief of police in a municipality, may confer upon members of emergency management auxiliary police units, the powers of peace officers, subject to such restrictions as shall be imposed by the local government and MCA § 33-15-41.

MCA § 33-15-19 authorizes mutual aid agreements within and outside of the State as well as interstate compacts. The governing body of a municipality or county is authorized to participate in the Statewide Mutual Aid Compact (SMAC) established by MEMA as a mechanism to standardize mutual aid arrangements between jurisdictions within the state. SMAC provides guidelines for requesting and receiving mutual aid, liability protection and reimbursement procedures for providing such aid. The governing body of each political subdivision of the state is strongly encouraged to sign and ratify the SMAC for mutual aid between their jurisdiction and other cities or counties within the state. A copy of this agreement must be signed by the senior elected official of the jurisdiction and the director and will be maintained on file by MEMA. Political subdivisions of the state are also authorized to develop and enter into mutual aid agreements with other jurisdictions outside the state for reciprocal emergency aid and assistance in case of emergencies too extensive to be dealt with unassisted. Copies of the agreements shall be sent to MEMA and shall be consistent with the state comprehensive emergency management plan and program, and in time of emergency it shall be the duty of each local emergency management organization to render assistance in accordance with the provisions of such mutual aid agreements.

VII. WORKING ON PRIVATE PROPERTY

MCA § 33-15-49 authorizes the use of local public employees to work on private property in certain limited circumstances. In the event an impending enemy attack, an enemy attack, or a man-made, technological or natural disaster occurs within the state or within any portion of it and a proclamation is issued by the governing authorities of the county, the governing authorities of the municipality, the office of the Governor of the state or the President of the United States declaring such affected areas to be disaster areas, the governing authorities of any county or municipality adversely affected by such disaster may:

- a) Use county or municipally owned equipment and such public employees as necessary to venture onto private property to aid in removing debris and to prevent further damage to such property at the request of the property owners;

- b) Use county or municipally owned equipment and such public employees as necessary to venture onto private property to remove debris and to perform any other necessary and needed services to prevent the spread of disease or any other health hazard to the community at large.

If the governing authorities of such adversely affected counties or municipalities are unable to perform such necessary and needed functions with their own equipment and personnel, they may request aid from other counties and municipalities not adversely affected by such impending enemy attack, enemy attack, or man-made, technological or natural disaster, and capable and willing to furnish needed services.

In addition, if the Governor determines that the governing authorities of such adversely affected counties or municipalities still lack sufficient equipment and personnel under such circumstances to perform such functions, any state agency or instrumentality, when directed by the Governor, is authorized to enter upon publicly or privately owned land or water and to use state-owned equipment and state employees as necessary to clear or remove debris and wreckage. Whenever the Governor provides for clearance of debris or wreckage pursuant hereto, employees of the designated state agencies or instrumentalities are authorized to enter upon private or public land or water and perform any tasks necessary to the removal or clearance operation.

County inmates or prisoners may be worked during emergencies if the governing authorities determine that an emergency exists and there is a need to use the services of such prisoners to protect life and property (Attorney General's Opinion to Price, dated December 13, 1996.) State inmates or prisoners may be worked during emergencies if the Governor determines that an emergency exists in accordance with MCA § 47-5-133.

Whenever possible, the local government should obtain permission to enter onto private property when necessary by obtaining a signed "right of entry" form. Please note that the emergency authority to work on private property must be necessary and reasonable in the emergency circumstances, not merely an excuse to do work for the benefit of private property owners.

VIII. LIABILITY

MCA § 33-15-21 provides that:

- a) Neither the state nor any political subdivision thereof, nor other agencies, nor, except in cases of willful misconduct, the agents, employees, or representatives of any of them engaged in any emergency management activities, while complying with or attempting to comply with this article or any rule or regulation promulgated pursuant to the provisions of this article, shall be liable for the death of or any injury to persons, or damage to property, as a result of such activity. The provisions of this section shall not affect the right of any person to receive benefits to which he would otherwise be entitled under this article, or under the workmen's compensation law, or under any pension law, nor the right of any such person to receive any benefits or compensation under any act of congress.

- b) Any person owning or controlling real estate or other premises who voluntarily and without compensation grants a license or privilege, or otherwise permits the designation or use of the whole or any part or parts of such real estate or premises for the purpose of sheltering persons or providing assistance to persons during or in recovery from an actual, impending, mock or practice attack or any man-made, technological or natural disaster, together with his successors in interest, if any, shall not be civilly liable for negligently causing the death of, or injury to, any person on or about such real estate or premises by virtue of its use for emergency management purposes, or loss of, or damage to, the property of such person.

In addition, MCA § 33-15-49, regarding the Governor's authorization of state employees and agents to work on private property, also provides, except in cases of willful misconduct, gross negligence or bad faith, any state employee or agent complying with and performing duties pursuant hereto shall not be liable for death or injury to persons or damage to property.

FINANCIAL MANAGEMENT

Even though emergencies create many problems and may prevent normal local government operations, local governments ultimately must remain accountable to the public, the State government, the Federal government and other grantors. In many cases, even if State law does not require evidence of competitive bids, quotes or proposals for purchase, construction and service contracts, applicable Federal regulations or private grant regulations generally require such evidence to be obtained and maintained by the local government for emergency related expenses. Some common problems reported by the United States Office of Inspectors General include:

1. Poor Project Accounting
2. Unsupported Costs
3. Duplication of Benefits
4. Excessive Equipment Charges
5. Excessive Labor and Fringe Benefits Charges
6. Unrelated Project Charges
7. Unapplied Credits
8. Excessive Administrative Charges
9. Poor Contracting Practices

Some key points to remember with FEMA grants include:

- Designate a person to coordinate the accumulation of records.
- Establish a separate and distinct account for recording revenues and expenses, and a subsidiary account for each project.
- Ensure final claims made for each project are supported by amounts recorded in the accounting system.
- Ensure each expenditure is recorded in the accounting books with proper supporting documentation.
- Research insurance coverage and seek full reimbursement. Credit the appropriate FEMA

project with that amount.

- Check with your Federal Grant Program Coordinator about the availability of funding under other Federal programs.
- Do not charge the regular salaries of permanent employees or seasonal employees to FEMA debris removal and emergency service projects.
- Do not claim costs for which you have no cash outlay.
- Ensure that claims for overtime fringe benefits relate to overtime worked, not items like health insurance that are paid anyway.
- Ensure that expenditures claimed for FEMA projects are reasonable and necessary, are authorized under the scope of work, and directly benefit the project.
- Document pertinent actions for contracts let under FEMA projects, including the rationale for the method of procurement, the basis for contractor selection, and the basis for contract price. Remember, no “cost plus” contracts are allowed.

