CENTER FOR GOVERNMENT AND COMMUNITY DEVELOPMENT

MUNICIPAL GOVERNMENT IN MISSISSIPPI

SIXTH EDITION

MISSISSIPPI STATE UNIVERSITY™

EXTENSION

EXTENDING KNOWLEDGE. CHANGING LIVES.

Municipal Government in Mississippi

Sixth Edition

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FOREWORD FROM THE MISSISSIPPI STATE UNIVERSITY EXTENSION SERVICE

The Mississippi State University Extension Service is a vital, unbiased, research-based, client-driven organization. Extension is Mississippi State University's lead unit for outreach and engagement, and is dedicated to delivering the information people need to make qualified decisions about their economic, social, and cultural well-being. As director, I want to focus on these core values, which are important to Mississippi State, our unit's success and future, and, most importantly, our clientele. We will—

- be honest, open, and fair to everyone;
- provide an advanced, up-to-date knowledge base;
- respond quickly with valid and consistent information;
- work collectively as team of professionals; and
- make a significant impact in the lives of Mississippians.

Like the cities of our state, the Mississippi State University Extension Service exists to provide services that improve the lives of Mississippians. In addition to the programs we provide in the areas of agriculture and natural resources, family and consumer education, 4-H youth development, and community resource development, the Extension Service, through the Center for Government & Community Development (GCD), provides three major types of services to local governments—education and certification programs for elected and appointed officials, specialized publications, and technical assistance.

The GCD currently works in conjunction with the following associations of local government officials to help meet and fulfill their educational needs: 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 & Emergency Management Association, Mississippi 911 Association, and Mississippi Association of County Engineers. The center works with these associations to plan and implement a variety of educational programs, seminars, and workshops.

In cooperation with the State Department of Audit and the Mississippi Department of Revenue, the GCD manages legislatively mandated certification programs for county purchase clerks, receiving clerks, inventory control clerks, tax assessors, and tax collectors and manages professional education programs for county supervisors and county administrators. The GCD's Certification Program for Municipal Clerks and Tax Collectors and Certified Appraiser School are nationally recognized. The GCD assists the Office of the Secretary of State in implementing a training program for municipal clerks and municipal election officials. Active in training in the areas of homeland security and emergency preparedness and management, the GCD works with the Mississippi Emergency Management Agency, Mississippi Office of Homeland Security, Mississippi State Department of Health, and Mississippi Board of Animal Health to provide training, seminars, and workshops for local government and emergency management officials.

Technical assistance is provided by the center to counties and municipalities in such areas as general management, financial administration, personnel administration, leadership

development, economic development, and community facilities and services. Technical assistance is provided on a "time-available" basis.

Through these activities, the GCD assists local government officials, local units of government, and associations of local government in their efforts to improve governance at the grassroots and to deliver services to the citizens of Mississippi. The center does not take an advocacy role in the business, legislative, or political affairs of the local governments or local government associations with which it works.

Our commitment to do whatever we can to improve service delivery by municipal government in our state is as strong as ever. This book is dedicated to that end.

Gary Jackson, PhD
Director
Mississippi State University Extension Service
July 2017

FOREWORD FROM THE MISSISSIPPI MUNICIPAL LEAGUE

As the official nonprofit organization of cities and towns of Mississippi, the Mississippi Municipal League is honored to join forces with the Mississippi State University Extension Center for Government and Community Development in presenting the sixth edition of *Municipal Government in Mississippi*. As stated in our mission statement, the league makes a continuous effort to provide municipal officials across the state with the resources, support, and training required when it comes to the organization and operation of municipal government in Mississippi.

Both newly elected and experienced officials will find this publication to be an invaluable source of information as you fulfill your elected position of service to your community. It is our hope that this book will serve as a manual in the many areas that encompass municipal government in Mississippi.

The Mississippi Municipal League is truly appreciative to the MSU Extension Center for Government and Community Development, in addition to all other individuals and organizations that contributed to the publication of this excellent reference source.

The MML pledges its continued effort to strengthen the ability of municipal governments to better serve their citizens and our state as a whole.

Shari T. Veazey
Executive Director
Mississippi Municipal League

PREFACE

In 2001, the Center for Government & Community Development in the Mississippi State University Extension Service published *Municipal Government in Mississippi, 2nd Edition, Revised and Expanded*. That publication was the successor to *Municipal Government in Mississippi: A Handbook for City Officials*, the fifth in a series of publications by the same name. The 2001 version of the publication became recognized as the definitive work on Mississippi municipal government by the general public, various professionals who work or consult with municipalities, educators, and elected and appointed state and municipal officials.

The changes in municipal law and practice that occurred in the years following the publication of *Municipal Government in Mississippi, 2nd Edition, Revised and Expanded* have necessitated ongoing revisions. This edition is designed to incorporate the most recent changes in the law, as well as introduce the reader to the powers, duties, and responsibilities of Mississippi municipalities. While no book can provide everything there is to know about municipal government, this book provides the building blocks for elected and appointed municipal officials and other interested individuals to form a substantial knowledge base across a range of subjects.

Writing this publication was a collaborative effort of several very talented individuals—all knowledgeable about municipal government and all experts in their professions. Brief biographies of the contributing authors are found starting on page xiii. Recognition should be given to these individuals for making this book possible and for their daily contributions to improving the operation of municipal government in Mississippi.

In an effort to continue to strengthen the ability of municipal governments to better serve their citizens, the Mississippi Municipal League (MML) has supported this publication. This edition of *Municipal Government in Mississippi* would not have been possible without the support of the MML.

Finally, appreciation is due Dr. Gary Jackson, MSU Extension director. This edition of *Municipal Government in Mississippi* would not have been published without Dr. Jackson's moral and financial support. His commitment to the improvement of local government service delivery and community development in Mississippi should be noted and lauded.

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

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July 2017

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Kim Turner has served as assistant secretary of state of the elections division since 2012, previously having served as the division's senior attorney. Born in Amsterdam, New York, but

raised in Tupelo, Mississippi, Kim graduated from Rhodes College in Memphis with a BA in business administration. While at Rhodes, she was elected and served as a junior and senior class representative to the Student Honor Council, served as the senior representative to the Rhodes Panhellenic Association, and was a member of Kappa Delta Sorority. Kim received her JD from Mississippi College School of Law, where she was the recipient of a full academic scholarship. Before joining the Secretary of State's office, Kim was an associate with Wells, Moore, Simmons & Hubbard, PLLC, where she dedicated her practice initially to real estate and transactional work, and later to litigation, primarily involving title insurance and mass tort. Kim later established her own private practice; she was associated by contract with Henry, Barbour, DeCell & Bridgforth, LLC in Yazoo City. Kim has one child, Nolan Reed Turner, who is a rising senior at St. Andrew's Episcopal School in Ridgeland, Mississippi. They reside in Jackson and are members of St. Andrew's Episcopal Cathedral.

Shari T. Veazey was appointed executive director of the Mississippi Municipal League (MML) in 2012. Veazey joined the MML staff in 2004 and was promoted to deputy director in 2007. In her role as deputy director, she served as chief financial officer, managed the league's three major conferences, developed the education and training agenda, and coordinated all marketing and public relations activities for the league. Established in 1931, the Mississippi Municipal League is a private association representing 294 municipalities in the state. The mission of the MML is to help cities and towns excel. Veazey has more than 33 years of experience in marketing, public relations, and training for associations and non-for-profits. She has a BA in communication from Mississippi State University. She is the immediate past president of the Mississippi Society of Association Executives (MSAE) and has also served a 2-year term as treasurer of MSAE. Veazey is also an active board member of Keep Mississippi Beautiful and was awarded the Louise Godwin Award of Excellence in 2015 by KMB. Veazey and her husband, Kenny, reside in Flowood and are members of Liberty Baptist Church.

Randall B. Wall is a partner in the law firm of Jones Walker. Born in Calhoun City, Mississippi, Randall completed his preparatory education at the University of Mississippi and the University of Wisconsin, where he received a BA degree in 1965. Randy received the JD degree from Harvard Law School in 1968. Randy is a member of the Mississippi Bar and American Bar Associations and the National Association of Bond Lawyers. He is a fellow of the Mississippi Bar Foundation. Randy is a frequent speaker on the topic of public finance for various industry associations in the Mississippi Municipal League, conferences, and associations for attorneys representing governmental entities.

Joe B. Young is the former tax assessor-collector of Pike County, having been elected to that position in 1983 and retiring in 2011. He holds a BS degree in mathematics from Mississippi College, where he served as co-captain of the football team and was selected by the faculty to receive the Farr Scholarship. Joe has made numerous educational and professional accomplishments within the assessing field. He has served as president of the Mississippi Assessors and Collectors Association (MACA) and president of the Mississippi Chapter of the International Association of Assessing Officers (IAAO). He has achieved Mississippi Assessment Evaluator (MAE) certification within the Mississippi Education and Certification Program for assessors and appraisers and also holds a Certified General Real Estate Appraiser license. He frequently testifies before the Mississippi Legislature on subjects related to tax assessing and collecting.

CHAPTER ONE

HISTORICAL AND CONSTITUTIONAL DEVELOPMENT OF THE MUNICIPALITY IN MISSISSIPPI

Michael T. Allen

INTRODUCTION

Municipal government in Mississippi has a rich history. Mississippi's municipalities—cities, towns, and villages—have withstood the test of time and proudly faced the many challenges brought on over hundreds of years of changing governments, times, and technologies. Today, as in the past, they are a prominent part of the political and economic landscape and a place that many call home.

With the 1920 census it became evident for the first time in U.S. history that more Americans were living in cities than in rural areas.[1] This count showed that an enormous population shift had occurred from the time of the first census. The census, taken in 1790, reported just slightly more than four percent of the population living in a city.[2] The *2011 Statistical Abstract of the United States* reports that in 2007 there were 19,492 municipal (city) governments and 16,519 township and town governments in the United States. With 82 percent of the nation's population now living in a metropolitan area,[3] the various types of municipal governments, usually called *municipalities*, *cities*, *towns*, *boroughs,* or *villages*, are the first form of government with which most Americans come into contact.

The U.S. Census Bureau reported that in 2006 nearly 187 million Americans lived in one of the then 19,489 *municipal* (city) governments. Almost half of these cities had populations of fewer than 1,000 residents while over 81 million people lived in cities with 100,000 or greater populations. The 16,520 *towns and townships* accounted for a much smaller percentage of the population. Only 7.5 percent had 10,000 or greater populations while 51.8 percent had populations of fewer than 1,000.[4]

In Mississippi, there are three classifications for municipalities: cities, towns, and villages. Cities have populations of 2,000 or greater, towns have 300 to 1,999, and villages have 100 to 299 people.[5] Villages may remain in existence if their population drops to fewer than 100; however,

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[1]Ernest S. Griffith, *The Modern Development of City Government in the United Kingdom and the United States* (College Park, MD: McGrath, 1969), p. xiii.
[2]Alexander B. Callow, Jr., ed. *American Urban History: An Interpretive Reader with Commentaries*. 2nd ed. (New York, NY: Oxford University Press, 1973), p. 3.
[3]*The World Factbook 2011*. Washington, DC: Central Intelligence Agency, 2011. https://www.cia.gov/library/publications/the-world-factbook/geos/us.html
[4]U.S. Census Bureau. 2007 Governments Integrated Directory.
[5]*Mississippi Code 1972 Annotated* § 21-1-1.

they are automatically abolished if their population dips below 50.[6] Only cities and towns may incorporate today.[7]

If small cities are categorized as having populations below 25,000 and large ones as exceeding that population, then the 2010 Census shows that Mississippi contains a far greater percentage of small cities compared to large ones. Of the State's 298 cities, 286 cities (96 percent) were small and the remaining twelve (4 percent) were by definition large. Of the twelve large cities, only two exceeded 50,000 residents. In fact, only 92 cities in Mississippi had populations of 2,500 or more and 135 had fewer than 1,000. Jackson, the largest, had 173,514 inhabitants and was the only city in Mississippi to exceed a population of 100,000. The State's total 2010 population was 2,967,297.[8]

Historically and legally, municipal governments throughout the nation have been viewed as "creatures" of their respective states. As such, they are subject to their state's constitution, legislature, and laws.[9] While the history of the development of the city in Mississippi goes back almost two hundred years, the development of the municipal form of government in the United States goes back even farther. The next section of this chapter examines some of this history and how municipal government in the United States has developed through the centuries. Later sections provide a brief sketch of Mississippi's history and the constitutional development of municipal government in the State.

DEVELOPMENT OF MUNICIPAL GOVERNMENT IN THE UNITED STATES

The American form of municipal organization and many of the municipal offices found in the United States had their origins in England.[10] Likewise, the development of municipal government in the United States can be traced back primarily to its English roots coupled with specific American innovations. An especially strong connecting principle was the "rule of law" fostered by the common legal basis between England and the American Colonies.[11]

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[6]*Mississippi Code 1972 Annotated* § 21-1-49.
[7]*Mississippi Code 1972 Annotated* § 21-1-1.
[8]U.S. Census Bureau. 2010 Census. Some figures calculated by the author based on Census data. Mississippi's twelve largest cities in 2010, listed from largest to smallest populations, are as follows: Jackson, Gulfport, Southaven, Hattiesburg, Biloxi, Meridian, Tupelo, Greenville, Olive Branch, Horn Lake, Clinton, Pearl.
[9]Center for Policy Research and Planning, Public Policy Research Center, and Mississippi Municipal Association, *Mississippi Municipal Profile* (No publisher listed, 1991), p. 1.
[10]Frank J. Goodnow, *Municipal Problems* (New York, NY: Macmillan, 1897), p. 1-2.
[11]Griffith, *The Modern Development of City Government in the United Kingdom and the United States*, p. 1-5.

Since the young Colonies were granted varying charters and legal provisions by different English rulers over many years there was much room for developmental variations. However, certain key municipal features remain similar between the English and American systems. Among these are the power of the mayor, the composition of the city council, the functions of the judiciary, the level of citizen participation, and the adoption of parliamentary procedures.[12]

Although most of the Colonial cities have been characterized as possessing a strong English tradition, legal status, and foundation, other significant influences came from other people groups. The Dutch are usually credited with initiating the strong Colonial emphasis on education and free public schools.[13] The Spanish and the Dutch are also said to have developed and used an elaborate system of formal town planning. Puritans are recognized for encouraging social cohesion, agrarianism, religious comrade, and a strong sense of local identification.[14]

Of course, local innovations by the Colonists themselves played a strong developmental role as well. Americans have long been recognized for developing new levels of democratic involvement and local self-government, public service, and a unusually low amount of political corruption.[15]

Cities continued to grow rapidly after the United States gained independence. When George Washington became President in 1789 there were already two cities with populations over 25,000—Philadelphia with 42,000 and New York with 33,000. As the new nation matured, it also became more urbanized. By 1850, New York grew to be the first American city with over a half million inhabitants. At this time there were also five other cities with populations over 100,000.[16]

The municipal scene continued to change dramatically over the next century. Just before World War II, for example, there were five cities with over one million residents and nine others with over half a million. Seventy-eight others had populations exceeding 100,000 and almost one fourth of the populace lived in only 37 cities.[17] In 2009, the number of American cities with populations of at least 100,000 had grown to 276—nine of which had well over one million residents.[18]

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[12]Griffith, *The Modern Development of City Government in the United Kingdom and the United States*, p. 1-5.
[13]Ibid., p. 7, 10.
[14]Howard P. Chudacoff, *The Evolution of American Urban Society* (Englewood Cliffs, NJ: Prentice-Hall, 1975), p. 1-2.
[15]Griffith, *The Modern Development of City Government in the United Kingdom and the United States*, p. 10-11.
[16]Charles M. Kneier, *City Government in the United States*. Rev. ed. (New York, NY: Harper and Brothers, 1947), p. 1-3.
[17]Ibid.
[18]U.S. Census Bureau. *2011 Statistical Abstract of the United States.* 130th ed. (Washington, D.C.: Government Printing Office, 2011), p. 34-35. Note: Municipal boundaries from which these figures were derived were in effect January 1, 2009.

A BRIEF MISSISSIPPI HISTORY

Long before a single municipal government existed in the land of the Anglo-Saxons, people were living in Mississippi who would influence the region for thousands of years to come. These people, called Indians by the European explorers, enriched Mississippi's history and supplied many of the names that were given to counties, cities, and rivers within the State. Even the name *Mississippi* came from the local Indians who called the land *Misi sipi* meaning "Father of Waters."