I. POLICIES

Local government should consider policies necessary for fiscal operations in emergency circumstances. Their emergency plan and policies should consider the ability of employees to work; agreements with other governments to accommodate financial, budget and payroll operations; accounting for and coordinating donations; records recovery and retention; tax collection and assessment services; purchasing; contracting; and complying with Federal, State and private grantor rules and regulations. If the local governing board is not able to meet to authorize contracts and expenditures, a designee or designees should be authorized and guidance should be provided so that the designee(s), whether it is the Mayor, City Administrator, Police Chief, County Administrator, Chancery Clerk, Sheriff or other official, will have authority, guidelines and limitations to take care of necessary emergency fiscal business. The local government should consider personnel policies which will provide guidance for overtime and extra work time required by emergencies and whether or not to authorize employees who are unable to work due to the emergency to be allowed administrative leave with pay.

II. RECORDS RESTORATION

Frequently, vital public records are damaged during emergencies. The local government should include in their emergency plan contingencies for protecting and restoring public records. MCA § 19-15-1 allows broad authority for county boards of supervisors to protect and restore public records. MCA § 21-15-35 provides the same authority to municipalities.

III. RECORDS RETENTION

It is very important that records be maintained to document expenditures, quotations, bids, proposals, contracts, revenues and donations that occur during or after the immediate emergency. It is critical for local governments to avoid losing Federal, State and other reimbursements for emergency expenditures due to lack of adequate documentation. MCA § 19-15-3 (for counties)

and MCA § 21-15-37 (for municipalities) provide direction for reproducing, retaining and destroying public records.

IV. DONATIONS – GIVING AND RECEIVING

Even in emergencies, unauthorized donations by the local government are still prohibited. However, MCA §§ 33-15-17 and 33-15-49 authorize the local government, through its emergency plan and board orders to provide for the health and safety of persons and property, including emergency assistance, such as food and shelter to the victims of disasters and emergency workers as well as clearing debris from private property when necessary. Other donations are authorized in MCA § 19-5-93 for counties and Chapter 21, Title 19 for municipalities.

Donations to the local government during and after the emergency must be accepted and accounted for like any other public funds. If donations are made to local governments for expenditure purposes that are not purposes for which a local government is legally empowered to expend funds, then the donations should be returned or, with the permission of the donor, re-directed to a qualified non-profit organization, not operated by the local government, that can legally expend the funds for the purpose for which the donation was made. The Sheriff, Emergency Operations Director, Police Chief, Fire Chief, Mayor, County Administrator or other individual local government officers or employees should not expend donated funds except as specifically authorized by the local governing board for lawful purposes. Generally, the local government may not expend funds, public or donated, for the personal benefit of local government officers and employees, except to the extent such funds are lawfully expended for the public at large. It is very important that all donations must be properly accounted for to insure the donor and the public that donated funds were used for lawful purposes and consistent with the donor's intent.

V. BUDGETS, PAYROLL AND TAXES

While budgetary and payroll laws may be suspended or amended during emergencies to the extent necessary, plans should include provisions for accounting, budget and payroll preparation at an alternate site if necessary. Emergencies frequently cause the government to incur expenses that were generally not included in the budget. Budget revisions may be made to provide for emergency expenditures. In addition, after the emergency, it may be necessary for the local board of supervisors to re-assess property destroyed in the disaster in accordance with MCA § 27-35-143.

VI. PURCHASING AND TRAVEL

The Mississippi Department of Finance and Administration Office of Purchase and Travel developed a brief guide to emergency purchasing and travel which is incorporated herein, edited for applicability to local governments. This document is intended to be used as a starting point in understanding the local government purchasing process. There is no way to cover all aspects of the process in a few pages. Applicable sections of the Mississippi Code are referenced to allow parties to gain complete information. You are urged to review the various laws and manuals which are referenced herein as well as visit the various websites. The document is arranged as follows:

General

- Who are you?
- What do you want to buy?
- The competitive bid process
- General guidelines for governing authorities
- Master Lease Purchase Program (Applies to local school district)
- Procurement Card Program

Emergency purchasing

- The laws – definition and procedures
- Declaration of emergencies
- Responsibility for making purchases
- Vehicle issues during an emergency
- Additional emergency purchasing tips

A. GENERAL PURCHASING

Because the laws and requirements are varied depending upon the type of governmental entity that is doing the purchasing and the items/services to be purchased, the following brief definitions and discussions are given here as clarification.

I. WHO ARE YOU?

- "Governing authority" is intended to mean any political subdivision such as counties, cities, schools, port authorities, etc. (See MCA § 31-7-1)

II. WHAT DO YOU WANT TO BUY?

○ **Commodities, Supplies and Equipment (other than Computer related items)** - Contact the Department of Finance and Administration, Office of Purchasing and Travel (OPT), 1401 Woolfolk Building, Suite A, 501 North West Street, Jackson, MS 39201. Phone: 601-359-3409. You can review the state contracts at: <http://www.dfa.ms.gov/dfa-offices/purchasing-travel-and-fleet-management/purchasing-and-travel/state-contracts/>. If there is no state contract, you may contact OPT and they will be able to advise you on how the local entities should purchase the product(s). If the items are not on a contract, competitive procedures are probably required.

○ **Computer and Telecommunications Equipment, Software and Services** - Contact the Department of Information Technology Services – Procurement Help Desk. Phone: 601-432-8166. isshelp@its.ms.gov. ITS utilizes various procurement mechanisms which state and local entities may use. ITS will be able to tell you if there are standing requests for proposals (RFPs) or Express Products Lists (EPLs) for your required products/services and if so, how to use these agreements. If there is no standing procurement vehicle, ITS will be able to advise you on how state and local entities should purchase the products/services.

Contact ITS directly to arrange for the following services:

- Telephone: business lines, trunking, Centrex, voice mail, set installation, long distance, toll free numbers, calling cards, audio conferencing
- Data: cabling, circuits (inter-LATA, intra-LATA, MPLS), Internet, DSL

o **Construction** - If governing authorities do not have expertise on staff, it is recommended that they hire an architect with experience in governmental construction contracting.

o **Service Contracts** - Most governing authorities are not required to comply with any competitive process for services, yet many do implement a competitive procedure. Note: in order to be reimbursed by FEMA, even service contracts may require documentation of competitive bids, quotations and requests for proposals.

o **Travel** - Contact the Department of Finance and Administration, Office of Purchasing and Travel, 1401 Woolfolk Building, Suite A, 501 North West Street, Jackson, MS 39201 601-359-3647. The Office will be able to tell you if there is a state contract for your required travel services. If there is no state contract, the Office will be able to advise you on how the state and local entities should procure the service(s).

III. THE COMPETITIVE BID PROCESS

MCA § 31-7-13 (a), (b), or (c)

\$0 to \$5,000 – no bids required

\$5,000 to \$50,000 – at least two written quotes

Over \$50,000 – Formal sealed bids required (advertised)

All purchases in excess of \$50,000 must be advertised in a local paper and a copy of the notification must be sent to the Mississippi Procurement Technical Assistance Program 601-359-3448. (See MCA § 31-7-13(c) of the Mississippi Code)

IV. GENERAL GUIDELINES – GOVERNING AUTHORITIES

If a commodity is on **any contract** approved by the Office of Purchasing and Travel, governing authorities may buy the contract item from the contract vendor; or they may buy the identical item from any source provided that the price does not exceed the state contract price; or they may ignore the contract and purchase under the guidelines set forth in MCA § 31-7-13 of the Mississippi Code as outlined above.