When European explorers first arrived in the region of *Misi sipi*, the people living there were of three major tribes and several smaller bands. The major tribes were the Natchez, the Choctaw, and the Chickasaw. It has been estimated that in the year 1700 these three tribes and the smaller bands had a total population of around 30,000. The Choctaws were the largest tribe with a population of somewhere between 5,000 and 10,000 at this time. The Alabamas, a smaller band living in what is now north-central Mississippi about the time the first European explorers arrived, later migrated eastward and settled in the present state of Alabama.[19]

The first known European explorers to enter Mississippi were Spanish. Hernando DeSoto, the first Spanish *conquistador* to set foot in Mississippi, came in 1540 and became the first recorded European to see the Mississippi River. However, it was the French who, over 200 years after Columbus "discovered" the New World, established the earliest colonial settlements in the region.[20]

The first French explorers were led by Robert Cavelier de La Salle and arrived in Mississippi around 1682. La Salle claimed the entire Mississippi Valley for the King of France in March of that year. Seventeen years later in 1699, Frenchman Pierre le Moyne d'Iberville established the first European colony in Mississippi and built *Fort Maurepas* near the site of present-day Ocean Springs in Jackson County. The settlement was called Biloxi after the friendly Biloxi Indians of the area.[21]

Other settlements began to spring up as more explorers arrived. In 1716, d'Iberville's brother, Jean Baptiste le Moyne de Bienville, who had participated in the 1699 expedition that established the Biloxi colony, traveled up the Mississippi River to the present site of Natchez in Adams County. There he set up an important outpost named *Fort Rosalie*, and was later commissioned Governor of French Louisiana. Part of this territory was later to become the Mississippi Territory.[22]

After the French and Indian War (1755-1763), French Louisiana was divided between Spain and England. England received the land east of the Mississippi River, including much of the territory

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[19]John K. Bettersworth, *Mississippi Yesterday and Today*, (Austin, TX: Steck-Vaughn Company, 1964), p. 2, 21.
[20]Ibid., p. 37-46.
[21]Ibid., p. 37-46; Mississippi, Secretary of State, *Mississippi Official and Statistical Register 1988-1992*, by Dick Molpus, (1989), p. 19.
[22]Mississippi, Secretary of State, *Mississippi Official and Statistical Register 1988-1992*, p. 19.

that was to become the State of Mississippi. The English called this region British West Florida. Spain gained New Orleans and all French territory west of the Mississippi River. In 1779, during the American War for Independence, Spain seized control of British West Florida. About fifteen years later, under the Treaty of San Lorenzo in 1795, Spain gave up its land north of the 31st parallel to the new United States government. In 1798, the Spanish left Natchez, and Natchez became the capital of the newly formed Mississippi Territory.[23]

The U.S. Congress officially designated the region as the Mississippi Territory on April 7, 1798. Congress enlarged the Territory in 1804 and again in 1812 to encompass the land areas of the present States of Mississippi and Alabama. At this time, the greatest population concentration was in the western portion (Adams County area) of the Territory.[24] It was here that Natchez became the first Mississippi community to incorporate when it adopted a charter in 1803.[25]

Before any communities were incorporated, on May 10, 1800, the U.S. Congress authorized the Mississippi Territory to elect a general assembly. The resulting Territorial Legislature first convened on September 22, 1800. The Mississippi Territory's population had increased to 40,000 by 1810. By 1816, the southwestern portion of the Mississippi Territory contained fourteen communities with charters, and was ready to be admitted to the Union as the State of Mississippi.[26]

The first stage in the quest for statehood began on December 27, 1814 when the Territorial Legislature approved a petition to the U.S. Congress for permission to hold a constitutional convention. This request was submitted to Congress on January 21, 1815 and sought approval to hold a constitutional convention and to draft a constitution suitable for admission of a new state into the Union. On March 1, 1817, after Congress passed and President James Monroe signed an enabling act, the Mississippi Territory was authorized to hold a constitutional convention, to adopt a constitution, and to set the boundaries for the proposed State of Mississippi. The enabling act also reorganized the eastern portion of the Territory as the Alabama Territory.[27]

The rationale behind splitting the Territory into two states was an attempt by Southern congressmen to strengthen the region's position in the U.S. Senate.[28] Thus Congress divided the

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[23]Mississippi, Secretary of State, *Mississippi Official and Statistical Register 1988-1992*, p. 19.
[24]Gordon K. Bryan, "County Government and Administration in Mississippi" (Ph.D. dissertation, University of California, Los Angeles, 1949), p. 6, 13-14.
[25]Center for Policy Research and Planning, Public Policy Research Center, and Mississippi Municipal Association, *Mississippi Municipal Profile*, p. 10.
[26]Bryan, "County Government and Administration in Mississippi," p. 15; Robert B. Highsaw and Charles N. Fortenberry, *The Government and Administration of Mississippi* (New York: Thomas Y. Crowell, 1954), p. 1, 328.
[27]Bryan, "County Government and Administration in Mississippi," p. 16-18; Tip H. Allen, Jr., "The Enduring Traditions of the State Constitutions," in *Mississippi Government and Politics: Modernizers Versus Traditionalists*, Politics and Governments of the American States, Dale Krane and Stephen D Shaffer (Lincoln: University of Nebraska Press, 1992), p. 44.
[28]Allen, "The Enduring Traditions of the State Constitutions," p. 43-44.

Territory into two pieces in 1817 and authorized the western section to seek statehood first.[29] Accordingly, in July 1817, the forty-eight elected delegates met in a Methodist church for Mississippi's first constitutional convention. The convention, held in the town of Washington in Adams County, lasted for six weeks and produced an eighteen-page constitution that was adopted on August 15, 1817. Congress approved the constitution and on December 10, 1817 formally admitted the State of Mississippi as the twentieth state of the Union. (Mississippi escaped being named Washington by a mere six votes in the 1817 constitutional convention.)[30] Two years after Mississippi's statehood, on December 14, 1819, Congress admitted the eastern portion of the Territory to the Union as the twenty-second state, the State of Alabama.

Natchez, capital of the Mississippi Territory, became a temporary capital under statehood. In 1822, the Mississippi Legislature designated the city of Jackson as the state's new capital. The capital city, named in honor of General Andrew Jackson, overlooks the Pearl River on a site once known as LeFleur's Bluff.[31]

After statehood was achieved, Mississippi experienced rapid population growth and economic development. With the introduction of a superior Mexican variety, cotton soon became the state's primary crop. High cotton prices coupled with inexpensive land and good harvests caused enormous economic expansion in Mississippi.[32] This change brought calls to overhaul or replace the 1817 state constitution to make it more suitable for business. In December of 1830, the Legislature submitted to the voters the question of whether to call a state constitutional convention. The vote occurred in August 1831 and authorized a second constitutional convention to be convened. The convention began in September 1832 and by the middle of the next month (October 16, 1832) had completed its work. The electorate ratified the new constitution that year.[33]

The 1850s have been called the "Golden Age of the Cotton Kingdom" and were made possible by the agricultural development of the Mississippi Delta. During this time, Mississippi was known as one of the wealthiest states in the nation; however, this period was short-lived. On January 9, 1861, Mississippi became the second state to secede from the Union.[34]

Mississippi was a totally independent state for nearly three months before joining the Confederate States of America on March 29, 1861. Jefferson Davis, a Mississippian, was elected President of the Confederacy. Mississippi became heavily involved in the ensuing War Between the States. Of the 78,000 Mississippi soldiers who fought for the Confederacy, over 59,000 were killed or wounded. Many battles were fought in the state and when the War finally ended, Mississippi was deeply impoverished and the economy was in shambles.[35]

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[29]Highsaw and Fortenberry, *The Government and Administration of Mississippi*, p. 1.
[30]Bryan, "County Government and Administration in Mississippi," p. 16-18; Allen, "The Enduring Traditions of the State Constitutions," p. 44.
[31]Mississippi, Secretary of State, *Mississippi Official and Statistical Register 1988-1992*, p. 20.
[32]Ibid., p. 20.
[33]Bryan, "County Government and Administration in Mississippi," p. 22.
[34]Mississippi, Secretary of State, *Mississippi Official and Statistical Register 1988-1992*, p. 20.
[35]Ibid., p. 20.

After the War and during the Reconstruction Era (1870-1876), there was much upheaval as Mississippians tried to return to their normal lives. Readmitted February 23, 1870, Mississippi became the first Confederate state to return to the Union.[36] Taxes were high and moods were low for many during this time. However, able leaders, some of whom were recently-freed black Mississippians, made the transition period more bearable. For example, in 1870, Mississippi sent Hiram Rhodes Revels to the U.S. Senate as the first black Senator in the nation. In 1875, another black Senator, Blanche K. Bruce, was elected. In the Mississippi Legislature, John R. Lynch became Speaker of the House before he was later elected to two terms in the U.S. House of Representatives.[37]

CONSTITUTIONAL DEVELOPMENT OF MUNICIPAL GOVERNMENT IN MISSISSIPPI

In Mississippi, municipal power currently descends from the *Mississippi Constitution of 1890* (cited in this book as *Const.*, § ...), the Legislature, and state law. This legal status has not changed during the entire history of statehood or under any of the four state constitutions (1817, 1832, 1869, and 1890). Under this arrangement, the Mississippi Supreme Court declared that the state's cities owe their very existence to the Legislature, which the Court said has "absolute power over municipalities":

> Municipal corporations are now, as they have always been in this state, purely creatures of the legislative will; governed, and the extent of their powers limited, by express grants; invested, for purposes of public convenience, with certain expressed delegations of governmental power; their granted powers subject at all times to be enlarged or diminished, having no vested rights in their charters, which are subject at all times to amendment, modification, or repeal; their powers, their rights, their corporate existence, dependent entirely upon legislative discretion, acting as it may deem best for the public good.[38]

Since Mississippi cities are creations of the Legislature, the Legislature has delineated specific areas of political and administrative authority (referred to as "governmental powers" and "proprietary powers") to act as agents of the state.[39] The role of the city as an agent of the state and operating solely under state legislative authority is referred to as *Dillon's Rule*.[40] (The legal term for this principle originated in the late 1800s following an Iowa State Supreme Court ruling,

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[36]John W. Winkle III, *The Mississippi State Constitution: A Reference Guide*. Reference Guides to the State Constitutions of the United States, no. 12 (Westport, CT: Greenwood Press, 1993), p. 8.
[37]Ibid., p. 21.
[38]*Adams v. Kuykendall*, 35 So. 830, 83 Miss. 571 (1904) as cited in Center for Policy Research and Planning, Public Policy Research Center, and Mississippi Municipal Association, *Mississippi Municipal Profile*, p. 1.
[39]Center for Policy Research and Planning, Public Policy Research Center, and Mississippi Municipal Association, *Mississippi Municipal Profile*, p. 1, 5.
[40]Ibid, p. 7.

with Judge John F. Dillon presiding, that upheld the principle of state supremacy over municipalities.)[41]

A more recent principle of municipal authority officially operating in Mississippi and in most other states is called *municipal home rule*. The primary purpose of municipal home rule is to allow cities more freedom and flexibility in handling their own internal affairs and actions as they see fit. The Mississippi Legislature allows such flexibility within broadly defined constitutional and statutory parameters.[42] In reality though, Mississippi's municipal home rule statute allows only limited home rule.

Since the first municipality was incorporated in Mississippi in 1803, over 300 others have been incorporated. However, all 300 cities are not in existence today since some have been legally dissolved and others have voluntarily surrendered their charters.[43] Historically, the number of municipalities in Mississippi has fluctuated. Two years after the adoption of the 1890 Constitution, there were 325 active municipalities. Thirty years later, this total was down to 313. By the middle of the twentieth century, there were only 263 active municipalities.[44] Today there are 298 municipalities in Mississippi with the newest one (Diamondhead in Hancock County) incorporating in 2011.

Before 1892, municipalities were all created by special charters from the Legislature. The charter gave the city its name, established its boundaries, designated its form of government, and provided specific political and corporate powers.[45] The 1890 *Constitution* changed this special charter process and established a standardized method to be employed by the Legislature (found in § 88 [General Laws]). All municipalities in existence at that time were given the opportunity to retain their special private charters by means of a special vote. If they did not vote to retain their private charters, they were automatically included under the new municipal provisions. Only a few cities acted to retain their private charters.[46]

In addition to § 88, the *Constitution* recognizes the existence of cities or municipal corporations in other sections as well. For example, § 101 (designates the City of Jackson as the capital), § 104 (statutes of limitations), § 110 (rights of way and private roads), § 183 (associations with railroads, corporations, etc.), § 192 (exemptions from municipal taxation), § 209 (conflict of interest involving public contracts), and § 245 (municipal elections qualifications), among others, all specifically address municipalities in some manner. However, even though cities are recognized as legal entities, the *Constitution* in § 88 empowers the Legislature to create, amend, and abolish such political subdivisions at their discretion:

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[41]Blake R. Jeffery, Tanis J. Salant, and Alan L. Boroshok, *County Government Structure: A State by State Report* (Washington, D.C.: National Association of Counties, 1989), p. 2.
[42]Dana B. Brammer, ed., "Municipal Home Rule: Flexibility for Mississippi's Cities." *Public Administration Survey* 31, 4 (1984), p. 1-3.
[43]Center for Policy Research and Planning, Public Policy Research Center, and Mississippi Municipal Association, *Mississippi Municipal Profile*, p. 10.
[44]Highsaw and Fortenberry, *The Government and Administration of Mississippi*, p. 328.
[45]Ibid., p. 329.
[46]Ibid.

> The legislature shall pass general laws, under which local and private interest shall be provided for and protected, and under which cities and towns may be chartered and their charters amended, and under which corporations may be created, organized, and their acts of incorporation altered; and all such laws shall be subject to repeal or amendment.

Because § 88 of the *Constitution* has empowered the Legislature as such, state law has dictated the process of municipal incorporation and development since 1890. Likewise, state law forms the predominant authority upon which Mississippi's cities operate on a day-to-day basis today. Most laws relevant to municipal government can be found in Volume 6 of the *Mississippi Code 1972 Annotated* § 21-1-1 to § 21-47-5 (hereinafter cited in this book as *Code*, § x-x-x).

Because the *Constitution* says little about cities and municipal corporations, elected and appointed officials do themselves and their constituents a great service by becoming familiar with all applicable legal provisions. To this end, the remainder of this book addresses many of the laws, issues, and special arrangements for municipalities.

CHAPTER TWO

USING THE *MISSISSIPPI CODE OF 1972*, ANNOTATED

Michael Lanford

WHAT IS THE *MISSISSIPPI CODE*?

The *Mississippi Code* is a collection of all the laws, or statutes, passed by the legislature and signed by the governor which govern the State of Mississippi. It includes the *Mississippi Constitution*, adopted in 1890 and the *Constitution of the United States*. It contains the latest versions of statutes as amended by the legislature and contains references, or annotations, to court cases interpreting the statutes.

The *Code* is presently 21 volumes plus a two-volume paperback Index. Volume 1 begins with the *U.S.* and *Mississippi Constitutions* and the Mississippi statutes follow. Each statute is referenced with a three-figured number starting with section (§) 1-1-1 in Volume 1 and ending with § 99-43-49 in Volume 21(A). These numbers represent the title, chapter, and section of the *Code*. Statutes or *Code* sections, on municipalities and municipal officers can be found in Volume 6 at § 21-1-1 and the sections that follow (*et seq.*).

DOES THE *CODE* CONTAIN THE LATEST VERSION OF THE STATUTES?

Each year after the legislature meets the *Code* is updated. This usually occurs in July or August. The publisher of the *Code* will send out supplements or "pocket-parts." These newsprint supplements are inserted into a pocket in the back cover of each volume and will contain the latest amendments and court cases. Sometimes this pocket-part will become too big to be inserted in the volume, and the publisher will simply provide a free-standing paperback supplement for that volume. Always check to make sure your copy of the *Code* contains the latest supplement. When looking up a code section it is a good idea to always check the supplement first; if the section is printed in the supplement there is no reason to look further in the main volume.

HOW DO I FIND THE STATUTES ON A PARTICULAR SUBJECT?

The statutes may be searched using the *Code*'s table of contents and two indexes.

The Index to the *Code*

If you have no idea where to begin, look up the subject in which you are interested in the two-volume index, which is arranged alphabetically. First define to yourself your question or subject matter. For example, you may be interested in what a municipality's duties and powers are with regard to fireworks. You would begin by looking in the Index under "fireworks" or "municipalities." In the F section of the index you will find the entry, "FIREWORKS." Under that you will find a number of headings, one of which is "Municipalities regulation, § 21-19-15."

You can then go to that *Code* section and read the statute. After the statute there may be annotations, references to court cases and Attorney General opinions interpreting that statute.

You might have started your inquiry by looking under M for "Municipalities." If so, you would have found the entry, "Fireworks" and subheadings under that entry.

There will often be some trial and error involved, at least until you become familiar with the *Code* and its Index. If you do not find any references to your subject on your first attempt, try to think of another word that might be used to describe your subject. For example, you might find references to the laws you are looking for under "Explosives."

The Index to Each Volume

You may already know that many municipal government statutes are found in Volume 6 of the *Code*. Instead of using the large Index for the entire *Code*, you could go directly to Volume 6 and turn to the much smaller index found in the last few pages. There you can look up the same words and find a detailed list of statutes found in that particular volume dealing with your subject.

The Table of Contents

After you become somewhat familiar with the contents of the *Code*, you may find it easier to look up a statute simply by "eye balling" the *Code*. On the spine of each volume is printed the subject matter with which that particular volume deals. For example, the spine of Volume 6 (figure on right) indicates that the topics "Municipalities" and "Elections" are covered in the volume. After this topic description, the spine of the book indicates that the *Code* sections found in the volume are §§ 21-1-1 to 23-17-61. You might want to begin with this volume and find out about municipal police powers. Pull this volume; on the inside of the front cover and first page you will find a table of contents. This table lists the subject matter and *Code* sections contained within. As you go down the list you will find several different subjects, one of which is "Police and Police Departments. . . .§ 21-21-1." If you then turn to that statute you will find a more detailed table of contents listing each statute and describing in a few words the subject with which the statute deals. For example, "§ 21-21-1. Marshal or Chief of Police duties: bond" and "§ 21-21-5 Purchasing dogs for use of Police Department," etc.

MISSISSIPPI CODE 1972 *Annotated*

Titles 21 to 23

Municipalities
Elections

§ 21-1-1 to § 23-17-61

6

A statute will often be followed by cross references to other *Code* sections dealing with a related topic. For example § 21-21-1 is followed by a cross-reference to a statute describing the police chief's duties in furnishing voting booths for municipal elections, namely § 23-15-257.

Using the Internet

You can also find the *Code*, without all the references to cases and attorney general's opinions, on the Internet. You can find it on the Secretary of State's web site at www.sos.ms.gov. There you may search the *Code* by using keywords or by typing in the *Code* section.

CHAPTER THREE

FUNCTIONS AND POWERS

Samuel W. Keyes Jr.

INTRODUCTION

As used in this chapter, the term "powers" refers to the authority of a municipality to act, while the term "functions" refers to the purposes for which municipal powers may properly be exercised. This chapter includes a review of the fundamental sources of municipal power and surveys the general laws of the State of Mississippi in order to afford the reader with an outline of municipal functions and powers conferred by the Legislature. It is not intended to furnish an exhaustive analysis or detail the manner in which powers are to be exercised. Rather, it is designed as an outline of the major areas of municipal concern and the corresponding authority to act on those concerns. For in depth guidance on particular areas of responsibility, the relevant provisions of the *Mississippi Code* and other chapters in this book should be consulted.

SOURCES OF MUNICIPAL POWER IN MISSISSIPPI

***Sources of Municipal Power in General*:** Mississippi municipalities are creatures of law and possess only such powers as are delegated by law.[1] This requisite delegation by law is accomplished through one or more of the following sources: (1) state constitutions; (2) state statutes/legislation including (a) those applicable to all municipalities or to particular classes of municipalities and (b) local and private acts applicable to a particular municipality; (3) municipal charters; and (4) inherent rights of self-government. Each of these sources is discussed below.

***State Constitution*:** Article 4, § 88 of the *Mississippi Constitution of 1890*, states:

> The legislature shall pass general laws, under which local and private interests shall be provided for and protected, and under which cities and towns may be chartered and their charters amended, and under which corporations may be created, organized, and their acts of incorporation altered; and all such laws shall be subject to repeal or amendment.

Municipalities are, pursuant to this constitutional provision, solely creatures of the legislature and have only such powers as are conferred by statute or by charter from the state.[2]

***Statutes/Legislation*:** For the most part, the legislative delegation of municipal functions and powers, including the details of how those powers are to be exercised, is prescribed by enactment of general laws. These general laws are usually codified as statutes in the *Mississippi Code*.[3]

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[1]*See, e.g.*, *Peterson v. City of McComb,* 504 So.2d 208 (Miss. 1987). *See also Code*, § 21-17-3.
[2]*See* note 1 *supra*.
[3]For information on use of the *Code*, see Chapter Two of this book.

Beginning with the next section, the primary focus for this chapter will be to survey the many functions and powers that have been conferred to municipalities via statute.

***Local and Private Acts*:** From time to time, municipalities may procure passage of local and private legislation through which the legislature delegates additional or supplemental authority affording a particular municipal governing authority power to engage in functions and exercise powers not otherwise provided for by general law. Legislation of this type is, at least in theory, designed to empower local governments to address special circumstances peculiar to their respective jurisdiction. Local and private laws provide another source of legislative delegation of functions and powers that must be considered. However, no attempt will be made in this chapter to explore the multitude of local and private laws which may apply to specific municipalities.

***Private or Special Charters*:**[4] As previously stated, the legislative delegation of functions and powers to municipalities, including the details of how those powers are to be exercised, is normally prescribed by the general laws of the state which are usually codified in the *Mississippi Code*. However, there are municipalities in Mississippi formed pursuant to private or special legislative charter prior to the adoption of the *1890 Constitution* which elected to retain their private or special charters. They are called "private charter" municipalities. In addition to the general laws applicable to all municipalities, "private charter" municipalities must also look to the provisions of their respective charter as a source of authority. For obvious reasons, no attempt will be made to identify the several private charters in existence. Rather, this chapter will focus on the general municipal functions and powers available to all municipalities.

***Inherent Rights of Self-Government*:** The majority of states, including Mississippi, have rejected this doctrine as an intrinsic source of municipal power. As previously stated Mississippi municipalities are solely creatures of the legislature and have only such powers as are conferred by the legislature.[5]

CLASSIFICATION, CREATION, ABOLITION, EXPANSION, AND FORMS OF MUNICIPAL GOVERNMENT

***Classification, Creation, Abolition and Expansion*:** The legislature, in response to the requirements of § 88 of the *Mississippi Constitution of 1890*, has provided for the classification, creation, abolition and expansion of municipalities via various statutes codified at *Code*, Title 21, Chapter 1. These matters are covered in Chapter Five of this book.

***Forms of Municipal Government*:** The various forms of municipal government are set out by the legislative enactments found in *Code*, Title 21, Chapter 3 (Code Charters, also called Mayor-Board of Aldermen Form), Chapter 5 (Commission Form), Chapter 7 (Council Form), Chapter 8 (Mayor-Council Form), and Chapter 9 (Council-Manager Plan). A discussion of these various forms and the statutory provisions applicable to each is provided in Chapter Four of this book.

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[4] For additional treatment of municipal charters, see Chapter Five of this book.
[5] *See* note 1 *supra*.

GENERAL POWERS AND HOME RULE

***General Powers*:** Regardless of the chosen form of municipal government, a good starting place to begin an exploration of the statutory functions and powers of municipalities is *Code*, § 21-17-1. This statute outlines basic municipal functions and lists a few of the general powers available to all municipalities. This statute, along with the Home Rule statute, represents the legislature's delegation of many of the typical functions and corresponding general powers traditionally expected to enable municipalities to address the variety of public issues of concern to local communities. Among these is the power to:

- sue and be sued;
- purchase and hold real and personal property for all proper municipal purposes,[6] and to sell and convey such property;[7]
- acquire equipment and machinery by lease-purchase;
- donate surplus lands to certain public schools and certain not-for-profit civic or eleemosynary (charitable) corporations, and donate funds to certain public schools;
- loan certain federal funds received under the Housing and Community Development Act of 1974, and expend funds to match federal, state or private funding for programs administered by federal, state and certain nonprofit organizations;
- contract with private persons or entities for the collection of delinquent payments owed to the municipality;
- make all contracts and do all acts in relation to the property and affairs of the municipality necessary to the exercise of its governmental, corporate, and administrative powers; and
- exercise such other powers as are otherwise conferred by law.

Other general powers include the fundamental authority to levy taxes,[8] appropriate municipal funds for the expenses of the municipality,[9] and change by ordinance the regular meeting dates of the governing authority.[10]

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[6]Among the proper municipal purposes expressly authorized by *Code*, § 21-17-1 are parks, cemeteries, hospitals, schoolhouses, houses of correction, waterworks, electric lights, and sewers.
[7]*See also Code*, §§ 17-9-1 *et seq.* (authorizing lease of municipal mineral right interests) and Code §§ 17-25-25.
[8]*Code*, §§ 21-33-45, 21-33-87, and 27-39-307.
[9]*Code*, §§ 21-17-7 and 21-13-3.
[10]*Code*, § 21-17-17.

The legislature has also explicitly affirmed that the powers granted to municipalities shall be exercised "in the manner provide by law."[11] In other words, the *Code* must be consulted to determine what procedures must be followed when municipalities conduct their business.

***Home Rule*:**[12] In general terms, Home Rule can be defined as the authority of a municipality to regulate its own affairs and to adopt orders, resolutions or ordinances with respect to such. In Mississippi, Home Rule power has been delegated by the legislature rather than the constitution. The significance of this fact is that the Home Rule provision must be interpreted and applied in the context of other statutes and laws.

Specifically, the operative language of the municipal Home Rule statute[13] provides:

> (1) The governing authorities of every municipality of this state shall have the care, management and control of the municipal affairs and its property and finances. In addition to those powers granted by specific provisions of general law, the governing authorities of municipalities shall have the power to adopt any orders, resolutions or ordinances with respect to such municipal affairs, property and finances which are not inconsistent with the Mississippi Constitution of 1890, the Mississippi Code of 1972, or any other statute or law of the State of Mississippi, and shall likewise have the power to alter, modify and repeal such orders, resolutions or ordinances. Except as otherwise provided in subsection (2) of this section, the powers granted to governing authorities of municipalities in this section are complete without the existence of or reference to any specific authority granted in any other statute or law of the State of Mississippi. . .

The statute then goes on to limit the application of Home Rule by stating, in pertinent part:

> (2) Unless such actions are specifically authorized by another statute or law of the State of Mississippi, this section shall not authorize the governing authorities of a municipality to (a) levy taxes of any kind or increase the levy of any authorized tax, (b) issue bonds of any kind, (c) change the requirements, practices or procedures for municipal elections or establish any new elective office, (d) change the procedure for annexation of additional territory into the municipal boundaries, (e) change the structure or form of the municipal government, (f) permit the sale, manufacture, distribution, possession or transportation of alcoholic beverages, (g) grant any donation or (h), without prior legislative approval, regulate, directly or indirectly, the amount of rent charged for leasing private residential property in which the municipality does not have a property interest. . .

In other words, there are a number of activities that are expressly excluded from the legislative grant of Home Rule authority which means municipalities may not exercise those powers unless expressly authorized elsewhere by Mississippi law.

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[11] *Code*, § 21-17-3.
[12] For additional discussion of Home Rule see Chapter Five of this book.
[13] *Code*, § 21-17-5.

If the proposed activity is not one of those excluded under Home Rule, two questions still must be addressed. The first question requires a determination be made that the proposed activity or exercise of power is in fact a legitimate public function relating to "municipal affairs, and its property and finances." Home Rule is not a valid source of authority to engage in activities that fail this test. If, on the other hand, the activity is a legitimate municipal function, there remains the equally difficult issue of determining whether or not the proposed action is "inconsistent" with the *Constitution* or other state laws. In other words, are there other statutes or laws that prohibit, preempt, control, or regulate the proposed exercise of power? If the answer to this question is yes, then Home Rule does not provide a source of authority to engage in the proposed activity, notwithstanding the activity may be a legitimate public concern of the municipality.

The Mississippi State Supreme Court has not had occasion to thoroughly explore the boundaries of Home Rule. As such, it is difficult to assess the full extent and nature of this provision. Notwithstanding these hurdles, the Home Rule statute does offer a potential source of authority that may, in proper circumstances, empower the municipal governing authorities with the authority and flexibility to address matters of municipal affairs, property, and finances which have not otherwise been addressed by state law.

GENERAL ADMINISTRATIVE MATTERS

The Legislature has put in place an extensive system of statutes and regulations that guide how municipalities manage day to day business. The directives that deal with some of the more general and routine concerns include, but are not limited to, matters of taxation and finance (*Code,* §§ 21-33-1 *et seq.*), the budget (*Code,* §§ 21-35-1 *et seq.*), contracts and claims (*Code,* §§21-39-1 *et seq.*), purchasing (*Code,* §§31-7-1 *et seq.*), open meetings (*Code,* §§25-41-1 *et seq.*), public records (*Code,* §§25-61-1 *et seq.*), and ethics in government (*Code,* §§25-4-1 *et seq.*). Many of these subjects are covered in detail in the other chapters of this book.

MUNICIPAL ORDINANCES

***Introduction*:** Municipalities have authority to adopt, implement and enforce orders, resolutions, and ordinances to provide for and address municipal concerns.[14] In practice, statute, and case law, the terms "ordinance," "resolution," and "order" are frequently used interchangeably. For instance, *Code*, § 21-13-3(1) empowers the governing authorities of any municipality to provide "by ordinance, order or resolution for the appropriation of monies for the operation of the municipal government." Technically speaking, an "ordinance" is an enactment which constitutes a permanent rule of government adopted to regulate continuing conditions and operating until formally repealed.[15] Such enactments evidence the exercise of the governing body's legislative powers. Ordinances are the local government equivalent of statutes and general laws. Examples include an ordinance designed to regulate the conduct of persons or the use of property (zoning ordinance and subdivision regulation) and enactments to establish special purpose districts (municipal utility districts, solid waste management districts, and fire protection districts).

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[14] *Code*, § 21-17-5.
[15] *Evans v. City of Jackson*, 202 Miss. 9, 30 So. 2d 315, 317 (1947).

Resolutions and orders are more in the nature of ministerial acts evidencing the executive or administrative power to deal with matters of a temporary character.[16] As such, resolutions and orders require less formality. In any event, whether the action is an "ordinance" or "resolution", or some other form depends not so much on what the action is styled as on its substance and effect. It is always important to carefully research the law to ascertain what particular form of enactment and what corresponding procedure is required for the contemplated action.

***General Authority*:** *Code*, § 21-13-1 gives municipalities the power to pass ordinances and to enforce them by a fine not exceeding One Thousand Dollars ($1,000.00) or imprisonment not exceeding ninety (90) days or both.

***General Statutory Requirements*:** When the governing authorities of a municipality determine to enact a permanent rule or regulation of government adopted to regulate continuing conditions and operating until formally repealed, the enactment should be in the form of an ordinance. The procedural requirements for the adoption of municipal ordinances are enumerated in *Code*, §§ 21-13-1 *et seq*. *Code*, § 21-13-3 requires that ordinances:

- shall be introduced in writing at a regular meeting of the governing body of the municipality;
- shall remain on file with the municipal clerk for public inspection for at least two weeks before 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 thereon;
- shall, upon final passage vote, be taken by "yeas" and "nays" which shall be entered on the minutes by the clerk; and
- granting franchise or use or occupancy of public places or rights-of-way to any interurban or street railway, railroad, gas works, waterworks, electric or power plant, heating plant, telephone or telegraph system, or other public utility must also be approved by a majority of the qualified electors voting in a special or general election on the question.

The style of all municipal ordinances shall be as follows:

> "Be it ordained by the mayor and board of aldermen (or other proper governing body, as the case may be) of the city (or town or village, as the case may be) of _____,"[17]

Each ordinance shall not contain more than one (1) subject which shall be clearly expressed in its title.[18] Every ordinance passed by the governing body of the municipality, except as otherwise

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[16] *New Orleans & N.E.R. Co. v. City of Picayune*, 164 Miss. 737, 145 So. 101, 102 (1933).
[17] *Code*, § 21-13-7.
[18] *Code*, § 21-13-9.

provided by law, shall be certified by the clerk, signed by the mayor or a majority of all the members of the body, recorded in the ordinance book, and published at least one (1) time in a legally qualified newspaper.[19] No ordinance shall be enforced for one (1) month after its passage except for the immediate and temporary preservation of public peace, health or safety or for other good cause.[20] And finally, all municipalities are required to keep a permanent ordinance book.[21]

***Other Requirements*:** The legislature from time to time imposes other or additional requirements with respect to certain specific enactments. For example, *Code*, §§ 17-1-1 *et seq.* empower local governing boards, including municipalities, to adopt and enforce zoning regulations. The statutory requirements and procedures enumerated by these *Code* sections must be complied with in order to have a valid and enforceable regulation. Observance of the provisions of *Code*, §§ 21-13-1 *et seq.* is, in this instance, not enough. It is important to carefully examine the applicable statutes to ascertain what particular procedure will be required for the contemplated enactment because; failure to follow the appropriate procedure could result in the invalidation of the ordinance.[22]

EMERGENCY MANAGEMENT

The Mississippi Emergency Management Act[23] (the "Emergency Act") puts in place the framework for a comprehensive emergency response system enhancing the ability of federal, state and local government to effectively and efficiently respond to emergencies. An essential part of that framework is the preparation of local emergency management plans which coordinate with the State emergency management plan.

The Emergency Act establishes the circumstances and procedure by which municipalities and counties, acting individually or jointly, may declare local emergencies in cases of civil, natural and other disasters. During such emergencies, the Emergency Act empowers municipalities to issue rules and regulations applicable to the emergency so long as they are not inconsistent with those issued by the Governor, the Mississippi Emergency Management Agency or other agency having jurisdiction.[24] In addition, municipalities may, subject to constitutional limitations, temporarily suspend the application of certain laws, rules and regulations where necessary to timely deal with the emergency.[25]

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[19]*Code*, § 21-13-11.
[20]*Code*, § 21-13-11.
[21]*Code*, § 21-13-13.
[22]*See, e.g., Ballard v. Smith*, 234 Miss. 531, 107 So. 2d 580 (1958) (invalidation of a zoning ordinance due to the failure of the mayor and clerk to sign the minutes as mandated by statute); and *Morris v. City of Columbia*, 184 Miss. 342, 186 So. 292 (1939) (invalidation of a zoning ordinance due to the failure to comply with statutory requirements to publish notice of intent and plans).
[23]*Code,* §§ 33-15-1 *et seq.*
[24]*Code,* §§ 33-15-17 and 33-15-31.
[25]*Code,* §§ 33-15-17 and 33-15-31. *See also,* § 31-7-13(k) (addressing emergency purchases and repairs).

The Emergency Act encourages municipalities and other local governments to sign, ratify and participate in the Statewide Mutual Aid Compact and other mutual aid agreements which provide for mutual aid between and among state and local government within Mississippi.[26]

HEALTH, SAFETY, AND WELFARE

Municipalities are delegated a variety of mandatory and discretionary powers designed to address public health, safety, and welfare concerns. The following is a survey of some of those powers:

***Community Hospitals and Health Related Services*:** Municipalities are empowered, acting individually or jointly with counties, to establish, own, and operate community hospitals and healthcare facilities;[27] provide financial support for mental illness and mental retardation services;[28] own, operate, and maintain a public ambulance service;[29] establish emergency medical service districts;[30] and provide financial support for county and district health departments.[31]

***Solid Waste Disposal*:** The Solid Waste Disposal Law of 1974[32] requires municipalities to provide for collection and disposal of garbage and the disposal of rubbish. To accomplish this responsibility, municipalities may employ personnel and equipment or contract with private or public entities for the service.[33] The Mississippi Regional Solid Waste Management Act[34] also provides the option to create or join a regional solid waste management authority established for the purposes of accomplishing this required service.

***Pollution Control Facilities*:** Municipalities may acquire and operate pollution control facilities for the purpose of preventing, eliminating, and mitigating air and water pollution.[35]

***Miscellaneous Health and Safety Regulatory Powers*:** Municipalities possess a variety of other discretionary powers providing for the public health and safety including power to make regulations to secure the general health for the municipality; prevent, remove, and abate nuisances; regulate or prohibit the construction of privy vaults and cess pools, and to regulate or suppress those already constructed; compel and regulate the connection of all property with sewers and drains; suppress hog pens, slaughter houses, and stockyards, or to regulate the same and prescribe and enforce regulations for cleaning and keeping the same in order; prescribe and enforce regulations for the cleaning and keeping in order of warehouses, stables, alleys, yards,

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[26]*Code,* § 33-15-19. *See also Code,* § 21-19-23 and §§ 21-21-31 *et seq.*
[27]*Code*, § 41-13-15. *See also Code*, §§ 21-17-1, 21-19-5 and 21-19-7.
[28]*Code*, § 41-19-39.
[29]*Code*, § 41-55-1.
[30]*Code*, § 41-59-51.
[31]*Code*, § 41-3-43.
[32]*Code*, §§ 17-17-1 *et seq.* *See also Code*, §§ 21-19-1 *et seq*.
[33]*Code*, §§ 17-17-5 and 21-19-1.
[34]*Code*, §§ 17-17-301 *et seq.*
[35]*Code*, § 49-17-103.

private ways, outhouses, and other places were offensive matter is kept or permitted to accumulate; compel and regulate the removal of garbage and filth beyond the corporate limits; and adopt and enforce regulations governing the disposal of garbage and rubbish in sanitary landfills.[36]

Municipalities may enact public health ordinances,[37] wastewater disposal ordinances,[38] ordinances regulating sources of radiation;[39] make regulations to prevent the introduction and spread of contagious or infectious disease and make quarantine laws for that purpose;[40] prevent or regulate the running at large of animals and require vaccinations;[41] cause private property to be cleaned and impose a lien for the cost of same;[42] establish, alter, and change the channels of streams or water courses;[43] make all needful police regulations necessary for the preservation of good order and peace of the municipality and to prevent injury to, destruction of, or interference with public or private property, including power to regulate or prohibit any mill, laundry, or manufacturing plant from operating anywhere by silt, cinders, or smoke there from or unnecessary noises thereof, made to do damage to or interfere with the use or occupation of public or private property; and prohibit or regulate the sale or use of fireworks.[44]

Municipalities are expressly authorized to adopt and enforce regulations to protect property, health, and lives and enhance the general welfare of the community by restricting the movement of citizens or any group thereof when there is imminent danger to public safety because of freedom of movement thereof;[45] impose emergency curfews;[46] restrain, prohibit, or suppress blind-tigers, bucket-shops, slaughterhouses, houses of prostitution, disreputable houses, games and gambling houses and rooms, dance houses and rooms, keno rooms, and all kinds of indecency and disorderly practices and disturbance of the peace;[47] provide for the demolition of abandoned houses or buildings used for sale or use of drugs;[48] provide for regulation of circuses, shows, theaters, bowling alleys, concerts, theatrical exhibitions, skating rinks, pistol or shooting galleries, amusement parks and devices, and similar things;[49] provide for the regulation of transient vendors;[50] regulate going-out-of-business and fire sales;[51] regulate pawn shops;[52] regulate small loan and check cashing businesses; [53] and adopt and enforce traffic regulations.[54]

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[36]*Code*, § 21-19-1.
[37]*Code*, § 41-3-57.
[38]*Code*, § 41-67-15.
[39]*Code*, § 45-14-35.
[40]*Code*, § 21-19-3.
[41]*Code*, § 21-19-9.
[42]*Code*, § 21-19-11.
[43]*Code*, § 21-19-13.
[44]*Code*, § 21-19-15. *See also Code*, §§ 45-13-13 (municipal regulation of fireworks) and 45-13-103 (municipal regulation of explosives).
[45]*Code*, § 21-19-17.
[46]*Code*, §§ 45-17-1 *et seq.*
[47]*Code*, § 21-19-19.
[48]*Code*, § 21-19-20.
[49]*Code*, § 21-19-33.
[50]*Code*, § 21-19-35.