If a commodity is **not covered by any contract**, governing authorities must follow statutory bid procedures which are set forth in MCA § 31-7-13 of the Mississippi Code.

Governing authorities are not required to obtain approval from the Office of Purchasing and Travel.

V. MASTER LEASE PURCHASE PROGRAM – STATE AGENCIES AND SCHOOL DISTRICTS (K-12 AND JUNIOR COLLEGE)

The Department of Finance and Administration administers the Master Lease Purchase Programs. These programs allow DFA to combine the equipment needs of multiple state agencies or school districts and obtain financing at rates which are based upon the combined volume of all of the needs. These programs allow the state agency or the school district to acquire equipment (computers, school buses, etc.) at rates which are typically much lower than the individual agency or school district could obtain on their own. For more information contact the Office of Purchasing and Travel.

VI. PROCUREMENT CARD

The Office of Purchasing and Travel maintains a contract for a Small Purchase Procurement Card Program. (Specific guidelines for using the Small Purchase Procurement Card are listed in the Procurement Manual <http://www.dfa.ms.gov/dfa-offices/purchasing-travel-and-fleet-management/purchasing-and-travel/procurement-manual/>. The intent of this Procurement Card program is to allow government entities to make small purchases of commodities, repairs, or services easier and in a more economical manner. This charge card is accepted by a wide variety of businesses offering goods and services. Government entities may use the Small Purchase Procurement Card to make purchases which are genuine needs of the entity. The maximum amount of a single purchase transaction shall be \$3,500 (entities may establish stricter guidelines). There is no purchase order required for credit card, procurement card, or membership card transactions. Information related to signing up for the program is available at <http://www.dfa.ms.gov/dfa-offices/purchasing-travel-and-fleet-management/marketing-and-audit/procurement-card-services/>.

B. EMERGENCY PURCHASING

In an emergency situation the requirements for purchasing may change. There are potentially three different emergency declarations that could take place;

- o The agency head or governing authority could declare an emergency;
- o The Governor could declare an emergency; or,
- o The President could declare an emergency.

The following is intended to be a quick guide and may not cover all situations that are possible.

I. THE LAWS

In the case of an agency or governing authority head declaration of an emergency, the entity should comply with MCA §§ 31-7-1 and 31-7-13:

The **definition of “Emergency”** is set forth in MCA § 31-7-1 (f) of the Mississippi Code as follows:

“Emergency” shall mean any circumstances caused by fire, flood, explosion, storm, earthquake, epidemic, riot, insurrection or caused by any inherent defect due to defective construction, or when the immediate preservation of order or of public health is necessary by reason of unforeseen emergency, or when the immediate restoration of a condition of usefulness of any public building, equipment, road or bridge appears advisable, or in the case of a public utility when there is a failure of any machine or other thing used and useful in the generation, production or distribution of electricity, water or natural gas, or in the transportation or treatment of sewage; or when the delay incident to obtaining competitive bids could cause adverse impact upon the governing authorities or agency, its employees or its citizens; or in the case of a public airport, when the delay incident to publishing an advertisement for competitive bids would endanger public safety in a specific (not general) manner, result in or perpetuate a specific breach of airport security, or prevent the airport from providing specific air transportation services.

The appropriate procedures are also set forth in the Mississippi Code as follows:

For Governing Authorities Emergency Purchase Procedures, MCA § 31-7-13 (k)

Governing authority emergency purchase procedure. If the governing authority, or the governing authority acting through its designee, shall determine that an emergency exists in regard to the purchase of any commodities or repair contracts, so that the delay incident to giving opportunity for competitive bidding would be detrimental to the interest of the governing authority, then the provisions herein for competitive bidding shall not apply and any officer or agent of such governing authority having general or special authority therefore in making such purchase or repair shall approve the bill presented therefore, and he shall certify in writing thereon from whom such purchase was made, or with whom such a repair contract was made. At the board meeting next following the emergency purchase or repair contract, documentation of the purchase or repair contract, including a description of the commodity purchased, the price thereof and the nature of the emergency shall be presented to the board and shall be placed on the minutes of the board of such governing authority.

Emergency Declared by the President;

If the President declares an emergency the Governor will also issue a declaration. In this case, it is possible that agencies and governing authorities may later seek reimbursement for some or all of their costs. If reimbursement will be requested the buying entity is urged to take the following issues into consideration:

- FEMA usually requires a record of some form of competition or an adequate justification why no competition was obtained. Thus, while state law does not require a second or third quote in an emergency situation, entities are urged to seek competition (telephone quotes, written quotes, bids) to be sure they are getting a good value and to enhance their opportunities for reimbursement at a later date. If competition is not available it is recommended that the entity document the situation and justification for not obtaining a second price quote.
- FEMA usually will reimburse for the rental of equipment but will not normally reimburse for the purchase of equipment that will be useable after the immediate emergency subsides.

- FEMA usually will reimburse for the replacement of equipment at the value prior to the emergency. For example, if an agency has a 15 year old bus, FEMA would reimburse the value of a 15 year old bus, not a new bus.

Agency or Governing Authority Responsibility

All agencies and governing authorities are reminded that it is their responsibility to purchase the commodities, equipment and services which their agency needs to fulfill its mission during an emergency situation. Only after all internal resources and capabilities have been expended should the entity submit a request to the MEMA Emergency Operations Center. Municipalities should submit their requests to their county EOC where it will be prioritized and forwarded to the MEMA EOC. Counties should work with their EOC to submit requests. State agencies should submit their requests to their agency Emergency Operations Coordinator who will submit the request in the MEMA on-line request system.

II. VEHICLE USE DURING AN EMERGENCY

State Agency and Governing Authority Vehicles

State Agency and Governing Authority vehicles should be the “vehicle of choice” in emergency situations. These vehicles are properly marked and are more likely to be properly identified as government vehicles. The users should follow standard fueling and maintenance policies and should maintain proper records of activities as required by their entity.

Rental Vehicles

Vehicles may be rented under the terms of the State of Mississippi contract. (see <http://www.dfa.ms.gov/dfa-offices/purchasing-travel-and-fleet-management/purchasing-and-travel/travel/>) Entities are urged to obtain fuel cards to be used with rental vehicles so that costs can be tracked and the entity can take advantage of the prices and reporting capabilities associated with the fuel card contract.

Employee’s Personal Vehicles

Employee’s personal owned vehicles (POV) may be used in an emergency situation, but employees are urged to check with their own insurance agent to determine if there are any issues or limitations with this type usage. Tort Claims is the primary liability insurer of POVs when used on state business. This would be the case whether in a disaster area or not. Tort Claims does not offer any physical damage (collision/comprehensive) coverage to any vehicle, whether state owned or POV. The employee’s personal insurance coverage would need to cover areas not covered by Tort Claims. Most insurance companies’ policies will meet these needs.