***Zoning, Planning, Subdivision, and Building Regulations*:** Municipalities have the discretionary authority within their corporate boundaries to adopt land use, zoning, building, subdivision, and related regulations for the purpose of promoting health, safety, morals, or the general welfare of the municipality.[55] Municipalities may establish regional planning commissions for assistance and cooperation relating to these issues.[56] For a detailed treatment of this subject refer to Chapter Eight of this book. Any municipality may adopt building, electrical, plumbing, gas, sanitary, or other regulatory ordinances to preserve the general public health, safety and welfare.[57]

***Economic Development*:** Municipalities may advertise to bring into favorable notice the opportunities and resources of the community.[58] Municipalities have authority to aid and encourage the establishment of industry by providing certain tax exemptions.[59] A variety of other tools are also available to encourage economic development including the establishment of industrial parks and provision of infrastructure and other incentives for commercial, retail and industrial development.[60] Some of the financing techniques for funding these activities are discussed in Chapter Twelve of this book.

Urban Renewal: A variety of urban renewal and development tools are available to municipalities under the Urban Renewal Law[61] to assist in removal of slums and blighted areas and to foster redevelopment in the affected areas.[62]

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[51]*Code*, § 21-19-37.
[52]*Code*, § 75-67-343.
[53]*Code,* §§ 75-67-139, 247 & 535.
[54]*Code*, §§ 63-3-209, 63-3-211, and 63-3-511.
[55]*Code*, §§ 17-1-1, *et seq.* *See also Code*, §§ 21-19-21 (fire regulations); 21-19-25 (building codes); 21-19-27 (safety barriers); 21-19-29 (building ingress/egress); 21-19-31 (public places, depots and common carriers); and 21-19-63 (subdivision maps).
[56]*Code*, § 17-1-29.
[57]*Code,* § 21-19-25.
[58]*Code*, §§ 17-3-1 through 17-3-7.
[59]*Code*, § 21-19-43.
[60]*See, e.g., Code*, §§ 57-5-1 *et seq.* (industrial parks); §§ 59-7-1 *et seq.* and 59-9-1 *et seq.* (port authorities); §§ 61-3-1 *et seq.*, and 61-5-1 *et seq.* (airports and airport authorities); §§ 57-7-1 *et seq.* (development of airport and other lands); §§ 57-1-1 *et seq.*, 57-1-101 *et seq.*, 57-1-171 *et seq.*, 57-1-301 *et seq.*, and 57-3-1 *et seq.* (acquisition of property and facilities for development); §§ 57-1-251 *et seq.* (major energy project developments) and § 19-5-99 (economic development districts); §§ 57-10-1 *et seq.* (programs administered by Mississippi Business Finance Corporation); §§ 57-61-1 *et seq.* (Mississippi Business Investment Act); §§ 57-64-1 *et seq.* (Regional Economic Development Act); §§ 21-41-1 *et seq.* (Special Improvement Assessments); §§ 21-43-1 *et seq.* (Business Improvement Districts); and §§ 21-45-1 *et seq.* (Tax Increment Financing Act).
[61]*Code*, §§ 43-35-1 *et seq.*
[62]*See also Code*, §§ 43-35-101 *et seq.* (Slum Clearance); §§ 43-35-201 *et seq.* (Off-Street Parking and Business District Renewal); §§ 43-35-301 *et seq.* (Designation of [Downtown] Area for Development and Redevelopment) and §§ 43-35-501 *et seq.* (Community Development

***Housing and Housing Authorities*:** Under Mississippi's Housing Authorities Law,[63] municipalities may act through their Housing Authority to provide housing accommodations for persons of low income. Municipalities are also expressly cloaked with the necessary authority to carry out programs for which they may contract with the United States government or any department thereof under the authority of the Housing and Community Development Act of 1974, as amended.[64]

***Public Welfare*:** Municipalities may exercise discretionary authority to create human resource agencies responsible for the administration of human resource programs authorized by federal law.[65] In addition, municipalities may contribute funds to support the federal food stamp program;[66] provide matching funds to support certain community service programs;[67] contribute to public welfare programs;[68] and contribute matching funds to federal assistance programs for aged persons.[69]

***Donations*:** Generally, no public entity can make donations to public or private persons or entities unless expressly authorized by statute. Examples where the legislature has expressly authorized municipalities to make certain limited donations include, but are not limited to, support for bands and orchestras, certain public schools, fair associations, historic museums, patriotic organizations, the American Red Cross, Local Economic Development Organizations, Main Street Associations, chartered Boys & Girls Clubs, Farmers Market certified by the MS Department of Agriculture & Commerce operating within the municipality, chartered chapter of the YMCA located within the municipality, and the fire fighters burn center.[70] Under certain circumstances municipalities may donate surplus land to public schools and bona fide not for profit civic or eleemosynary corporations[71] and for maintenance of hospital charity wards.[72]

Law).
[63]*Code*, §§ 43-33-1 *et seq.*
[64]*Code*, §§ 43-35-501 *et seq.* *See also Code*, § 21-17-1.
[65]*Code*, §§ 17-15-1 *et seq.*
[66]*Code*, § 21-19-41.
[67]*Code*, § 21-19-65.
[68]*Code*, § 43-1-12.
[69]*Code*, § 43-9-47.
[70]*Code*, §§ 21-19-44 through 21-19-69.
[71]*Code*, § 21-17-1.
[72]*Code,* § 21-19-7.

POLICE, POLICE DEPARTMENTS, AND MUNICIPAL COURTS

Municipalities have the power and authority to employ, regulate, and support a sufficient police force and to define its duties.[73] Except where a private or special charter provides otherwise, the marshal or chief of police in each municipality shall be the chief law enforcement officer and shall have control and supervision of all police officers employed by the municipality.[74]

Municipalities may construct and operate a municipal jail within the corporate limits,[75] or contract with the county in which the municipality is located for the joint construction, maintenance, and use of a jail.[76] Provisions may also be made for the working of municipal prisoners.[77]

Under certain limited circumstances, municipalities may provide reciprocal law enforcement assistance to other municipalities during civil emergencies.[78]

There shall be a municipal court in all municipalities of the state. Municipalities having populations of ten thousand (10,000) or more are required to appoint a municipal judge and a prosecuting attorney.[79] The municipal judge in municipalities having populations of twenty thousand (20,000) or less shall be an attorney licensed in Mississippi or a justice court judge of the county in which the municipality is located. The mayor or mayor pro tempore shall not serve as a municipal judge.[80] For a detailed treatment of this subject refer to Chapter Sixteen of this book.

FIRE DEPARTMENTS AND DISTRICTS

Municipalities have the power to appoint fire marshals[81] and to provide for the establishment and operation of fire departments.[82] Such fire departments and personnel may be authorized to assist in fire protection related services outside the municipal limits.[83] Municipalities are authorized to create fire districts within or adjoining such municipality when petitioned by the majority of the owners of property therein[84] and to levy special assessments within the district to pay for fire protection services.[85] Mutual assistance agreements for fire protection are expressly authorized.[86]

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[73]*Code*, § 21-21-3.
[74]*Code*, § 21-21-1.
[75]*Code*, §§ 21-19-5 and 47-1-39.
[76]*Code*, § 17-5-1.
[77]*Code*, §§ 47-1-39 through 47-1-45.
[78]*Code*, §§ 21-21-31 *et seq*. *See also Code*, § 21-19-23.
[79]*Code,* §§ 21-23-1 through 21-23-3.
[80]*Code*, § 21-23-5.
[81]*Code*, § 21-25-1.
[82]*Code*, § 21-25-3.
[83]*Code*, § 21-25-5. *See also Code*, § 21-19-23.
[84]*Code*, § 21-25-21.
[85]*Code*, § 21-25-27.
[86]*Code*, § 21-19-23.

PUBLIC UTILITIES AND TRANSPORTATION

***Franchises*:** Municipalities are not authorized to grant exclusive franchise or exclusive right to any person, firm, or corporation to use or occupy the public streets, highways, bridges, or public places in the municipality for any purpose.[87] However, municipalities may grant nonexclusive franchise or authority to any person, firm, or corporation for the erection of telegraph, electric light or telephone poles, post wires, gas, water, sewer, or pipes along and upon any of the public streets, alleys, and other public grounds for a period of not longer than 25 years.[88]

***Municipal Utilities*:** Municipalities may erect and operate public water works,[89] water supply systems, sewage systems, sewage disposal systems, gas producing systems, gas generating systems, gas transmission or distribution systems, electronic generating, transmission, or distribution systems, garbage and rubbish disposal and collection systems and incinerators, systems of public transportation, or combinations of the above systems for the benefit of its citizens.[90] Each municipality also has the discretion to establish a public utility commission to control, manage, and operate such public utility systems.[91]

STREETS, PARKS, AND OTHER PUBLIC FACILITIES

***Public Facilities in General*:** Municipalities have authority to construct, erect, purchase, and equip suitable public buildings, facilities, and offices of the municipality, its municipal court and for such other purposes including public meetings of its citizens[92] and exercise full jurisdiction in the matters of public streets, sidewalks, street lights, sewers, parks, piers, markets, libraries, cemeteries, and parking with authority to open, layout and construct, repair, maintain, and insure same.[93]

***Eminent Domain*:** Municipalities are delegated authority to exercise the right of eminent domain for public purposes.[94] This authority includes the right of immediate possession in certain instances.[95]

***Special Improvements*:** Certain public improvements, including streets, sidewalks, water/sewer, and drainage systems may be constructed and improved at the cost of the property owners benefitted thereby by levying and collecting special assessments.[96] Mississippi law also

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[87]*Code*, § 21-27-1.
[88]*Code*, §§ 21-27-3 and 21-27-5. *See also Code*, § 21-13-3 (requiring an election prior to the award of certain franchises).
[89]*Code*, §21-27-7.
[90]*Code*, § 21-27-11. *See also Code*, § 21-17-1.
[91]*Code*, § 21-27-13.
[92]*Code*, § 21-37-1.
[93]*Code*, §§ 21-37-3 *et seq*.
[94]*Code*, § 21-37-47.
[95]*Code*, § 11-27-81.
[96]*Code*, §§ 21-41-1 *et seq.*

authorizes municipalities to create business improvement districts for the purpose of financing efforts to restore and promote business activity through infrastructure improvements.[97]

INTER-GOVERNMENTAL COOPERATION

The *Code* provides a variety of opportunities that empower municipalities to entertain interlocal governmental agreements to share the cost and responsibility of providing public services and facilities. The Interlocal Cooperation Act of 1974[98] authorizes municipalities to enter into cooperative agreements with other local governments to provide public services, facilities, and to otherwise jointly exercise their respective powers more efficiently. Another source of authority for interlocal cooperation, though rarely used, is the authority to contract with multi-jurisdictional cooperative service districts for the purposes of jointly providing public services and facilities.[99]

In addition to the broad authority offered by the Interlocal Corporation Act of 1974 and the Cooperative Service District Act, the *Code* offers a number of other opportunities to engage in inter-governmental cooperation with regard to a number of specific activities. A few examples include: authority to construct, remodel, and maintain a joint city and county jail;[100] agreements whereby municipalities will provide fire protection in unincorporated areas of the county;[101] membership in regional planning commissions;[102] operation of community hospitals;[103] cooperation with respect to the construction and maintenance of public roads;[104] and participation in regional economic development efforts.[105]

These examples illustrate the fact that many of the duties and responsibilities of municipalities may be accomplished in cooperation with other political subdivisions on the basis of mutual advantage and increased efficiency.

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[97] *Code*, §§ 21-43-101 *et seq.*
[98] *Code*, §§ 17-13-1 *et seq.*
[99] *Code*, § 19-3-115.
[100] *Code*, § 17-5-1.
[101] *Code* § 83-1-39.
[102] *Code*, § 17-1-29.
[103] *Code*, § 41-13-15.
[104] *Code*, § 65-7-79.
[105] *Code*, §§ 57-64-1 *et seq.*

CHAPTER FOUR

FORMS OF GOVERNMENT[1]

Dana B. Brammer

Under Mississippi's optional charter plan, municipalities are given a choice of the basic forms of municipal government found in the United States today: (1) the weak mayor-council form (known in Mississippi as the mayor-board of aldermen form), (2) the strong mayor-council form (known in Mississippi as the mayor-council form),[2] (3) the commission form, and (4) the council-manager form. These options, as they apply to Mississippi, are presented below in the order in which they were made available within the state.

After going through periods of using private charters, the general charter, and the classification charter, Mississippi gradually evolved an optional charter system. Under this system, various forms of government are set out in the statutes and each municipality is free, within the options provided, to choose its particular form. With the exception of the twenty-three municipalities which elected to retain their private, special-act charters which characterized all Mississippi municipalities prior to the adoption of the *Mississippi Constitution of 1890*, the state's municipalities operate under charters granted by the general laws of Mississippi.

It should be pointed out that while the *Code* (§ 21-7-1 through § 21-7-19) provides a fifth option, "Council Form of Government," only Tupelo meets the population requirements for its adoption. Since Tupelo has abandoned the council form (essentially a weak-mayor form) in favor of the mayor-council form, the council option is meaningless.

MAYOR-BOARD OF ALDERMEN FORM[3]

The mayor-board of aldermen form of government (also known as the "code charter" form) is today used by approximately 95 percent of Mississippi's nearly 300 municipalities, despite the fact that this governmental arrangement is the product of a period when the functions of

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[1]Much of the material in this chapter is derived from Dana B. Brammer and John W. Winkle III, eds., *A Manual of Mississippi Municipal Government*, 4th ed. (Public Policy Research Center, The University of Mississippi, 1987), p. 18-32. The "comments" found at the end of the description of each form of government are extracted from Dana B. Brammer, "Forms of Municipal Government," in *Mississippi Municipal Profile* (Center for Policy Research and Planning, Mississippi State Institutions of Higher Learning; Public Policy Research Center, University of Mississippi; and Mississippi Municipal Association, 1991), p. 17-24. For this 2011 edition minor revisions to the text of this chapter have been made by the editors.

[2]Strictly speaking, the distinction between the weak mayor-council and the strong mayor-council forms is a matter of degree rather than kind.

[3]See *Code,* § 21-3-1 through § 21-3-25. (For general powers granted to all municipalities, regardless of the form of government they employ, see *Code*, § 21-17-1 through § 21-17-19.) It should be noted that private or special charter municipalities using the mayor-aldermen form of government may operate differently from those operating under a code charter.

municipal government were few and the desirability of a single executive was not recognized. The overwhelming majority of municipalities using this form have a population of less than 10,000.

Until 1908, when the commission form of government gained legislative approval, this form was all that was available within the state. Any newly created municipality may choose this form, and any municipality using an alternate form of government may acquire the mayor-aldermen form by a majority vote of the municipal electors in either a special or general election held for that purpose. If the proposal is defeated, another election on the question cannot be held for four (4) years.

The Governing Body

Under the mayor-board of aldermen form of government, the governing body is comprised of a mayor and either three (3), five (5) or seven (7) aldermen: three (3) if the municipality has fewer than 500 inhabitants and is approved by a majority of the qualified electors voting in a special election held for this purpose, five (5) if the municipality has fewer than 10,000 inhabitants and seven (7) if it has 10,000 or more inhabitants. Although both the mayor and the board have powers and responsibilities that are theirs alone, the *Code* frequently (and interchangeably) uses the phrases "the governing authorities" and "the mayor *and* board of aldermen" in awarding power to municipal governments. It may be argued, in fact, that an examination of the statutes reveals that most of the municipal authority has been awarded to the mayor and the board of aldermen, acting as a body. Of particular significance is the fact that the four (4) "elective officers" (other than mayor and aldermen) established by law – municipal judge, marshal or chief of police, tax collector, and tax assessor[4] – may be made appointive at the discretion of the governing authorities. Where an elective officer is made appointive, the person appointed serves at the pleasure of the governing authorities. Moreover, it is discretionary with the governing authorities whether or not that person must reside within the corporate limits.

Qualifications and Selection of Mayor and Aldermen

The mayor and all members of the board of aldermen must be qualified electors of the municipality and must be chosen by election. The mayor is elected from the municipality at large, while the aldermen are elected either at large, by ward, or by some combination of ward or at-large voting (all aldermen elected from and by wards must be residents of their wards). In municipalities where the population size mandates that there be five (5) aldermen, the five (5) may be elected either entirely at large, or one (1) may be elected at large and four (4) by ward. Where the population size mandates that there be seven (7) aldermen, six (6) are elected by ward and one (1) is elected at large.[5] Except for a few municipalities operating under a special or

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[4]By ordinance, the office of clerk or marshal may be combined with the office of tax collector and/or tax assessor.