Public fuel (fuel owned by a government entity) may be provided to private vehicles only in those cases of extreme necessity to serve the government’s purposes when fuel is otherwise unavailable for private purchase. Adequate records should be kept documenting the amount of fuel provided, the name of the person, the vehicle tag number, and the public purpose. In addition, to the extent possible, the fuel provided should be limited to the amount necessary for the public purposes to

avoid donations of fuel to private individuals. If fuel is otherwise available for purchase, public fuel should not be provided to private vehicles whether owned by private citizens or public employees. If public fuel is provided, the employee shall not be paid mileage reimbursement.

Contract Workers Use of State Owned Vehicles

Contract workers may operate state owned vehicles. Tort Claims does cover liability for contract workers. Tort Claims does **not** cover liability for independent contractors. If an independent contractor needs to operate a state owned vehicle, proof of auto liability insurance must be on file before operation.

III. EMERGENCY PURCHASING TIPS

- Prior to an emergency consider what your needs may be
- Determine if the items you need are on a state contract
- Contact potential suppliers and get contact names, phone numbers and email addresses
- Make sure you have 24/7 contacts for the suppliers
- Contact potential suppliers and establish a payment method (you don't want to be doing a credit check in the middle of an emergency)
- Make copies of all information prior to an emergency, give to several people, have hard copy, put it on a computer disk, have it on a flash drive.
- Develop a generic request for quotes form to be used during an emergency
- Develop a generic services contract form to be used during an emergency
- Think ahead. Don't order what you need today, by the time it gets here it will be tomorrow or beyond. Order what you need so you can have it when the need arrives.
- Establish the use of the Procurement Card Program or local procurement card prior to an emergency. The card is a great tool under normal conditions. It is even more valuable during an emergency.

IV. FEMA DEBRIS REMOVAL CHECKLIST

To be eligible for reimbursement under the Public Assistance Program, contracts for debris removal must meet rules for Federal grants, as provided for in 44 CFR Part 13.36 Procurement. The FEMA website (www.fema.gov) has a PDF Version of Fact Sheet 9580.201.

Listed below are recommendations from the FEMA Checklist to consider in your debris removal and monitoring contracts. Have your municipal attorney review your contracts to guarantee that the latest FEMA regulations are included.

Debris Removal

- DO remove debris on public property and rights-of-way if:
 - Removal eliminates immediate threats to human lives, public health and safety.
 - Removal eliminates immediate threats of significant damage to improved public and private property.

- Removal ensures economic recovery of the affected areas to the benefits of the community-at-large.
- DO sort and separate debris in the following categories:
 - Electronics – television, computer, stereo, phone, DVD player.
 - Large Appliances – Refrigerator, washer/dryer, air conditioner, stove, water heater, dishwasher.
 - Hazardous Waste – Oil, battery, pesticide, paint, cleaning supplies, compressed gas.
 - Vegetative Debris – Tree branches, leaves, logs, plants.
 - Construction Debris – Building materials, drywall, lumber, carpet, furniture, plumbing supplies.
 - Household Garbage – Bagged garbage, discarded food, paper, packaging.
- DO place debris curbside.
- DO stay within the right-of-way when clearing debris.
- DO a public service announcement regarding when curbside debris pickup will start and end, as well as explain the separation of construction and vegetative debris.

Debris Removal Contracts

- DO have a contract with a well-defined scope of work, specified costs, basis of payment and performance schedule.
- DO competitively bid contracts.
- DO use a unit price basis for long-term contracts.
- DO keep accurate records of contractor activities.
- DO use a unit price contract based on weights or volume of debris hauled when the scope of work is not well defined.
- DO include a provision in the contract that the contractor restore and/or repair to pre-existing, at the contractor's cost, all damages done to infrastructure during debris removal. Any damages incurred should be documented using photos and GPS by the monitor on site.
- DO provide the debris removal contractor a reasonable limit on the contract period of performance for the work to be done.
- DO include an invoice provision requiring contractors to submit invoices regularly and for no more than 30-day periods.
- DO require that all contract amendments and modifications be in writing.
- DO include a "termination for Convenience" clause allowing contract termination at any time for any reason.
- DO allow a reasonable limit on the period of performance for the work to be done.

- DO require a subcontract plan including a clear description of the percentage of the work the contractor may subcontract out and limiting use of subcontractors to only those you approve.
- DO include a contract provision requiring the debris removal contractor to provide a safe working environment for its employees (i.e. the MS Department of Transportation's regulations regarding maintenance of traffic as well as OSHA rules and regulations regarding monitoring towers must be observed)
- DON'T award a debris removal contract on a sole-source basis, it is recommended to get three competitive reasonable cost bids.
- DON'T allow any contractor to make eligibility determinations, since only FEMA has that authority.
- DON'T "piggy-back" on another county or municipality's contract as it may not be reimbursable by FEMA.
- DON'T use time and materials contracts for longer than the first 70 hours of response.
- DON'T use lump sum contracts unless the scope of work is clearly defined.
- DON'T use cost plus percentage contracts.
- DON'T believe a contractor that tells you that they are a FEMA certified contractor because FEMA does not certify debris removal contractors.
- DON'T sign a debris removal contract without first having it reviewed by your legal representative.
- DON'T allow cost line items for stumps 24" and under (these stumps are to be treated as vegetative debris).
- DON'T allow disaster generated debris to be hand loaded, but request that debris contractor use mechanical equipment.
- DON'T allow debris contractors to pick up debris without a monitor on site to complete the load tickets. Debris contractor should NEVER fill out their own load tickets.
- DON'T allow debris contractors and debris monitors to be affiliated as this could jeopardize FEMA reimbursement.

CONTACT INFORMATION

Office of the State Auditor

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Technical Assistance Division – E-mail tech@osa.ms.gov

Investigations Division – E-mail auditor@osa.ms.gov

Voice 601-576-2800, Toll-free 800-321-1275, Fax 601-576-2750,

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Governor's Office of Disaster Assistance Coordination

Voice 601-359-3150, Toll-free 877-405-0733, Fax 601-359-3741,

Web site www.governorbryant.com

Mississippi Emergency Management Agency Voice 601-933-6362, Toll-free 800-222-6362,
Fax 601-933-6800,

Web site www.msema.org

Federal Emergency Management Agency

Voice Toll-free 800-621-FEMA (3362) Fax Toll-free 800-827-8112,

TDD/TTY Toll-free 800-462-7585

E-mail FEMA-Correspondence-Unit@dhs.gov

Web site www.fema.gov

Department of Finance and Administration, Office of Purchasing and Travel

Voice 601-359-3409, Fax 601-359-3910,

Web site www.dfa.ms.gov

Department of Information Technology Services

Voice 601-359-1395, Fax 601-354-6016

Web site www.its.ms.gov

Mississippi Department of Transportation

Voice 601-359-7001

Web site www.mdot.ms.gov

Department of Environmental Quality

Voice 601-961-5797, Toll-free 888-786-0661, Fax 601-354-6569,

Web site www.deq.ms.gov

Department of Archives and History – Local Government Records

Voice 601-576-6894, Fax 601-576-6975

Web site www.mdah.ms.gov

Office of the Attorney General

Consumer Protection Division (price gouging)

Voice 601-359-4230, Toll-free 800-281-4418, Fax 601-359-4231

Public Integrity Division

Voice 601-359-4250, Fax 601-359-4254

Web site www.ago.state.ms.us

Ethics Commission

Voice 601-359-1285, Fax 601-354-6253

Web site www.ethics.state.ms.us

Department of Public Safety

Voice 601-987-1212, Fax 601-987-1498

Web site www.dps.state.ms.us

TERM OF OFFICE TRANSITION
Office of the State Auditor
2016 Supplement

Budget:

- MCA § 21-35-27 limits expenditures and obligations to one fourth (1/4) of the budget during April, May and June of an election year. Purchases which are subject to the purchase law (MCA § 31-7-13), emergency purchases and purchases which are seasonal in nature are excluded from this law. OUTGOING BOARD
- MCA § 21-35-25 limits a newly elected board's authority to revise the budget during its first three months in office. The incoming board is limited to only one revision no later than the first regular meeting in August. INCOMING BOARD
- Emergency purchases as defined by MCA § 21-35-19 are exempt from these amendment requirements, however, emergency purchases do require a budget amendment if needed. EITHER BOARD

Ethics – Incoming Board

- MCA § 25-4-105 limits the authority of a municipality to contract with its officers, employees and their relatives. Relatives include a public servant's spouse, child, parent, sibling and spouses of these relatives. See the Ethics Chapter

Nepotism – Incoming Board

- MCA § 25-1-53 prohibits elected or appointed municipal officers from employing relatives related by blood or marriage within the third degree to the positions of officer, clerk, stenographer, deputy or assistant.
- There is an exception for employees in positions prior to an appointing officer taking office. See the Nepotism Chapter

End of Term Review

- Elected officials are elected for four year terms of office. The outgoing officials only have authority through June.
- Their actions are not binding upon the incoming officials. An "end of term review" of appointments, contracts and policies should be made to determine if any business is outstanding.
- Contracts do not have to expire on June 30. However, the incoming officials may cancel, change or acknowledge the existing agreements.
- MCA § 25-1-7 and 25-1-1 authorize an officer to continue in office until a successor is appointed or elected. MCA § 25-1-37 makes the acts of an officer in possession of an office valid, even if he/she doesn't legally hold the office. Officers and employees will

continue with their duties as currently assigned until the new board takes an official action to make a change.

Incoming Official's Issues

A new set of elected officials exist at the beginning of a term of office, even if the same people are reelected. This means each member must take a new oath of office and where required post a new bond.

Appointment of Officers:

- New officer appointments should be made at the beginning of each term of office, even if the same person is being reappointed.
- Officers are Statutory Positions with Official Duties and are required to be filled by state law.
- No person shall serve in an interim or hold-over capacity for longer than one hundred eighty (180) days after the expiration of the term. If the position is not filled with the one hundred day (180) period, no municipal funds may be expended to compensate any person serving in the position.
- Failure to appoint someone to a mandatory position could result in liability of the appointing authority for failure to perform its duties, MCA § 25-1-45.
- There is no provision in the law for an “Acting” officer; an appointment is absolute, even if it is intended to be for a short period of time.
- MCA § 21-3-17 requires the mayor and clerk to sign all appointments and approve all bonds.
 - Code Charter Appointments: MCA § 21-3-3
 - City Clerk
 - Police Chief
 - Municipal Judge
 - Prosecuting Attorney
 - Special Appointments:
 - Court Clerk if not the city clerk – MCA § 21-23-11
 - Fire Marshall – MCA §21-25-1
 - Street Commissioner – MCA §21-3-23 (May be board member – MCA § 21-3-5)
 - Chief Administrative Officer – MCA § 21-3-25
 - Police Officers (by board) – MCA § 21-21-3
 - Police Officers (by mayor) – MCA § 45-5-59
 - Department Heads need to be appointed to make clear who is responsible for each budgeted department and who has liability if the department's budget is exceeded – MCA § 21-35-17

Assignment of Duties:

State laws allow assignment or delegation of certain duties. Assuming these duties without board authorization may create questions of legal authority and liability.

- Travel: Who may authorize travel and travel advances – MCA § 25-3-41
- Petty Cash: Who may have a petty cash fund and for what purpose – MCA § 7-7-60
- Purchasing Law: Who may authorize emergency purchases, contract changes, use state contracts, accept quote offers, approve specifications and advertising, etc. – MCA § 31-7-13
- Contracting: Who may enter contracts, how will claims be verified, etc. MCA § 25-3-43
- Leave: Who may authorize leave – MCA § 25-11-103(h)
- Overtime: Who may authorize overtime – MCA § 21-3-5

Review of Policies and Procedures:

A review of all municipal policies and procedures should be made. With the start of the new term of office, the incoming officials become responsible for the activities (or failure to act) of the municipality. Determination should be made regarding what has to be done, how things are done, and that they are done legally.

- Board Meeting Procedures (Procedural Ordinance)
How are motions made, how are votes taken, may the public speak, what detail is recorded in the minutes, who approves the minutes per MCA § 21-15-33, etc.
- Purchasing and Contracting Procedures
Who may contract/purchase, how is the contract (purchase order, etc.) documented, who may declare emergency purchases, etc.
- Employee Personnel Policy
How leave is earned and used, what holidays are paid and who works on holidays, how hourly pay is documented, how are employees hired and terminated, etc.
- Claim Verification Procedure
Does the city owe the claim? Who contracted the bill? Were the services received? Were purchase laws followed? Is the payment within the budget, etc.?
- Budget Procedure
Do procedures follow state laws, who prepares, do departments know what information to provide, who works out a timing schedule for publications and hearings, etc.
- Disaster Procedures
Has the MEMA plan been adopted, who does what, are there contact points, where are resources available, are FEMA assistance requirements understood, what state laws have to be followed, etc. (see Emergency Accountability Plan for Local Governments Chapter)

- Form and Understanding of Policies
Policies of authority must be board authorized. All policies should be in writing, distributed to those affected, and those affected should sign and acknowledgement of receipt and understanding.

Transfer of Responsibility:

- Personal Property – Conduct an Inventory
An inventory of municipal property should be made at the end of the term of office. Should property be missing or misrepresented in the records, this inventory will document when the problem happened (which term), and allow the current board an opportunity to officially address the problem. May hire a CPA to advise and observe.
- Cash – Conduct cash counts and receipt cut-offs
All cash should be accounted for by official cash count at the end of the term of office. The last receipt issued should be documented for verification. This is a verification that the cash was or was not there at the end of the term. May hire a CPA to advise and observe.