[5]The provisions set out in the text above reflect pre-1962 statutes, since *Code,* § 21-3-7, as modified in 1962, was voided by a federal district court as "a purposeful device conceived and operated to further racial discrimination in the voting process." *Stewart v. Waller*, 404 F. Supp. 206 (N.D. Miss. 1975).

private charter which fixes a separate time for holding elections, mayors and aldermen are elected in a general municipal election held on the first Tuesday after the first Monday of June, 1985, and every four (4) years thereafter.[6] If an alderman moves from his ward, or if the mayor or an alderman elected at large moves from the municipality, the office is automatically vacated and is filled in the manner set out in *Code*, § 23-15-857.

Powers and Duties of Mayor

The mayor is vested with the "superintending control" of all officers and affairs of the municipality and is charged with seeing that the laws and ordinances are executed. He presides over all meetings of the board of aldermen (and thus recognizes its members for the purpose of making motions, speaking to motions, and so on) but is allowed to vote only in case of a tie. The mayor has power to veto any ordinance, resolution, or order adopted by the board of aldermen by returning the measure to the board, together with a written statement of his objections to all or any part of it, within ten days of its receipt.[7] The mayor is required to sign all commissions and appointments of officers chosen by the mayor and board of aldermen. In addition, the mayor (along with the clerk) is required to approve all bonds of municipal officers.

Powers and Duties of Board

Although the mayor presides over all meetings of the board of aldermen, only members of the board may make motions and cast votes (except in cases of equal division, where the mayor may cast the deciding vote). The board of aldermen is required to elect from among its members a mayor pro tempore to preside over its meetings and otherwise serve in the place of the mayor in cases of his "temporary absence" or "disability." The board is also required to submit all its ordinances, resolutions, and orders to the mayor for approval or veto; and in the event the mayor vetoes any measure, the board may override the veto by a vote of two-thirds (⅔) of the total number of board members.

Powers and Duties Shared by Mayor and Board

Exercising appointive authority of governing body. One of the most important areas of shared power is that of appointing and dismissing various municipal officials and employees. As has already been noted, the mayor and aldermen share authority to make the municipal judge, marshal or chief of police, tax collector, and clerk "appointive" officers rather than "elective officers."[8] And where that power is exercised, the officer serves at the pleasure of the mayor and

[6]*Code*, § 23-15-173. Municipal primary elections are held the first Tuesday in May preceding the general election; and if a second primary is required, it is held the third Tuesday in May preceding the general election. *Code*, § 23-15-171.

[7]See *Code*, § 21-3-15, for conditions under which an ordinance may take effect without the mayor's approval.

[8]An office may not be changed from elective to appointive within 90 days of a regular municipal election, nor may the change become effective during the term of office of any officer whose term shall be affected by the change.

board. In addition to these officers, the mayor and aldermen may appoint a street commissioner[9] and such other officers and employees as may be necessary and may prescribe their duties and fix their compensation (they shall require a surety bond for all officers and employees handling public funds).[10] In practice, the board of aldermen hires and fires subject to the mayor's veto, while the mayor oversees the daily operation of municipal government and makes recommendations to the board.[11] Since 1976, the mayor and aldermen have had specific authority to establish the position of chief administrative officer, but the ordinance doing so requires a two-thirds (⅔) vote of the aldermen.[12]

Holding board meetings. The mayor and board of aldermen are required to hold regular meetings on the first Tuesday of each month, at a time and place fixed by ordinance (unless another day has been set pursuant to *Code*, § 21-17-17). A second regular meeting may be held when established by ordinance, but that meeting must take place not less than two (2) weeks, or more than three (3) weeks, after the first meeting. If a regular meeting falls on a holiday, the board will meet the following day. A quorum for the transaction of business requires a majority of all the aldermen. By written notice, the mayor or any two (2) aldermen may call a special meeting. All meetings are subject to the provisions of the Open Meetings Act (*Code*, § 25-41-1 through § 25-41-17). This act permits closed meetings under certain circumstances. (See Chapter Seven for a discussion of open meetings.)

Comments

The position of mayor is truly a "weak" one in the mayor-board of aldermen form of government, since the mayor is given responsibility for superintending all officers and affairs and for seeing that the laws and ordinances are executed *but* is not given sufficient powers to do so. Not only may some administrative officers be elected by the voters, but the mayor has limited control over the appointment of nonelective officers. Where these officers are elected, they stand on a coordinate level with the mayor; where they are appointed they often look primarily to the aldermen for administrative supervision. Even so, a mayor who possesses competence, the ability to persuade others, and a strong personality can make much of the office, despite the fact that administrative power is so diffused as to make identification of responsibility and the coordination of activities difficult. Where the mayor and the board can forge a "partnership" – and where the public demand for services is not great and government is run largely on a part-time basis – the mayor-board of aldermen form appears to work reasonably well.

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[9]In municipalities of less than 15,000 population, the street commissioner may be appointed from among the aldermen.

[10]For example, the governing authorities determine whether the mayor's position is to be full time or part time and fix the compensation for both the mayor and aldermen. Because each governing body is allowed to determine its own salary scale, a wide variation exists.

[11]Attorney General's Opinion 90-0301, May 10, 1990.

[12]*Code*, § 21-3-25. Members of the board of aldermen cannot exercise any administrative powers or duties delegated by ordinance to the chief administrative officer.

COMMISSION FORM[13]

Whereas the mayor-board of aldermen plan is derived from the application of "separation of powers" and the doctrine of "checks and balances," the commission plan unites legislative and executive power. The plan was born during the first part of the twentieth century, gained Mississippi legislative approval in 1908, and soon became the plan of choice among the state's larger municipalities. While the form never had widespread acceptance in Mississippi, fourteen (14) municipalities at one time or another operated as commission cities. Today, primarily as a result of legal actions challenging the constitutionality of the at-large provisions common to the commission form, Clarksdale and Vicksburg are the only Mississippi municipalities operating as commission cities. Neither of them, however, is a commission city in the classic sense, inasmuch as the at-large electoral system has been modified by both municipalities to meet the requirements of the Voting Rights Act of 1965.

The material presented below summarizes the commission provisions contained in the *Code* and may differ somewhat from the current practice in both Clarksdale and Vicksburg.[14] Although the statutes authorize any city to replace its current form of government with the commission form, the provision is, for all practical purposes, meaningless in view of the form's at-large electoral requirements.

The Governing Body

As set out in the *Code,* the governing body of a municipality with a commission form of government typically consists of a mayor and two commissioners[15] who are known collectively as the commission.[16] The commission, acting as a body, is empowered to perform all the corporate powers, duties, and obligations possessed by the municipality (acting separately, the mayor and commissioners serve as department heads). Each member of the commission, including the mayor, has the right to vote on all questions coming before the body. (See footnote 16.)

The commission fixes the compensation of the mayor and other commissioners (subject to approval by the voters in a special election) and also establishes their office hours.

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[13]See *Code*, § 21-5-1 through § 21-5-23. (For general powers granted to all municipalities, regardless of the form of government they employ, see *Code*, § 21-17-1 through § 21-17-19.)

[14]This is especially true in Clarksdale, where the commission does not divide the executive and administrative duties and assign them to specific commissioners and where the mayor does not have the right to vote on all matters coming before the commission (he or she presides over the commission but may vote only in case of a tie).

[15]In 1969, Clarksdale increased the size of its commission from three to five, including the mayor.

[16]While the *Code* also refers to commissioners as "councilmen," and to the mayor and commissioners as a "council," all references in the text above will be to commissioners and the commission in order not to confuse the reader with the council employed in either the council-manager or the mayor-council form of government.

Qualifications and Selection of Mayor and Commissioners

The mayor and each commissioner must be a qualified elector and a bona fide resident of the municipality for a period of at least one year. The statutes provide that each of them are to be elected at large; but, as previously noted, this is not the current practice in either of the two existing commission cities. Instead, the mayor is elected at large, and the other commissioners[17] are elected by and from wards. All of them are elected in the general municipal election held every four (4) years.[18]

Powers and Duties of Mayor

The mayor is the nominal head of the commission and is responsible for presiding over its meetings, but he is unable to veto any measure passed by the commission. "General supervision of all the affairs and departments of the city government" is vested in the mayor (as is responsibility for reporting to the commission in writing any matters requiring its action), but he is not empowered to hire and fire independently of the other commissioners. Unless the commission grants the mayor authority over personnel, finance, and other management functions, he is really little more than one of three equals.

Powers and Duties of Commission

Except as limited by law, the commission (acting as a body) exercises all executive, legislative, and judicial powers given municipal governing authorities either under the *Code* sections providing for the commission form of government or under general law. Specific powers include the following: power to organize various city departments and to assign each department to the mayor or commissioner who will "superintend" it; power to create, fill, or discontinue offices and employment; power to set the amount paid to a municipal officer or employee and to make and enforce rules and regulations governing the employment of such officers and employees; power to remove any officer or employee of the municipality (except as limited by law) and to appoint a successor; power to issue and sell bonds; power to make and enforce ordinances and resolutions; and power to elect a vice-president to preside over the commission in the mayor's absence or inability.

Meetings of Commission

The commission is required to meet on the first Monday in July following the quadrennial municipal election (unless another day has been set pursuant to *Code*, § 21-17-17) and thereafter to meet at least twice a month. If the regular meeting falls on a holiday, the commission will meet the following day. Special meetings may be called at any time by the mayor or by two (2) commissioners. A majority of the commissioners constitutes a quorum for the transaction of business, and the affirmative vote of a majority of all commissioners is needed to adopt any

[17]In Vicksburg, the commissioners are called aldermen.
[18]See *Code*, § 23-15-171 and § 23-15-173.

motion, resolution, ordinance, or other measure. All meetings are subject to the provisions of the Open Meetings Act (*Code*, § 25-41-1 through § 25-41-17). This act permits closed meetings under certain circumstances. (See Chapter Seven for a discussion of open meetings.)

Comments

Like all forms of government, the commission form has both strengths and weaknesses. The major strengths generally attributed to the plan are these: (1) the government structure is simplified, and (2) power and authority are centralized in a few individuals who can be held accountable for their actions. Major weaknesses are: (1) power is too centralized, since the persons who make municipal policy are also responsible for its execution; (2) division of administrative authority among commissioners tends to narrow the focus of commissioners to the needs of their own departments rather than to the needs of the municipality as a whole; and (3) the absence of a chief executive lessens the likelihood of strong policy leadership.

COUNCIL-MANAGER FORM[19]

The council-manager form of government (made generally available to Mississippi's municipalities in 1952)[20] is like the commission form in that it does not provide for the separation of executive and legislative powers between a mayor and a council. It differs from the commission form, however, in that it does recognize the separate but coordinate functions of politics and administration: an elected council is responsible for making policy, while administration is assigned to an appointed professional known as a manager. Even though council-manager government has been highly favored by municipal reformers over the years and is now being used by nearly half of the municipal governments in the United States, it has never been widely accepted in Mississippi. Today, it is found in only seven municipalities: D'Iberville, Diamondhead, Gautier, Grenada, Moorhead, Pascagoula, and Picayune.

The Governing Body

The governing body of a council-manager municipality is a six-member council consisting of a mayor and five councilmen, except that any municipality which prior to September 30, 1962, had a larger or smaller number of councilmen is permitted to retain that number by adopting an appropriate ordinance.[21] The council exercises all legislative power, and the mayor serves as the "titular head of the city for ceremonial purposes and for all processes of law." Neither the mayor nor the other councilmen may exercise any administrative power.

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[19]See *Code*, § 21-9-1 through § 21-9-83. (For general powers granted to all municipalities, regardless of the form of government they employ, see *Code*, § 21-17-1 through § 21-17-19.)

[20]Meridian adopted the council-manager form of government in 1948 (legislation applied only to municipalities in a specific population class), but abandoned it in favor of the mayor-council form in 1985. Grenada adopted the form in 1952 through an amendment to its private charter.

[21]Counting the mayor, the council has six members in D'Iberville, Diamondhead and Picayune, eight in Grenada, five in Moorhead, and seven in Gautier and Pascagoula. A six-member council makes it possible to produce evenly divided votes, but there is no mechanism for breaking ties.

Qualifications and Selection of Mayor and Councilmen

The mayor and councilmen, all of whom must be qualified electors of the municipality, are chosen in the general municipal election held every four (4) years.[22] Under the authorizing statute, the mayor is elected at large, while councilmen may be elected either at large or one (1) at large and the others by ward (although the *Code* allows at-large election of all councilmen, that electoral system has been overturned where it has been challenged in the federal courts). Each councilmen elected by ward must be a resident of the ward he represents.

Powers and Duties of Mayor

In addition to being the titular head of the city, the mayor is president of the council and has a voice and vote in all its proceedings. He, however, has neither the veto power nor administrative powers. Moreover, the mayor is not required to maintain an office or to keep office hours.

Powers and Duties of Council

As has already been noted, the council performs the legislative duties of municipal government, but none of the administrative duties. It is responsible for appointing a city manager (this position will be discussed below), as well as the city attorney, the auditor, and the municipal judge, if any. At its discretion, the council also may appoint the city clerk and treasurer. All other municipal employees are appointed by the city manager, and both the council and the mayor are specifically prohibited from directing or dictating either their appointment or removal. Except for seeking information or advice, all contact between the council and administrative services must be through the manager. While neither the council nor the mayor may give orders to any subordinate of the municipality, the council is empowered to investigate any part of municipal government and may compel the attendance of witnesses and the production of evidence. On the recommendation of the manager, the council may create new departments, fix their duties and powers, and set compensation. The council fixes the hours of service of all officers and employees and sets its own compensation, as well as the compensation of the mayor and manager. It may appoint one of its members to act in case of the absence or disability of the mayor, and it also may appoint a qualified person to temporarily perform the duties of city manager in case of his absence or disability. It is required to appoint "without delay" an acting manager should that office become vacant. Like the mayor, members of the council are not required to maintain an office or to keep office hours. Except as otherwise provided by law, members of the council are specifically prohibited from serving on any board or commission appointed by the council or under its jurisdiction.

The council is responsible for adopting an annual budget, for securing an annual financial examination of the municipality (like all municipalities, council-manager municipalities are subject to the provisions of the Municipal Budget Law)[23], and for requiring a surety bond for all municipal officers and employees handling public funds. Under the statute authorizing council-

[22]See *Code,* § 23-15-171 and § 23-15-173. Provisions are made for holding special elections under certain circumstances.
[23]See *Code*, § 21-35-1 through § 21-35-33.

manager government, the council is given special privileges with respect to bond and tax rate limitations.[24]

City Manager

The city manager is the chief administrative officer of the municipality and must be appointed at a regular meeting of the council. He must be selected solely on the basis of "experience and administrative qualifications" by no less than a majority vote of the total membership of the council. The manager may not engage in any other business or profession while employed as manager, and no member of the council may be appointed city manager during the term for which he was elected. The term of the manager's appointment is fixed by the council, but no single term may exceed four (4) years (the council may reappoint the manager for successive terms if it so desires). The manager can be removed at any time by a majority vote of the membership of the council, provided he or she is given a written copy of charges. The manager is entitled to a public hearing before the council, but he can be suspended pending the outcome of the hearing. The statute authorizing council-manager government expressly excludes the manager from the provisions of any civil service act.

As chief administrative officer, the manager is responsible to the council for the entire administration of the city government. In addition, the manager (1) prepares and recommends an annual budget to the council; (2) administers and secures the enforcement of all laws and ordinances of the city; (3) appoints and removes all department heads and employees (except for a few officers named above under "Powers and Responsibilities of Council"); (4) supervises and controls all department heads and other employees and their subordinates; (5) negotiates contracts and makes purchases, subject to approval of the council; (6) enforces franchises and other contracts; (7) makes reports and recommendations he deems "expedient and necessary," as well as those requested by the council (must submit an annual report of his work and the financial condition of the municipality); and (8) performs other duties required by ordinance or resolution of the council.

Meetings of Council

The council is required to meet regularly on the first Tuesday of each month at a time it has established (unless another day has been designated pursuant to *Code*, § 21-17-17). If the regular meeting falls on a holiday, the council will meet the following day. Special meetings may be called at any time by the mayor or two (2) councilmen, but at least two (2) day's notice must be given to the mayor and each member of the council. Special meetings also may be called on the written consent of the mayor and all councilmen. At all meetings a majority of the council membership constitutes a quorum, and an affirmative vote by a majority of all members is required for the passage of any measure (unless a greater number is specifically required). The manager and other officers approved by the council may attend meetings and may participate in discussions, but they may not vote. All meetings are subject to the provisions of the Open Meetings Act (*Code*, § 25-41-1 through § 25-41-17). This act permits closed meetings under certain circumstances.

[24]See *Code*, § 21-9-57.

Comments

Students of municipal government have both praised and criticized the council-manager form of government. On the positive side, control over the administration of municipal affairs is centered in a single individual who is expected to be a professional manager; government is organized along the lines of modern business, with the city manager corresponding to the corporate manager and the council corresponding to the board of directors; and professional administration tends to provide a more effective and cost-efficient delivery of municipal services. Major criticisms of the plan are that strong policy leadership is made difficult by the fact that the council, including the mayor, is a body of equals; the six-member council established under Mississippi law makes legislative deadlock a very distinct possibility; the elected council may tend to rely too heavily upon the judgment of the appointed manager, even though the law properly subordinates the manager to the council.

MAYOR-COUNCIL FORM[25]

The mayor-council form of government attempts to remedy the failure of the traditional mayor-board of aldermen form to clearly separate administrative and legislative duties and to concentrate responsibility for coordination of governmental activities in the mayor. The form is not a distinctly new one, however, for it differs from the mayor-board of aldermen arrangement primarily in degree. Nationally, this "strong mayor" form began its development in the last two decades of the nineteenth century, but it did not become an option for Mississippi municipalities until 1976. The mayor-council form of government was authorized by the legislature in 1973, but did not become effective until August 1976 when the U.S. Attorney General interposed no objection under the Voting Rights Act of 1965.[26] Today, the mayor-council form is employed by ten municipalities: Bay St. Louis, Biloxi, Columbus, Greenwood, Gulfport, Hattiesburg, Jackson, Laurel, Meridian, and Tupelo. (It should be noted that some of the information presented below is not applicable to the operation of the mayor-council form of government in Greenwood and Laurel, due to litigation altering some of the powers and functions of the mayor vis-a-vis the council.)