Office Qualifications – Incoming Officials

- Incoming officials must take the oath of office prior to the date he/she is to take office. Section 268, MS Constitution provides the oath of office. MCA § 11-1-1 list who may administer an oath of office.
- Elected officials take office on July 1st.
- Post official bonds. MCA § 25-1-15 presents the language of the officials bonds and requires they be for the whole term of office.
- MCA § 25-1-19 requires bonds be approved by the governing authority and filed in the office of the municipal clerk.
- Bond requirements for most municipalities:
 - Board or Council Members – Lesser of \$100,000 or five percent (5%) of tax collections, (MCA § 21-17-5)
 - Officers and employees handling money – based on form of government
 - Code Charter - \$50,000 (MCA § 21-3-5)
 - Mayor Council - \$50,000 (MCA § 21-8-23)
 - Council Manager - \$50,000 (MCA § 21-9-21)
 - Municipal Clerk, City Manager, Chief Financial Officer, Administrator - \$50,000 (MCA § 21-15-38)
 - Deputy Clerk - \$50,000 (MCA § 21-15-23)
 - Chief of Police - \$50,000 (MCA § 21-21-1)
 - Deputy Police - \$50,000 (MCA § 45-5-9, if hired under this law; No bond if hired under MCA § 21-21-3)
 - Mayor – No Bond Requirement, recommend to bond the same as board members

Travel/Training for Incoming Officials

- MCA § 21-17-5(4) allows for the outgoing board to authorize training for incoming elected officials. This training may occur prior to taking office.
- MCA § 25-3-41 requires that travel to the municipal conference must be officially authorized before reimbursable travel expenses are incurred.

Incoming Board's Responsibilities

- Incoming officials are responsible for the faithful performance of their duties effective when they take office. Potential liability also occurs at this point. (MCA § 25-1-45)
- The incoming board should review policies and contracts in effect when they take office. This review is to assure that operations are legal, and the conditions are right for the continued operation of the municipality.
- The review should result in actions to acknowledge the continuation of each policy or contract, make changes to their terms, or terminate the contract.
- The review also includes inter-local agreements, continue or stop actions authorized by local and private bills, follow through with grant and loan initiatives, and to pursue, change, or terminate other contracts.
- Every effort should be made to identify all interest and positions of the municipality for evaluation.
- Continued practice of business as usual may result in liability.

CALENDAR OF DUTIES AND ACTIVITIES
CLERKS – COLLECTORS
2016 Supplement

This calendar of duties has been assembled from responses of Clerks, Assessors and Collectors throughout the State of Mississippi. In some cases, dates for certain procedures may not be exactly the same in every municipality. The calendar is intended merely to show the generally practiced dates for conducting these duties throughout the year in the state. The lines beneath each section or month below are provided for you to list any additional duties that you perform at those times.

Every Month

- Prepare “municipal docket” (agenda) for board meeting. MCA § 21-15-19
- Prepare budget report for board meeting. MCA § 21-35-13
- Record board proceedings at board meeting. MCA § 21-15-17
- Certify minutes. MCA § 21-15-33
- Claims Docket. MCA § 21-39-7
- Attest checks/warrants. MCA § 21-39-13
- File privilege tax report with board. MCA § 27-17-501.
- Settle state court assessments. MCA § 99-19-73
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Every Quarter or Monthly (as required)

- Monthly reports; social security, federal income tax, state income tax, employment security, state retirement, etc.
- Payments to insurance companies, Workers’ Compensation Commission, MS Employment Security Commission, Federal Withholding Tax, State Income Tax and State Retirement
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Periodically (As Required)

- Cafeteria plan enrollment. MCA § 25-17-3
- Advertise for purchases. MCA § 31-7-1
- Pay bond & interest payments (paying agent). MCA § 21-33-87
- Revise budget. MCA § 21-35-25
- Manage elections. (Secretary of State calendar)
- Renew surety bonds. MCA § 25-1-15
- Redemption of property by owners. MCA § 1-33-61
- Mailing notices to privilege taxpayers that licenses will expire on or before the first day of the month prior to the month in which the license will expire (August if licenses expire on Sept. 30). MCA § 27-17-465.
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October:

- Fiscal year begins. MCA § 21-35-3
- New fiscal year's books begin operation. MCA §§ 21-35-11 and 21-15-21
- Last month for prior fiscal year's accounting and charges to the budget. MCA § 21-35-23
- New fiscal year's levy goes into effect. MCA § 21-33-53
- Board must contract annual audit. Within 30 days after completion, send two copies to State Auditor and publish a synopsis as prescribed by the State Auditor's Office. MCA § 21-35-31
- Board records completed "Municipal Compliance Questionnaire" on minutes
- Advertise for term contracts. MCA § 31-7-13(n)
- Audit cost of solid waste service and inform users of costs. MCA § 17-17-347
- Publish solid waste revenues, expenses, etc. MCA § 17-17-348
- Within 90 days of fiscal year end, send a report of all types of taxes received for the fiscal year to the State Auditor's Office.
- As soon as possible begin billing procedures for personal and real property taxes
- Quarterly reports for social security, state income tax, Employment Security Commission, federal income tax, etc. due
- Obtain public utilities assessment from Chancery Clerk
- Fall Session – Certification Training Program
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November

- Distribute requested tax bills to escrow holding mortgage companies; distribute individual tax bills to property owners
- Collection of real and personal property taxes. MCA § 27-41-1
- Authorize partial payments of ad valorem taxes. MCA § 21-33-53
- MML Small Town Conference

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December

- Advertise for depository every 2 years. MCA § 27-105-305; 27-105-353
- Continue collection of real and personal property taxes. MCA § 27-41-1
- Winter Educational Workshop and Winter Business Meeting of Mississippi City Clerks, Assessors, and Collectors Association

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January

- Continue collection of real and personal property taxes
- Prepare W-2 and 1099 forms and distribute by January 31st. (IRS regulations)
- Prepare IRS 1095-C forms and distribute by January 31st if applicable.
- Receive bids for depositories – 1st meeting (every 2 years) MCA § 27-105-363
- Quarterly reports due for social security, state income tax, Employment Security Commission, federal income tax, etc.
- Prepare and mail land redemption maturity notices. MCA § 27-43-1; 27-43-3; 21-33-53
- Prepare a list for publication of unredeemed properties scheduled to mature in April. MCA § 27-43-1; 21-33-53
- Begin preparing the SEC Continuing Disclosure Statements for outstanding bond issues.
- MML Mid-Winter Legislative Conference

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February

- Real and personal property taxes become delinquent on February 2nd, apply interest at a rate of 1% per month and begin collection procedures. MCA § 27-41-9
- Enforce personal property tax payments. MCA § 27-41-5; 27-53-17
- Appoint members of School Board at 1st meeting. MCA § 37-7-203
- File Copy A of all paper forms of 1099 with Form 1096 with the IRS by February 28th. (Electronic filing by March 31st)
- File Copy A of all paper forms W-2 with Form W-3 with the Social Security Administration by February 28th. (Electronic filing by March 31st)
- File all paper forms W-2 with the MS Department of Revenue by February 28th. (Electronic filing by March 31st)
- File all paper forms 1099 with the MS Department of Revenue by February 28th. (Electronic filing by March 31st)
- File paper form 1094-C and Form 1095-C of the Affordable Health Care Act, if applicable, by February 28th. (Electronic Filing by March 31st)
- Spring Session – Certification Training Program (possibly April)
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March

- Prepare publication of tax sale for the 1st Monday in April. MCA § 27-41-55
- Advertise delinquent tax sale notice and list in newspaper after February 15 for the April tax sale. MCA § 27-41-55
- File Copy A of all electronic forms of 1099 with Form 1096 with the IRS by March 31st. (Paper filing by February 28th)
- File Copy A of all electronic forms W-2 with Form W-3 with the Social Security Administration by March 31st. (Paper filing by February 28th)
- File all electronic forms W-2 with the MS Department of Revenue by March 31st. (Paper filing by February 28th)
- File all electronic forms 1099 with the MS Department of Revenue by March 31st. (Paper filing by February 28th)
- File electronic form 1094-C and form 1095-C of the Affordable Health Care Act, if applicable, by March 31st. (Paper filing by February 28th).
- Repay tax anticipation loan by March 15. MCA § 21-33-325
- SEC Continuing Disclosure Statements for outstanding bond issues due by March 31.

- Mississippi Municipal Clerks and Collectors Association Annual Conference and Business Meeting conducted by the University of Mississippi

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April

- Quarterly reports for social security, state income tax, Employment Security Commission, federal income tax, etc. due again
- Conduct ad valorem tax sale on first Monday. MCA § 27-41-59
- Spring Session – Certification Training Program (possibly February)
- Graduation Applications are due by April 1st for the MS CMC and CDMC

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May

- Second installment of realty taxes due on or before May 1. MCA § 27-41-1
- International Institute of Municipal Clerks Convention

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June

- Prepare a list for publication of unredeemed properties scheduled to mature in August and send notices to property owners and lienors. MCA § 27-43-3
- Board authorize travel advances for MML convention. MCA § 25-3-41
- Recommendation: Budget process for municipality's next fiscal year *should* begin no later than this month
- Mississippi Municipal League Annual Convention – Biloxi (“Usually” held this month except for election years when it is held in July)

- Municipal Clerks and Collectors Association holds their Summer Business Meeting and Breakfast in conjunction with convention.
- Graduation for clerks and deputy clerks completing the Certification Training Program is held during the Opening Ceremony of the MML Convention.
- Presentation of clerks and deputy clerks obtaining their IIMC designations during the Opening Ceremony of the MML Convention.
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July

- Quarterly reports for social security, state income tax, Employment Security Commission, federal income tax, etc. due again
- Secure tax roll from County Assessor. MCA § 21-33-9. Review for accuracy and report any discrepancies to the County Board of Supervisors during the designated time for public hearings on County roll
- Revision of Municipal budget if a revenue shortfall is to occur. MCA § 21-35-25)
- Department prepare budget requests. (municipal audit and accounting guide)
- Collect final ad valorem tax installment (if allowed). MCA § 21-41-1
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August

- Compile and publish notice of sale of land for delinquent taxes to be held on the last Monday of August. MCA § 27-41-55; 1-3-69
- Final preparation of Municipal budget should take place. MCA § 21-35-5; 27-39-203
- Publish notice of proposed budget and proposed tax levy hearing. MCA § 27-39-203
- Publish notice of solid waste tax/fee increase, if any. MCA § 21-19-2
- Notify holders of expiring privilege tax licenses (expire on Sept. 30). MCA § 27-17-465
- Notify county if fire protection is not required.
- Tax sale on last Monday in August. MCA § 27-41-59
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September

- Conduct hearing on proposed municipal budget and proposed tax levy. MCA § 21-35-5; 27-39-203
- Adopt and publish municipal budget. MCA § 21-35-5
- Set tax levy and certify to County Tax Collector and State Auditor. MCA § 21-33-45
- Publish tax levy one time within 10 days after adoption. MCA § 21-33-47
- Final approval and adoption of tax rolls, MCA §21-33-35
- Complete Municipal Compliance Questionnaire of the State Department of Audit and spread a copy in Board minutes
- Gather Solid Waste Information for publication. MCA § 17-17-347; 17-17-348
- Clerk or Collector accepts assessment rolls for billing and collection (Section 21-33-49)
- Fiscal Year End is September 30th.
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MISSISSIPPI STATE UNIVERSITY EXTENSION SERVICE
CENTER FOR GOVERNMENT AND COMMUNITY DEVELOPMENT
2016 Supplement

Mississippi's towns and communities may have much in common, but each has unique characteristics. Some have only a few hundred residents and provide just basic services, while many provide the full range of municipal services to populations in the thousands. Manufacturing enterprises are the biggest employers in some municipalities. Others depend primarily on agriculture or tourism.

There is, however, one resource available to all Mississippi communities—access to community development, outreach and local government training programs provided by the Mississippi State University Extension Service.

Through the Center for Government and Community Development (GCD), university-based and county colleagues work for positive change through partnerships with communities to address important local issues, concerns and opportunities.

Backed by Mississippi State University research, GCD educators provide outreach programs that teach elected officials and community and business leaders how to apply the latest knowledge and technology to local issues and needs.

GCD Programs include county and municipal educational programs, legislatively-mandated certifications programs, emergency preparedness education, drinking water programs, and community development programs.

**COUNTY AND MUNICIPAL
EDUCATIONAL PROGRAMS**

In Mississippi, there are approximately 5,000 elected and appointed local government officials. These men and women have the responsibility for establishing and implementing public policy in the state's 82 counties and 298 municipalities.

Each session of the Mississippi Legislature results in new laws and regulations for local government, creating the need for continuing education and technical assistance throughout an individual's tenure in local government service.

The GCD is a nationally recognized leader in the development and implementation of educational programs for county and municipal officials. The center's staff also provides technical assistance and specialized publications for local officials.