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[25]See *Code*, § 21-8-1 through § 21-8-47. (For general powers granted to all municipalities, regardless of the form of government they employ, see *Code*, § 21-17-1 through § 21-17-19.)

[26]Mayor-council government is available to any municipality, regardless of the form of government under which it is operating. See *Code*, § 21-8-1 through § 28-8-5, setting out the procedures for adoption of the mayor-council plan. If a municipality adopts the mayor-council form, all statutes in conflict with that form are repealed, but all provisions of the general law which are not inconsistent with the form remain applicable (*Code*, § 21-8-33 through § 21-8-43). Existing civil service laws apply, as does "the disability and relief fund for firemen and policemen;" and the organization of the police court and the public schools are not affected by the change to mayor-council government.

The Governing Body

Each municipality operating under the mayor-council form of government is governed by an elected mayor and an elected council consisting of either five (5), seven (7), or nine (9) members.[27] Except as may be otherwise provided by general law, the legislative authority of the municipality is exercised by the council while the executive power is exercised by the mayor.

Qualifications and Selection of Mayor and Councilmen

The mayor and each of the councilmen must be qualified electors of the municipality. The mayor is elected from the municipality at large, and councilmen are elected either by ward, or by some combination of ward and at-large voting. Where there are five (5) councilmen, all five (5) may be elected by ward, or four (4) may be elected by ward and one (1) may be elected at large. Where there are seven (7) councilmen, all seven (7) may be elected by ward; or either six (6) may be elected by ward and one (1) at large, or five (5) may be elected by ward and two (2) at large. Where there are (9) nine councilmen, all nine (9) may be elected by ward, or seven (7) may be elected by ward and two (2) at large. The number and method of election of councilmen shall be contained in the petition calling for the election to adopt the mayor-council form. If a councilman moves from his ward, or if the mayor or a councilman elected at large moves from the municipality, the office is automatically vacated and is filled in the manner set out in *Code*, § 23-15-857. Except as otherwise provided, the mayor and councilmen are elected in the regular municipal election held every four (4) years.[28]

The elected municipal officials holding office at the time of the election to adopt the mayor-council form of government continue to serve until their terms are completed; and the governing authorities in office at the time of the adoption of the mayor-council plan, draw the first wards. Thereafter, the existing board, council, or commission establishes the wards to be used in the new government. Thereafter, wards must be redrawn by the council to reflect population changes following each decennial census and annexation of territory.[29]

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[27]Only the mayor and the councilmen are elected; all other officers and employees are appointed.
[28]See *Code*, § 23-15-171 and § 23-15-173. Provisions are made for holding special elections under certain circumstances.
[29]See *Code*, § 21-8-7, for provisions related to redistricting.

Powers and Duties of Mayor

As the possessor of the executive power of the municipality, the mayor is charged with enforcing the charter and ordinances of the municipality, as well as all applicable general laws. He is responsible for supervising all departments of municipal government and for requiring them to make an annual report and such other reports as are deemed desirable. Subject to confirmation by a majority of the council members present and voting, the mayor appoints department heads (directors) and members of any municipal board, authority, or commission. Although department heads are protected by any civil service provisions in effect at the time a city changes to the mayor-council form, all directors appointed subsequently are excluded from civil service protection and may be removed at the mayor's discretion. (Subordinate officers and employees of the municipality are appointed by the department heads and, with the approval of the mayor, may be dismissed by them, subject to any civil service provisions.) Where the council has made provision for a "chief administrative officer" to coordinate and direct the operations of the various departments and functions of municipal government, that officer shall be appointed by the mayor (with the advice and consent of the council) and shall be answerable solely to him and shall serve at his pleasure.

The mayor may attend all council meetings, may take part in discussions, and may make recommendations for actions he considers to be in the public interest; but the mayor may not vote except in case of a tie on the question of filling a vacancy in the council.[30] He must review ordinances, resolutions, orders, and other official actions of the council (excluding procedural actions governing the conduct of council meetings, appointing a clerk of the council, and exercising the council's investigative functions). The mayor may veto ordinances of the council, but the veto may be overridden by two-thirds (⅔) of the council present and voting.[31] The mayor is required to maintain an office at city hall.

Whenever the mayor shall be prevented from attending to the duties of office, he is required to appoint a member of the council to assume the duties of mayor (the person so appointed retains his right to vote in the council). *Code*, § 21-8-19, details specific procedures for filling a vacancy in the mayor's office.

Powers and Duties of Council

In mayor-council municipalities, the council is the legislative body. It elects one (1) of its members to serve as its president and another to serve as vice president (the president, or in his absence the vice president, presides over council meetings and may vote even when presiding[32]).

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[30]See *Code*, § 21-8-7(5), for provisions governing the filling of vacancies in the council.

[31]See *Code*, § 21-8-17, for provisions relating to veto and to conditions under which an ordinance may take effect without the mayor's approval.

[32]In the event of the absence of the president or the vice president, the council designates another of its members to preside.

In addition, it appoints a "clerk of the council" and any necessary deputy clerks to compile the minutes and records of its proceedings, its ordinances and resolutions, and to perform such duties as may be required by law.[33] Whenever the mayor is unable to appoint a councilman to serve as acting mayor, the council may do so.

The council may establish a department of administration and such other departments as it finds desirable; and it shall allocate and assign all administrative powers, functions, and duties (except those vested in the clerk) among and within the departments. While the mayor appoints department heads and directors, they are confirmed by the council. The council is specifically authorized to adopt an ordinance creating and setting the qualifications for a chief administrative officer to be appointed by the mayor and confirmed by the council. Other specific powers and duties of the council include these: setting the compensation for the mayor and councilmen (where the salary is increased, it does not become effective until the next elected mayor and council take office); setting the salary of all municipal officers and employees; redistricting the municipality after every decennial census and after an annexation; requiring any municipal officer to prepare and submit sworn statements regarding his official duties; causing a full and complete audit of the municipality's finances to be made at the end of the fiscal year; investigating the conduct of any municipal department, office, or agency; appropriating money for the operation of government; overriding vetoes of council actions; appointing a council member to serve as acting mayor in the event the mayor is incapacitated; calling a special election to fill a mayor's unexpired term; and requiring all officers and employees handling public funds to give surety bond.

Except in cities with a population in excess of 190,000, council members are not required to maintain individual offices at city hall (the clerical work of members of the council are performed by municipal employees at municipal expense). Legislation authorizing mayor-council government prohibits the council from seeking to dictate or require either the appointment or removal of any employee of the municipality. Except for seeking information or advice, the council must deal with departments and employees through the mayor.

Meetings of Council

The council is required to hold regular meetings on the first Tuesday after the first Monday in July following the election of council members and at least monthly thereafter on the same day (or at such other times as the council may set). Special meetings may be called at any time by either the mayor or a majority of the members of the council. At any meeting of the council, a quorum shall consist of a majority of the members elected. Where a quorum exists, a majority of the members present may adopt any motion, resolution, or ordinance, unless a greater number is specifically required. All meetings are subject to the provisions of the Open Meetings Act (*Code*, § 25-41-1 through § 25-41-17). This act permits closed meetings under certain circumstances. (See Chapter V for a discussion of open meetings.)

[33]The clerk of the council and the city clerk 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).

Comments

Persons favoring the mayor-council form of government generally agree that the form has the following strengths: (1) in combination with a system of checks and balances, the executive and legislative powers of government are divided logically between the mayor and the council; (2) administrative power is not diffused as it is in the mayor-board of aldermen form, but is consolidated under a single individual who is elected at large and given sufficient appointive and removal powers to make him accountable for implementing established policy (under the council-manager form, administrative power is consolidated under an appointed individual); (3) the council can focus on major policy needs, since it is not burdened with day-to-day administration; and (4) the mayor is placed in a position to provide both strong administrative leadership and strong policy leadership.

Individuals who oppose the mayor-council arrangement usually note these weaknesses: (1) the separation of legislative and executive powers, together with a system of checks and balances, offers many opportunities for conflict and deadlock between the mayor and council; and (2) a politically strong mayor may not possess the qualities essential to a good administrator. The difficulties that result from the second weakness can be lessened, however, by the passage of an ordinance allowing the mayor to appoint a chief administrative officer.

CHAPTER FIVE

THE NATURE OF THE MUNICIPAL CORPORATION

Jerry L. Mills[1]

THE MUNICIPAL CHARTER

The basic power of a municipality is set forth it its charter. The municipal charter is akin to the state's constitution in this respect. The municipal charter is the source of a municipality's power to act. Prior to the adoption of the *Mississippi Constitution of 1890*, municipalities actually had a document known as the municipal charter. Following the adoption of our current *Constitution*, and the laws passed as a result, few cities utilize their old municipal charter.

The *Constitution of 1890* directed the manner in which all future municipal charters would be granted in Mississippi. Prior to that time, individual charters were granted to municipalities. The adoption of the current *Constitution* ended this practice. § 88 provides: "The legislature shall pass general laws, under which local and private interest shall be provided for and protected, and under which cities and towns may be chartered and their charters amended . . . ."[2]

In 1892, the Legislature passed laws which implemented this section of the *Constitution*. Municipalities were permitted to choose to keep their existing city charter[3] or elect to be governed by the new "code charter." New municipalities were required to be formed under the "code charter."[4] A number of cities and towns around the state chose to retain their private charter and continue to operate under them today.

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[1] Legal research and editorial assistance to the 2011 update was provided by John Scanlon, who is an associate at Pyle, Mills, Dye & Pittman in Ridgeland, the law firm of the author of this Chapter.

[2] Miss. Const., Art. 4, § 88.

[3] Today these charters are referred to as "private charters."

[4] At the time there was only one form of government set out in the Mississippi Code. That form called for a mayor-board of aldermen form of government. The term "code charter" is still frequently used in referring to the mayor-alderman form of municipal government. You will often see this term used when municipal officials request attorney general's opinions. In reality, all forms of municipal government are "code charters" in that the primary elements of government are defined by the Mississippi Code.

Since the initial creation of "code charters" in 1892, the Legislature has created a number of additional "forms of government" under which a municipality may operate. Presently, municipalities may operate under the following forms of government:[5]

- Private Charter[6]
- Code Charter – Mayor-Board of Alderman Form[7]
- Commission Form[8]
- Council Form[9]
- Mayor-Council Form[10]
- Council-Manager Plan[11]

The specifics of each form are discussed in Chapter Four.

MUNICIPAL POWERS

Prior to the adoption of Mississippi's "home rule" statute in 1985, the law specified that municipalities could only exercise powers expressly delegated to them by the Legislature.[12] As a result, two things occurred. First, there are numerous specific grants of powers to municipalities found in our general law.[13] Second, there are hundreds of local and private acts giving specific authorities to specific municipalities.[14]

HOME RULE

In 1985 the Mississippi Legislature granted municipalities limited home rule with the adoption of § 21-17-5 of the *Mississippi Code of 1972*. In 1992, Mississippi increased the power of municipalities by amending the statute to provide that, "in addition to those powers granted by specific provisions of general law, . . . municipalities shall have the power to adopt any . . . ordinances with respect to such municipal affairs . . . which are not inconsistent with"

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[5] *Code,* § 21-1-9 (Rev. 2007).
[6] Assuming it made the proper election in the late 1890s.
[7] Miss. Code, Title 21, Chapter 3.
[8] Miss. Code, Title 21, Chapter 5.
[9] Miss. Code, Title 21, Chapter 7.
[10] Miss. Code, Title 21, Chapter 8.
[11] Miss. Code, Title 21, Chapter 9.
[12] *Videophile, Inc. v. Hattiesburg*, 601 F. Supp. 552, 553 (S.D. Miss. 1985) (because of legislative preemption, the city was without power to enact its own obscenity ordinance). However, the *Videophile* holding was later abrogated by statutory amendment, as recognized by the Fifth Circuit in *J & B Entertainment, Inc. v. City of Jackson*, 152 F.3d 362, 379, n.16 (5th Cir. 1998) (amendments to statute granted municipalities power to regulate obscenities).
[13] Chapter Three surveys specifically the major powers of municipalities.
[14] As a municipal official you can expect to see other cities in the State taking some action only to be told that you do not have the authority to do the same thing. Frequently this will be because local and private legislation has been passed that applies only to that specific city.

Mississippi law. Thus, Mississippi statutorily abrogated the holdings of *Videophile*.[15] After multiple amendments, this section[16] now provides:

- The governing authorities of every municipality of this state shall have the care, management and control of the municipal affairs and its property and finances. In addition to those powers granted by specific provisions of general law, the governing authorities of municipalities shall have the power to adopt any orders, resolutions or ordinances with respect to such municipal affairs, property and finances which are not inconsistent with the Mississippi Constitution of 1890, the Mississippi Code of 1972, or any other statute or law of the State of Mississippi, and shall likewise have the power to alter, modify and repeal such orders, resolutions or ordinances. Except as otherwise provided in subsection (2) of this section, the powers granted to governing authorities of municipalities in this section are complete without the existence of or reference to any specific authority granted in any other statute or law of the State of Mississippi. Unless otherwise provided by law, before entering upon the duties of their respective offices, the aldermen or councilmen of every municipality of this state shall give bond, with sufficient surety, to be payable, conditioned and approved as provided by law, in a penalty equal to five percent (5%) of the sum of all the municipal taxes shown by the assessment rolls and the levies to have been collectible in the municipality for the year immediately preceding the commencement of the term of office of said alderman or councilman; however, such bond shall not exceed One Hundred Thousand Dollars ($100,000.00). For all municipalities with a population more than two thousand (2,000) according to the latest federal decennial census, the amount of the bond shall not be less than Fifty Thousand Dollars ($50,000.00). Any taxpayer of the municipality may sue on such bond for the use of the municipality, and such taxpayer shall be liable for all costs in case his suit shall fail. No member of the city council or board of aldermen shall be surety for any other such member.

- Unless such actions are specifically authorized by another statute or law of the State of Mississippi, this section shall not authorize the governing authorities of municipalities to (a) levy taxes of any kind or increase the levy of any authorized tax, (b) issue bonds of any kind, (c) change the requirements, practices or procedures for municipal elections or establish any new elective office, (d) change the procedure for annexation of additional territory into the municipal boundaries, (e) change the structure or form of the municipal government, (f) permit the sale, manufacture, distribution, possession or transportation of alcoholic beverages, (g) grant any donation, or (h) without prior legislative approval, regulate, directly or indirectly, the amount of rent charged for leasing private residential property in which the municipality does not have a property interest.

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[15] *J & B Entertainment, Inc. v. City of Jackson*, 152 F.3d 362, 378, n.16 (5th Cir. 1998).
[16] *Code*, § 21-17-5 (Rev. 2009).

- Nothing in this or any other section shall be construed so as to prevent any municipal governing authority from paying any municipal employee not to exceed double his ordinary rate of pay or awarding any municipal employee not to exceed double his ordinary rate of compensatory time for work performed in his capacity as a municipal employee on legal holidays. The governing authority of any municipality shall enact leave policies to ensure that a public safety employee is paid or granted compensatory time for the same number of holidays for which any other municipal employee is paid.

- The governing authority of any municipality, in its discretion, may expend funds to provide for training and education of newly elected or appointed municipal officials before the beginning of the term of office or employment of such officials. Any expenses incurred for such purposes may be allowed only upon prior approval of the governing authority. Any payments or reimbursements made under the provisions of this subsection may be paid only after presentation to and approval by the governing authority of the municipality.

The Supreme Court has stated that "[m]unicipalities are but creatures of the state and they possess only such power as conferred upon them by [the Home Rule] statute."[17] While the 1985 passage of the "home rule" statute did away with the general legal principle that a specific grant of power was necessary for a municipality to take an action, it contained numerous exceptions as set out above. With regard to the levy of taxes, issuance of bonds, procedures for elections, change of municipal boundaries, change in the form of government, sale of alcoholic beverages, donations, or rent control, the rule remains the same. In each of these instances, state law must be followed.

Another major restriction on "home rule" is found in the requirement that actions of the municipality may not be inconsistent with state law. Numerous Attorney General's opinions have taken the restrictive view that if a state statute addressed a subject, municipalities could not act. This position was taken based on a theory of pre-emption. It appears that the Courts may not take such a restrictive view.

At this point in time, the Mississippi Supreme Court has made direct determinations of issues related to municipal "home rule" in only a handful of cases. In each, there is substantial reason to believe that the Courts will allow municipalities more latitude than the Attorney General's opinions would seem to indicate. Directly on point is a case involving the City of Tupelo's

[17] *City of Belmont v. Mississippi State Tax Com'n*, 860 So. 2d 289, 306 (Miss. 2003).