GCD works with local government associations to plan and implement educational programs, seminars, and workshops:

- Mississippi Association of Supervisors
- Mississippi Municipal League
- Mississippi Association of County Board Attorneys
- Mississippi Municipal Clerks and Tax Collectors Association
- Mississippi Chancery Clerks Association
- Mississippi Association of County Administrators/Comptrollers
- Mississippi Assessors and Collectors Association
- Mississippi Chapter of International Association of Assessing Officers
- Mississippi Civil Defense and Emergency Management Association
- Mississippi Association of County Engineers

EDUCATIONAL EFFORTS

GCD also manages legislatively-mandated certification programs for county and municipal officials in cooperation with state government agencies. Each year, the centers certification activities include:

- Conduct the Mississippi Certified Municipal Clerk (MS-CMC) Program in cooperation with the Mississippi Municipal Clerks and Collectors Association (MMCCA) and the International Institute of Municipal Clerks (IIMC). Completion of the exam-based program allows municipal clerks and their deputies to obtain the educational requirements for their MS-CMC and their IIMC-CMC designations. At any given time some 125 municipal clerks, tax collectors, and deputy municipal clerks, representing over 75 different municipalities, will work toward certification.
- Conduct the Master Municipal Clerks Program, an advanced education/certification program for graduates of the Certification Program for Municipal Clerks and Collectors.
- Assist the Office of the Secretary of State with implementation of training programs for county and municipal election officials.
- Award advanced professional designations to Assessor and Appraiser Education Program participants entitling them to annual salary supplements of up to \$3,500. Currently, some 400 County Assessors and staff members are active in this program.
- Award advanced professional designations to Tax Collector Education Program participants entitling them to annual salary supplements of up to \$6,500.
- Award professional certification to county purchase clerks, receiving clerks, or inventory control clerks who successfully complete the Professional Certification Program for County Purchase, Receiving, and Inventory Control Clerks which is conducted in cooperation with the Office of the State Auditor.

EMERGENCY PREPAREDNESS PROGRAMS

GCD works with the Mississippi Emergency Management Agency, the Mississippi Office of Homeland Security, the Mississippi State Department of Health, and the Mississippi Board of Animal Health to provide training, seminars, and workshops for local government and emergency management officials.

Services include:

- Continuing education and professional development certifications for local emergency managers in partnership with the Mississippi Civil Defense Emergency Management Association.
- Coordination of certification programs for 911 call center telecommunicators and directors in conjunction with the Mississippi Department of Public Safety's Board of Standards & Training.
- National Incident Management System training in Incident Command System for elected and appointed local and state officials.

DRINKING WATER PROGRAMS

Mississippi State University Extension Service (MSUES) is hosting roundtable discussions designed to foster increased coordination and cooperation among the Mississippi Rural Water Association (MsRWA), the public water supplies (water associations) of Mississippi's counties, the 82 county emergency managers, and the Mississippi Emergency Management Agency (MEMA). The water associations of each county will be represented at discussion sessions through individual board officers and their certified water operator. During emergencies, the county emergency manager in the affected county directs all response activities. Knowledge gained through these learning sessions increases response efficiency. The MsRWA serves as the statewide contact and coordinator of the Rural Water Emergency Assistance Cooperative (RWEAC). When fully implemented, the network will improve communication and coordination among water association officers, operators, county emergency managers, MEMA and MsRWA.

COMMUNITY DEVELOPMENT

Counties and municipalities are the driving force for industrial recruitment and job creation in Mississippi. These local units of government are entrusted with the responsibility of providing jobs, public services, education, and healthcare to their citizens while using tax dollars as efficiently as possible. To be successful, these communities need informed, innovative local leaders with the vision and determination to compete successfully for business and industry in a highly competitive economic environment.

The Mississippi State University Extension Service, with offices and staff in all 82 counties in the state, is well positioned to work with local government leaders, planning and development district offices, the Mississippi Development Authority, and other MSU outreach entities to identify and assist local communities in economic development initiatives. The Extension Service provides training to local officials on economic development related issues and individual assistance to businesses and local governments on specific projects as needed. MSU, as a land-grant institution, is committed to being a leader in research and service to the state and to the advancement of socioeconomic goals that serve the public interest and improve the quality of life for its citizens.

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CERTIFICATION TRAINING PROGRAM FOR MUNICIPAL CLERKS, DEPUTY CLERKS, AND TAX COLLECTORS 2016 Supplement

Since 1973 the Certification Training Program for Municipal Clerks, Deputy Municipal Clerks, and Tax Collectors and their deputies has offered these municipal officials an opportunity to achieve both state and national certification in their positions. The curriculum is presented over a three-year period with two (2), two and one-half day sessions each year (a session in the spring and fall). For convenience and accessibility, each of the two annual sessions is presented in three locations – north Mississippi (Oxford), central Mississippi (Jackson), and southern Mississippi (Hattiesburg). The certification program is designed to allow entry at any of the sessions during the year. This program is sponsored by the Center for Government & Community Development and the Mississippi Municipal Clerks and Collectors Association. It is accredited by the International Institute of Municipal Clerks (IIMC).

Training is provided by highly-qualified instructors from both the public and private sectors. Course instructors include personnel from the Office of the State Auditor, the Office of the Attorney General, the Office of the Secretary of State, the Mississippi Ethics Commission, the Department of Environmental Quality, and other state agencies; faculty members from Mississippi's universities with expertise in management, leadership development, communications, local government, and information management technology; veteran municipal clerks; and attorneys in private practice who specialize in personnel administration, municipal bonds, and local government law.

Some thirty (30) individual, exam-based, half-day courses are part of the three-year curriculum of 120 contact hours of instruction. For a relatively modest tuition plus transportation, lodging if necessary, and any meals, you can make sure that your municipal clerk and her (his) deputies receive the training they need to help you manage your municipality.

Certification through the program is limited to municipal clerks and tax collectors and their official deputies. However, any municipal official is welcome (and encouraged) to attend sessions or individual courses on an interest basis.

Additional information concerning the certification program, including the registration process, may be obtained from Patrick Miller, Center for Government & Community Development, Mississippi State University Extension Service, Box 9643, Mississippi State, MS 39762, telephone number: 662-325-3141, fax number: 662-325-8954, and e-mail: patrick.miller@msstate.edu or from the GCD's web site, www.gcd.msstate.edu.

Mississippi Municipal Clerk Certification Program Curriculum

The Mississippi Municipal Clerk Certification Program is a three-year program consisting of 120 classroom hours of training in three areas of study: public administration; social and interpersonal skills; and electives. Each course will consist of four (4) hours of classroom instruction.

PUBLIC ADMINISTRATION COURSES (15 courses required)

- Agendas and Minutes
- Basics of Municipal Accounting
- Computer Technology
- Ethics in Government
- Financial Management
- Foundations of Public Administration
- Liability in Government
- Municipal Audit & Accounting Guide
- Municipal Bonds
- Municipal Law I
- Municipal Law II
- Municipal Law III & Interlocal Agreements
- Origin, Functions and Forms of Government
- Parliamentary Procedures
- Personnel Management
- Purchasing
- Records Management

SOCIAL AND INTERPERSONAL SKILLS (9 courses required)

- Business Etiquette
- Citizen Participation
- Community Development
- Customer Service
- Diversity Issues in the Workplace
- Social Media
- Interpersonal Communications & Conflict Resolution
- Leadership Survival Skills
- Problem Solving
- Written and Oral Communications

ELECTIVES (6 courses required)

- Ad Valorem Taxation
- Elections
- Emergency Management
- Grant Administration
- Privilege License & Transient Vendors
- Public Employees Retirement System
- Risk Management

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By **Janet Baird**, Extension Instructor, Center for Government and Community Development.

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