"brown bag" ordinance.[18] In that case the City of Tupelo sought to regulate "brown bag clubs" by ordinance. Suit was filed by one of the clubs contending that Tupelo did not have the authority to regulate such clubs. A primary basis for this argument was that Tupelo was preempted by state statute. The argument of the club was consistent with an opinion issued by the Attorney General's office. The Court said:

> Although the present issue is one of first impression for this Court, the issue has been considered in the past in the form of Attorney General (AG) Opinions. The consistent position of the AG has been that the passing of "brown bag" ordinances is precluded by statutory authority. The AG reaffirmed in a recent ruling the view of that office with regard to the authority of municipalities to pass ordinances restricting the possession of alcohol in brownbag clubs:
>
> > As stated above, state law clearly authorizes possession and consumption of light wines and beer within certain meticulously detailed state parameters. It is readily apparent that consumers who fall within these state parameters may lawfully possess and consume the regulated beverages. Any local ordinance that places additional restrictions will effectively prohibit what the state expressly allows.
>
> Thus, the Attorney General concluded that the applicable state legislation permits not only the possession, but also the consumption, of alcoholic beverages subject only to the restrictions contained in the applicable statutes. This Court disagrees, however. *Miss. Code Ann*. § 67-1-7 refers solely to the "possession" of alcoholic beverages and does not mention consumption. The Legislature may or may not have intended that the consumption of such beverages in wet counties should not be restricted by municipalities, but this Court is unwilling to read the statute more expansively than it is written in light of the public policy considerations in favor of the TBBO [Tupelo Brown Bag Ordinance] and similar ordinances.[19]

Thus, it appeared from this case that the Mississippi Supreme Court would not take the position that simply because a statute addressed the same subject matter, municipalities are preempted from additional regulation. In a more recent case, the Pike County Board of Supervisors passed an ordinance prohibiting the possession and consumption of alcoholic beverages on portions of two waterways within that county, the Bogue Chitto River and Topisaw Creek.[20] Certain business owners who rented inner tubes, canoes, and kayaks to customers for use on those waterways appealed the Board's decision to the Circuit Court.[21] Because the residents there had not voted to prohibit the sale and possession of alcohol, and because majority of the electors

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[18] *Maynard v. City of Tupelo*, 691 So. 2d 385, 387 (Miss. 1997) (the amended statute granted to municipalities "the right to adopt ordinances with regard to their 'municipal affairs,' but only if said ordinances are not inconsistent with state legislation and/or the Mississippi Constitution").
[19] *Ibid.* at 389.
[20] Ryals v. Bd. of Sup'rs of Pike County, 48 So. 3d 444, 445 (Miss. 2010).
[21] *Ibid.* at 446.

there had voted to legalize the manufacture, sale, distribution, possession, and transportation of alcoholic beverages containing more than five percent alcohol by weight, the ordinance was invalid as to possession.[22] Relying on the *Maynard* case, the Supreme Court ultimately struck down the portion of the ordinance prohibiting possession, but upheld the portion prohibiting consumption. Although this was a challenge to an action taken by a county, and not a city, the Court held: "If a county or municipality passes an ordinance which stands in opposition to the law as pronounced by the legislature, the ordinance, to the extent that it contradicts state law, will be found void by this Court, as the laws of this state supersede any and all local ordinances which contradict legislative enactments."[23]

The Mississippi Supreme Court has addressed two other aspects of the restrictions on "home rule." One case arose in the City of Greenwood in the case of *Jordan v. Smith* over the power to appoint the city attorney. The City of Greenwood had adopted the mayor-council form of government. Under that form of government the mayor appoints the city attorney. Greenwood had an ordinance which required council confirmation of the appointment. The mayor contended that since the statute addressed the issue, the ordinance was preempted. The Court said:

> This is not a case in which a municipality seeks to do something that it is not authorized to do. The governing authorities of the City of Greenwood are clearly authorized to appoint a municipal judge and the other officers here involved. See, e.g., *Miss. Code Ann.* § 21-23-3 (1972). The question here involved is the apportionment of responsibility for appointments among the constituent elements of municipal authority. While the city council has no authority to appoint, nothing in our statutes or precedents denies the council an advice and consent role in the appointive process. In such circumstances, the governing authorities of Greenwood were free to adopt the ordinances here questioned. *Miss. Code Ann*. § 21-17-5 (1972) ("The governing authorities of every municipality . . . shall have the power to adopt any orders, resolutions or ordinances with respect to municipal affairs . . . which are not inconsistent with the *Mississippi Constitution of 1890*, the *Mississippi Code of 1972*, or any statute or law of the State of Mississippi . . ."). *Hattiesburg Firefighters Local 184 v. City of Hattiesburg,* 263 So. 2d 767 (Miss. 1972).
>
> We hold that the ordinance duly adopted by the City of Greenwood requiring that the legal officers here in question should be appointed subject to council approval is not inconsistent with the statutory requirement that executive authority be vested with the mayor in the mayor-council form of government. Accordingly, the judgment of the chancellor to the contrary must be reversed. Nothing said here is intended to sanction the city council assuming any right to initiate an appointment. We approve only an ordinance duly adopted applying the confirmation power to the municipal officers here involved. Confirmation should not be withheld without good cause.[24]

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[22] Ryals v. Bd. of Sup'rs of Pike County, 48 So. 3d 449 (Miss. 2010).
[23] *Ibid.* at 448.
[24] *Jordan v. Smith*, 669 So. 2d 752, 757 (Miss. 1996).

Later, the Supreme Court overruled the *Jordan* case in part in a case dealing with the issue of separation of powers under the Mississippi Constitution, Art. I, sections 1 and 2, into three branches or departments: legislative, executive, and judicial. § 2 provides in part that the acceptance of an office in one branch, or "department" of government "shall, of itself, and at once, vacate any and all offices held by the person so accepting in either of the other departments."[25] In *Myers v. City of McComb*, the Court made clear that any earlier holding from any case, including Jordan, which had suggested that these two constitutional provisions did not apply to municipalities, was overruled.[26]

Though the Supreme Court may well take a less restrictive view than the Attorney General's office on the issue of home rule, Attorney General's opinions have addressed a far wider range of issues than have the courts. The guidance these opinions provide should not be overlooked. See Addendum A for a summary of certain Attorney General's opinions on subject of home rule. In addition it is important to note the legal protection municipal officials can gain by obtaining an Attorney General's opinion. The Mississippi Code provides:

> § 7-5-25. Written opinions
>
> The Attorney General shall give his opinion in writing, without fee, to the Legislature, or either house or any committee thereof, and to the Governor, the Secretary of State, the Auditor of Public Accounts, the State Treasurer, the Superintendent of Public Education, the Insurance Commissioner, the Commissioner of Agriculture and Commerce, the State Geologist, the State Librarian, the Director of Archives and History, the Adjutant General, the State Board of Health, the Commissioner of Corrections, the Public Service Commission, Chairman of the State Tax Commission, the State Forestry Commission, the Transportation Commission, and any other state officer, department or commission operating under the law, or which may be hereafter created; the trustees and heads of any state institution, the trustees and heads of the universities and the state colleges, the district attorneys, 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, the county attorneys, the attorneys for the boards of supervisors, mayor or council or board of aldermen of any municipality of this state, and all other county officers (and no others), when requested in writing, upon any question of law relating to their respective offices.
>
> When any officer, board, commission, department or person authorized by this section to require such written opinion of the Attorney General shall have done so and shall have stated all the facts to govern such opinion, and the Attorney General has prepared and delivered a legal opinion with reference thereto, there shall be no liability, civil or criminal, accruing to or against any such officer, board, commission, department or person who, in good faith, follows the direction

[25] Miss. Const. Art. I, § 2.
[26] 943 So. 2d 1.

> of such opinion and acts in accordance therewith unless a court of competent jurisdiction, after a full hearing, shall judicially declare that such opinion is manifestly wrong and without any substantial support. However, if a court of competent jurisdiction makes such a judicial declaration about a written opinion of the Attorney General that applies to acts or omissions of any licensee to which § 63-19-57, 75-67-137 or 75-67-245 applies, and the licensee has acted in conformity with that written opinion, the liability of the licensee shall be governed by § 63-19-57, 75-67-137 or 75-67-245, as the case may be. No opinion shall be given or considered if the opinion is given after suit is filed or prosecution begun.

It is however important to note the decision of the Mississippi Supreme Court in *City of Durant v. Laws Const. Co., Inc*., 721 So. 2d 598, 599 (Miss. 1998). In that case, a construction company, Laws Construction, had been unsuccessful in submitting the lowest construction bid to secure a contract with the city. The bid would have been awarded to Laws if the third party who was awarded the contract had been legally disqualified. Laws challenged the city's selection of the third-party company's bid because it lacked a certificate of responsibility number. Because the city, in making its determination that the winning bid was properly selected, did not contact the Attorney General's office in writing to request an opinion, the Supreme Court held the city violated state statute and was liable for $168,495.00 in compensatory damages plus $15,978.95 in costs and attorney' s fees for not awarding the contract to Laws Construction.[27] The Supreme Court stated:

> The City claims to have acted in good faith when relying on the Attorney General opinions. The City argues that even if this Court does not reach the same conclusion in regards to the interpretation of § 31-3-21 as the Attorney General opinions, the correct construction should only apply to future applications of the statute. We have in the past, when determining that an Attorney General opinion was erroneous, applied the correct construction in future cases thereby not penalizing a party's reliance. See *Meeks v. Tallahatchie County*, 513 So. 2d 563, 568 (Miss. 1987). However § 7-5-25 requires the party to contact the Attorney General's office in writing requesting an opinion on his particular facts. In return, the Attorney General's office will prepare and deliver a legal written opinion. In the case sub judice, the City merely spoke with the Attorney General's office over the phone. Furthermore, the Attorney General's office sent opinions regarding similar circumstances, and did not render a written opinion with regard to the particular facts in the case sub judice, as required by the statute. Therefore, the City should be held liable.[28]

Another case dealing with "home rule" was *Nichols v. Patterson*.[29] In that case the state auditor had taken the position that certain expenditures were illegal. During the course of the investigation and at trial, the position of the auditor was that the expenditures were not

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[27] 943 So. 2d 1at 604.
[28] *Ibid.* at 604.
[29] 678 So. 2d 673 (Miss. 1996).

authorized by statute and were thus donations. On appeal the state took a narrower view, contending that the expenditures (for the most part) were illegal because they were not properly authorized by the city. In doing so the Court said:

> Olive Branch insists that all the expenditures should also be considered lawful, because the city is protected by the "home rule." This rule, Mississippi Code Annotated § 21-17-5, gives municipalities discretion in managing municipal affairs. The Auditor states that Mississippi Code Annotated § 21-17-5 expressly prohibits donations, which all of the contested expenses were.
>
> In 1985 the Mississippi legislature passed the state's first municipal "home rule" statute. This statute, Mississippi Code Annotated § 21-17-5 states in pertinent part:
>
>> (1) The governing authorities of every municipality of this state shall have the care, management and control of the municipal affairs and its property and finances. In addition to those powers granted by specific provisions of general law, the governing authorities of municipalities shall have the power to adopt any order, resolutions or ordinances with respect to such municipal affairs, property and finances which are not inconsistent with the *Mississippi Constitution of 1890*, the *Mississippi Code of 1972*, or any other statute or law of the State of Mississippi, and shall likewise have the power to alter, modify and repeal such orders, resolutions or ordinances.
>>
>> (2) Unless such actions are specifically authorized by another statute of law of the State of Mississippi, this section shall not authorize the governing authorities of a municipality to . . . grant any donation. . . .
>
> Olive Branch contends that the Auditor ignores the section in the "home rule" which gives municipalities power to control the affairs of the municipality and focuses instead on the section which states that the "home rule" does not authorize donations. Olive Branch states that the difference in the positions of the Auditor and the Appellants is that the Auditor still considers any expenditure not specifically authorized by statute to be a donation. However, Olive Branch misstates the Auditor's position. The Auditor believes that Olive Branch had the authority to expend its monies in the fashion dictated by the law. Nevertheless, Olive Branch did not follow the law, by expressly determining that the questioned expenditures were for a valid purpose and "adopted" by the Board and the Mayor in the city minutes.

> As stated above, most of the excepted expenditures, the Volunteer Appreciation Dinners, the travel advances by the Mayor, the police dinners, and the City Beautiful Commission Meetings, were not in the minutes of the meetings of the municipality and did not reflect authorization for the expenditures of the funds, which falls short of the requirement of documentation. "A board of supervisors can act only as a body, and its act must be evidenced by an entry on its minutes. The minutes of the board of supervisors are the sole and exclusive evidence of what the board did." *Board of Supervisors*, *Adams County v. Giles,* 219 Miss. 245, 259, 68 So. 2d 483 (1953) (quoting *Smith v. Board of Supervisors of Tallahatchie County,* 124 Miss. 36, 41, 86 So. 707, 709 (1920)). See also Martin *v. Newell* et al., 198 Miss. 809, 23 So. 2d 796 (1945). Also, the 53rd checks were a donation by the City of Olive Branch in direct contravention of the *Mississippi Constitution of 1890*, Article 4, §§ 66, 96 and Mississippi Code Annotated § 21175(2)(g). The Auditor's exceptions are valid against Olive Branch.[30]

The primary significance of this case is that many of the expenditures that Attorney General's opinions have held to be donations were determined to be illegal by the Court only because of the lack of proper minute entries and not because they were in fact donations.

There are a few other, more recent cases dealing with the Home Rule as well. In *Mayor and Bd. of Aldermen, City of Ocean Springs v. Homebuilders Ass'n of Mississippi, Inc*., 932 So. 2d 44 (Miss. 2006), the Supreme Court upheld a lower court's finding that the city's impact fees were a void taxing measure. The city's adopted Comprehensive Plan included separate impact fee ordinances authorizing assessment, collection, and expenditure of what were termed "development impact fees" to fund various municipal needs related to development.[31] The impact fees were to be paid in addition to other similar fees for land-use, zoning, planning, etc., imposed by the city.[32] Adjudicating the fees unlawful, the Court stated: "Consistent with our holding in *Maynard,* we find that Home Rule authority grants municipalities authority to impose *fees,* as long as the imposition is not inconsistent with legislative mandate or the Mississippi Constitution . . . ."[33]

Another restriction on municipalities is that a current governing body, be it a board of aldermen, or city council, or otherwise, may not bind a later administration with respect to certain matters. The Mississippi Supreme Court made this ruling when presented with the issue of whether a municipality should be bound by a previous city council's resolution recognizing a local firefighter's association as the bargaining agent for certain employees of the fire department.[34] The Court stated: "One city council cannot legally adopt a resolution binding a successor administration on discretionary matters."[35] Specifically, the Court prevented the 1996 Biloxi

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[30] 678 So. 2d 681-82 (Miss. 1996).
[31] *Ibid.* at 47.
[32] *Ibid*.
[33] *Ibid.* at 53.
[34] *Biloxi Firefighters Ass'n v. City of Biloxi*, 810 So. 2d 589 (Miss. 2002).
[35] *Ibid.* at 595.

city council from being bound to a 1992 city council's decision to contract away the governing body's "control of municipal affairs, property, and finances."[36]

Home Rule Permits:[37]

Accepting donations for water system improvements

The City of Saltillo may accept funds donated for the specific purpose of improving the city water system, provided that the funds are expended like other municipal funds. Op.Atty.Gen. No. 2010-00022, Herring, February 12, 2010.

Including administrative costs for certain equipment in a regulatory permit fee

A city may include in its permit fee a portion for equipment enclosed within a natural gas distribution center structure, if that portion calculated only to cover the administrative costs of the city department charged with overseeing and administering the specialized activities of the storage and distribution center in question or constitutes compensation for a specific benefit or service for the entity paying the fee. Located partially within the city limits of Petal was a large gas storage and distribution center, and – while most all of the storage of natural gas takes place below ground – there were certain buildings, structures, and equipment on the surface of the ground to operate equipment in order to receive and ship natural gas. Op.Atty.Gen. No. 2009-00745, Tyner, February 26, 2010.

Assessing a $1,000-fine for each day of a continuing violation of a city ordinance

The legislature granted authority to municipalities in § 21-13-1 to enforce its ordinances by a fine of up to $1,000.00 – implicitly for each offense. By the very nature of the conduct being prohibited, some violations can be continuing in nature, particularly those addressing zoning and property use and maintenance issues. § 21-19-25 authorizes municipalities to codes dealing with general public health, safety or welfare, or a combination of the same, by ordinance. Such authority would include adoption of a property maintenance code such as that adopted by Ridgeland. A municipal property maintenance ordinance defining each day of a continuing violation (after notice and reasonable time for correction) as separate offenses is not in conflict with § 21-13-1 and thus is a permissible exercise of the municipality's police power under § 21-17-5, the municipal home rule statute. Op.Atty.Gen. No. 2009-00733, McGee, February 3, 2010.

Allowing use of city buildings and property for certain public use

As to the formulation of uniform use policies for community centers, a use policy which is uniform in its application to all organizations or individuals who wish to access any of the

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[36] *Ibid.* at 593.

[37]The danger of relying on Attorney General's opinions without seeking a written opinion cannot be overemphasized when taking an affirmative action. Likewise great care must be used to review in detail the specifics of each opinion.

governing authority's public facilities may be tailored to meet the specific needs of each building affected. That is, as long as a use policy is uniformly applied, governing authorities may address issues such as area or room access and hours of availability on a building-by-building basis. However, when drafting building-specific policies, a governing authority should not use these issues as a guise to favor or deny access to any organization or individual. Op.Atty.Gen. No. 2003-0246, Barefield, June 13, 2003.

Naming a building in a person's honor

A municipal governing body may name a municipal building after a person it wishes to recognize and honor, including a State representative. Op.Atty.Gen. No. 2003-0587, Brown, October 23, 2003.

Allow use of municipal tennis courts if fee collected

Regarding the use of municipal tennis courts for conducting private tennis clinics, etc., such usage would not constitute an impermissible donation of municipal property, if the required fee is collected by the city and members of the general public are permitted to use the facilities on the same terms. However, a municipal tennis pro may not collect fees for private lessons, tennis clinics and camps conducted on municipal tennis courts during times in which the tennis pro is on duty and being paid a salary by the city. Op.Atty.Gen. No. 2008-0473, Pollard, September 12, 2008.

Allow municipal vehicles to accompany a local athletic team

A municipality may permit police escorts of a local school athletic team within its municipal limits, as well as outside. Any potential liability of the municipality would be subject to the "Tort Claims Act" found at § 11-46-1 et seq. Op.Atty.Gen. No. 2008-00030, Tucker, February 8, 2008.

Authorizing the use of municipal property for private purposes is considered a donation of that property, and while use of a municipal vehicle by a baseball team does not appear to constitute the type of social service program contemplated by § 21-19-65, whether it is qualified to receive matching funds is ultimately a fact question to be determined by the governing authorities. Op.Atty.Gen. No. 2006-0014, Thomas, January 27, 2006.

Bring charges in court against an individual for violation of ordinances

A Board of Aldermen does not have the authority to impose a surcharge upon an individual for failure to comply with the town's ordinance requiring the posting of numbers on homes and to place that surcharge on the water bill of such individual. The municipality may bring charges against any individual in violation of this ordinance in the municipal court, and upon a determination of guilt, any fine and/or other punishment would be determined by the municipal court judge. Op.Atty.Gen. No. 2002-0125, Moore, March 22, 2002.

Enactment of an ordinance placing a moratorium on billboards

A mayor and council may enact an ordinance placing a moratorium on billboards. A governing authority may regulate the placement of billboards through its authority to enact ordinances under § 21-17-5 and though zoning ordinances enacted under § 17-1-1 et seq. Op.Atty.Gen. No. 2007-00006, Robinson, January 28, 2008.

Enactment of additional traffic ordinances, the violation of which result in civil offence

Although §§ 63-3-201 and 63-9-11 provide that a violation of the rules of the road is a criminal violation, the City of Tupelo is not prohibited from enacting additional ordinances also making disobedience or disregard of a traffic control signal a civil offense. Such an ordinance would not be "inconsistent" with the state scheme for punishment for disobedience of traffic control devices but would be additional thereto. Op.Atty.Gen. No. 2006-00170, Mitchell, December 13, 2006.

To provide employees child care benefits

To permit a municipality to provide child care benefits, such as free participation in city parks' after school or summer programs when not at maximum capacity, as part of its employee benefits package would not conflict or be "inconsistent" with the statutory provisions concerning municipal compensation and benefits, but would simply supplement the permissible benefits provided by statute, absent the existence of any direct statutory prohibition providing otherwise. Op.Atty.Gen. No. 2007-00502, Edwards, October 12, 2007.

Allow an extra 8 hours of leave if employee's off day falls on holiday

A municipality may adopt leave policies which allow an extra eight (8) hours of leave to an employee whose regular day off falls on a holiday. The leave granted may equal the length of the employee's work period. Op.Atty.Gen. No. 2003-0008, Mitchell, January 30, 2003 and Code § 21-17-5 (3)

Enact leave policies granting certain additional holiday leave

Municipal governing authorities may, in their discretion, enact leave policies for municipal employees granting additional leave for those employees whose regular day off falls on a legal holiday so long as a policy tailored to ensure public safety employees have the benefit of the same number of paid holidays as other municipal employees is enacted prior to the award of any additional leave. Op.Atty.Gen. No. 2006-00123, Kohnke, April 7, 2006 and Code § 21-17-5(3).

Enter into lease agreements on water tower without the bid process

There is no requirement that municipal governing authorities advertise for and/or solicit bids as a prerequisite to leasing space on a municipally owned water tower for the purpose of placing communications antennas on said tower. Therefore, the authorities may enter such an agreement without advertising for and/or soliciting bids, provided they determine, consistent with the facts,

that it would be in the best interest of the municipality. Although not required by law, the city may advertise or solicit bids, and should use reasonable efforts to secure the highest benefit for the taxpayers. Op.Atty.Gen. No. 2001-0710, Shoemake, November 30, 2001.

Entering into contracts for use of city property for antennae if in interest of city

There is no specific statutory provision which would preempt a municipality, by and through its utility commission, from entering into contracts with parties for use of city property for antennae, provided said commission determines, consistent with the facts that it would be in the best interest of the municipality. Although the city may contract with a third party to solicit and manage/oversee such contracts, the final contracts must be between the city and the users. However, no such contract would be binding on a successor commission, and a contract which extends beyond the term of the present commission or a majority of the members thereof would be voidable at the option of the new commission. Op.Atty.Gen. No. 2000-0164, Flanagan, April 14, 2000.

Determine not to use radar speed detection devices

The governing authorities have the authority to make the determination not to use radar speed detection devices to enforce municipal speed limits. This would include the authority to remove radar devices that have already been installed in municipal vehicles. Op.Atty.Gen. No. 2003-0245, Stuart, May 30, 2003.

Appoint an advisory committee of citizens

The governing authorities of a city may appoint an advisory committee of citizens to receive and consider citizen complaints, to gather information, to perform studies and to make recommendations to the governing authorities. An advisory committee would not be an arm or agency of the municipality and would not have authority to take official action, make decisions or formulate public policy. Its meetings would be subject to the Open Meetings Act. It would not have authority to compel witness attendance or to hold investigation proceedings on behalf of the governing authorities. There is no authority for the governing authorities to budget and spend general funds for the administration of an advisory committee of citizens which has not been created by general laws or local and private legislation. Op.Atty.Gen. No. 2002-0139, Lynn, March 29, 2002.

Require sex offenders to register if certain conditions are met

As long as the provisions of a municipal ordinance requiring the registration of sex offenders supplement, and do not conflict, with the provisions of § 45-33-21, a municipality is within the authority granted it by § 21-17-5 to enact such an ordinance that requires sex offenders to register with the City Clerk in addition to the requirement that the offender register with the Sheriff of the county. Op.Atty.Gen. No. 2005-0382, Gibson, April 21, 2006.

May enter into certain agreements with other out-of-state cities

§ 17-13-1 et seq., the Interlocal Cooperation Act of 1974 would not apply to an agreement between a Mississippi City and a governmental unit from another state. Nevertheless, the Mississippi city may enter into an "Agreement," describing an intended common line of action with the out-of-state City in order to accept donations from that City for purposes outlined in the agreement between them, without the formality of a contract. In addition, the Mississippi City may always enter into a more formal contract for a proper municipal purpose wherein such authority has been granted by statute, but may not make donations to its "sister city" in the form of "monetary or non-monetary assistance." Op.Atty.Gen. No. 2007-00382, Jones, August 3, 2007.

Alter the municipal work week to four 10-hour days

A municipality may reduce the municipal work week to four (4) ten (10) hour days, in accordance with the "Home Rule" statute, found at § 21-17-5. Op.Atty.Gen. 2008-00319, Rutledge, June 27, 2008; Op.Atty.Gen. 2008-00312, Walker, June 27, 2008.

Certain credit card use

"Specific statutes and home rule flexibility give municipal and county governments the authority to use credit cards within the bounds of existing purchase laws." [Opinion No. 2000-0654; excerpt from page 421] and Code § 17-25-1.

Contracting for animal control and animal sheltering

"We also call your attention to a former opinion of this office which stated that the county home rule statute authorized a county to contract for animal control and animal sheltering." Op.Atty.Gen. 2000-0581, Gamble, August 14, 1995 (citing §19-3-40, county home rule law).

Donated Employee Leave

Subsequent to the enactment of sub§ 25-39-5(8) which created the donated leave program for state employees, an opinion was issued authorizing the City of Batesville to adopt a similar policy for their municipal employees. This opinion was based upon such policy "not being inconsistent" with state law under the provisions of "home rule", § 21-17-5(1). [Opinion No. 2000-0475; excerpt from page 620.]

Ownership and operation of a historical museum

". . . pursuant to home rule, a municipality "may own and operate a historical museum . . . and may lease the museum property to a nonprofit historical society to maintain and operate the museum on behalf of the city with a lease and management agreement." [Opinion No. 2000-0403; excerpt from page 688.]

To sell advertising on public web sites

Although a state agency would need statutory authority to sell advertising on its web site, counties and municipalities have home rule powers under § 19-3-40 and § 21-17-5, and pursuant to these statutes, counties and municipalities may sell advertising on their public web sites and may regulate the content, subject and identity of their advertisers to promote the public safety, health or welfare, assuming compliance with the Mississippi and United States Constitutions. Op.Atty.Gen. No. 2000-0278, McLeod, June 12, 2000.

"Counties and municipalities, on the other hand, have home rule powers. § 19-3-40 and 21-17-5. Pursuant to these statutes it is our opinion that counties and municipalities may sell advertising on their public web sites and may regulate the content, subject and identity of its advertisers to promote the public safety, health or welfare." [Opinion No. 2000-0278; excerpt from page 788.]

To Impose Fees or Special Assessments

An assessment which will be used to benefit only the assessed property is not a tax and may be allowed under the Home Rule statute as a fee. **However, such fees must benefit the assessed property and cannot be used for general public purposes**. See Op.Atty.Gen. Caldwell (August 9, 1996) and the cases cited therein. [Opinion No. 2000-0148; excerpt from page 897.] See *Mayor and Bd. of Aldermen, City of Ocean Springs v. Homebuilders Ass'n of Mississippi, Inc*., 932 So. 2d 44 (Miss. 2006)

Advertise the fact that a particular business has donated a vehicle by placing the name of the donating business on the vehicle

". . . this office is of the opinion that pursuant to home rule a municipality may advertise the fact that a particular business or other organization has donated a vehicle to the municipal police department by placing the name of the donating entity upon the vehicle." [Opinion No. 1999-0401; excerpt from page 1384.]

Enter contract for analysis of utility bills on a contingent fee basis

"We are of the opinion that a municipality may contract with a firm to analyze the city's utility bills for improper charges and to compensate the contractor by a contingent fee based upon refunds or rebates actually received by the city pursuant to § 21-17-1(Supp. 1998) so long as the contract complies with the requirements of the section and any additional rules and regulations established by the Mississippi Department of Audit." [Opinion No. 1999-0137.]

Hire a police chaplin

". . . we are of the opinion that the governing authorities of a code charter municipality may hire an individual to serve as a police chaplain and perform specific duties, such as supporting the police department, providing ministry and counsel to criminal defendants in municipal court, and providing assistance to officers in notifying next of kin when motor vehicle accidents result in death." [Opinion No. 99-0098; excerpt from page 1673.]

Require employee reimbursement of education expense

"We have previously opined that a municipality may, under the home rule statute for municipalities which is similar to the home rule statute for counties, implement a policy which provides for an employee receiving education at the expense of the municipality to complete a reasonable period of employment thereafter, with the municipality to be reimbursed if the required term of employment is not completed. See Op.Atty.Gen. Skinner (September 5, 1997) [Opinion No. 98-0667; excerpt from page 1866.]

Enter a contract to develop a computer program and sell rights to the program

"Therefore, it is our opinion that Harrison County may enter into a contract with a computer company to develop a computer program, and the county may sell its rights to such program pursuant to § 19-7-5 or § 31-7-13(m)(iv) of the Code. Please also note however that, in our opinion, a county cannot develop computer programs solely for the purpose of sale for profit. [1998 WL 56464; excerpt from page 2523.]

Home Rule Does Not Permit:

Use of municipal equipment and employees in uniform for nonprofit advertisement

A municipality may not permit the use of municipal equipment and municipal employees in their municipal uniforms in the manner, whether during working hours or not, for the purpose of taking photographs to be used for advertisement purposes for a nonprofit entity. Op.Atty.Gen. No. 2008-00021, Turnage, February 8, 2008.

Regulation of fertilizer, pesticides and seed in conflict with Dept. of Ag. & Commerce

It is clear from a reading of §§ 69-3-1 et seq., 69-23-1 et seq. and 69-24-1 et seq. that comprehensive regulation and enforcement of the use of fertilizer, pesticides and seed is vested in the Department of Agriculture and Commerce, thus, any local ordinance enacted by a local governmental entity to regulate the use of fertilizer, pesticides and seed which conflicts with any of the above mentioned statutes, or with any of the regulations of the Department of Agriculture and Commerce would be void. Op.Atty.Gen. No. 2006-00658, Spell, January 19, 2007.

Donations to nonprofit water association

A town may not donate the improvements to a private nonprofit water association. Op.Atty.Gen. No. 2005-00518, Helmert, October 28, 2005.

Investments in certain county water systems

There is no statutory authority for a municipality to make an investment in a county owned and operated water system which serves solely non-city residents and will not be of any benefit to the municipality. Op.Atty.Gen. No. 2003-0028, Youngman, January 24, 2003.

Donate to nonprofit organizations without specific statutory authority

As, pursuant to § 21-17-5, a municipal governing authorities may not, without specific statutory authority, make a donation to a nonprofit organization, House Bill 1567 of the 1996 Regular Session which authorized the Board of Supervisors of Sunflower County to donate funds during the 1995-1996 fiscal year to the Mississippi Food Network does not authorize the governing authorities of the City of Greenville to donate funds to the Mississippi Food Network. Op.Atty.Gen. No. 2001-0603, Artman, September 28, 2001.

Offer certain developmental incentives which are essentially impermissible donations

Any infrastructure required for the development of a residential subdivision should be treated in the same manner as streets and roads. As such, a municipality may not offer development incentives that reimburse developers for the cost of providing water and sewer infrastructure; to do so would constitute an impermissible donation. Op.Atty.Gen. No. 2003-0695, Hammack, February 17, 2004.

Authorize holiday pay when work is performed; leave otherwise

In view of § 21-17-5 which authorizes holiday pay only when work is actually performed on a holiday, local governing authorities may not pay for holidays when no work is performed, but are limited to allowing additional leave. Op.Atty.Gen. No. 2003-0008, Mitchell, January 30, 2003. The governing authority of any municipality shall enact leave policies to ensure that a public safety employee is paid or granted compensatory time for the same number of holidays for which any other municipal employee is paid [Code § 21-17-5 (3).]

Authorize additional compensation for firefighters for routine maintenance

No statute authorizes additional compensation or compensatory time for firefighters who perform additional duties such as routine maintenance and repairs during their regular shifts; federal labor standards may apply. Op.Atty.Gen. No. 2002-0264, Hammack, June 7, 2002.

The levying of taxes

The Home Rule statute, § 21-17-5, allows municipalities broad regulatory authority over municipal affairs and finances but specifically does not authorize a municipality "to levy taxes of any kind or increase the levy of any authorized tax". This same prohibition in the county Home Rule statute (§ 19-3-40) prohibits a county from levying a tax but does not prohibit it from imposing a fee. An assessment which will be used to benefit only the assessed property is not a tax and may be allowed under the Home Rule statute, but such fees must benefit the assessed property and cannot be used for general public purposes. Op.Atty.Gen. No. 2000-0148, Denny, March 31, 2000.

To Impose Impact Fees

As you note, the Home Rule statutes, § 21-17-5 of the *Mississippi Code* allows municipalities broad regulatory authority over municipal affairs and finances but specifically does not authorize a municipality "to levy taxes of any kind or increase the levy of any authorized tax." As we have opined before, this same prohibition in the county Home Rule statute (19-3-40) prohibits a county from levying a tax but does not prohibit it from imposing a fee. **An assessment or impact fee that would be used for general public purposes is prohibited.** See Op.Atty.Gen. Caldwell (August 9, 1996) and the cases cited therein. [Opinion No. 2000-0148; excerpt from page 897.] See *Mayor and Bd. of Aldermen, City of Ocean Springs v. Homebuilders Ass'n of Mississippi, Inc*., 932 So. 2d 44 (Miss. 2006)

Take official action without bond

Aldermen and city councilmen may not take the oath of office and assume the duties of office until they have the bond required by § 21-17-5 in effect. Failure to so qualify results in a vacancy, which may be filled pursuant to § 23-15-857. Aldermen or city council members who served in the preceding term may hold over in office, assuming their bonds remain in effect, until the vacancy is filled. If a municipal officer is unable to be bonded by a surety company, he or she may follow the procedures set forth in § 25-1-31, which allows, after certain conditions are met, an officer or employee to make his official bond with two (2) or more qualified personal sureties. Op.Atty.Gen.No. 2001-0416, Wood, July 31, 2001.

Become involved in daily operation of departments or serve as supervisors thereof

Although the governing authorities of a code charter municipality may appoint an alderman as street commissioner, and aldermen may serve as aldermen/advisors and observe the activities of various departments in order to report back to the board, they may not become involved in the daily operation of departments, serve as supervisors thereof, or direct daily activities of municipal employees. In addition, § 21-17-5(2) prohibits the governing authorities from changing the structure of municipal government by ordinance. Thus, there is no statutory authority for a mayor or for the governing authorities to appoint aldermen as commissioners over municipal departments. Op.Atty.Gen. No. 2002-0507, McKenzie, August 30, 2002.

A fee to insurance companies to reimburse the municipality for its cost of fighting fires

"We do not find authority for a municipality to charge a fee of $500.00 to an insurance company providing fire insurance coverage to its insured in the event of a fire within the municipality to reimburse the municipality for the costs of fighting the fire." [Opinion No. 2001-0198; excerpt from page 134.]

Municipal expenditure to "hold" a certain piece of property

"We find no authority for a municipality to expend funds in order to "hold" a certain piece of property for the future benefit of a private, nonprofit organization which does not yet have other funds with which to purchase the property." [Opinion No. 2001-0113; excerpt from page 224.]

Prohibiting professional engineers from approving individual onsite wastewater systems

Therefore, a board of supervisors does not have authority pursuant to the home rule statute, § 19-3-40, to prohibit professional engineers from approving individual onsite wastewater systems. [Opinion No. 2000-0761; excerpt from page 313.]

Cleaning or making repairs on private property

". . .we opine that cleaning or making repairs on private property would not be authorized under the county "home rule" statute, and therefore, such action would constitute an unauthorized donation." [Opinion No. 2000-0735; excerpt from page 337.]

Remediation of health hazards on private property

"You state that Neshoba County has received numerous requests to remove or bury various articles of garbage which were illegally dumped on private property. This potential health hazard is located on private property, and you ask whether there is any authority under "home rule" or state law to remediate or eradicate a potential health hazard."

"We find no authority for such a request under the County home rule statute. See Op.Atty.Gen. Thaxton (October 16, 1997). We find qualified authority to perform remediation of health hazards on private property. This authority is restricted to circumstances and procedures set forth in certain statutes." [Opinion No. 2000-0732; excerpt from page 350.]

No authority for county to make contribution of funds to municipality

"We find no authority under the county home rule statute authorizing a county to make a contribution of funds to a municipality." [Opinion No. 2000-0703; excerpt from page 370.
Creation of an independent commission

"The home rule statute, § 21-17-1(Supp. 1999), does not allow governing authorities to create an independent commission because it provides that governing authorities may not change the form or structure of municipal government." [Opinion No. 2000-0127; excerpt from page 933.]

Providing free food or drinks to anyone

". . . we opine that the Columbus-Lowndes Recreational Authority may not provide food and drinks at no charge to anyone." [Opinion No. 98-0359; excerpt from page 2156.]

Change liquor sales statutes

"The home rule statute, § 21-17-5(2)(Supp. 1996) provides that a municipality may not regulate the sale of alcoholic beverages without specific statutory authority. The state legislature has addressed the area of regulation of the sale of alcoholic beverages in Miss. Code Ann. § 67-1-1 et seq. and has provided that regulation of the manufacture, sale, distribution, possession and transportation of alcoholic beverages falls within the jurisdiction of the State Tax Commission.

Local ordinances may not impede this jurisdiction. Op.Atty.Gen. Carson (November 27, 1991); MS AG Op., Diaz (October 23, 1991). [Opinion No. 97-0139; excerpt from page 3112.]

Contributions of finances or equipment to church athletic teams

"We find no statute or law of the State of Mississippi that permits a municipality to contribute finances or equipment to an independent church league with participating church teams and with membership limited to church members, and not open to participation by the general public." [Opinion No. 1999-0391; excerpt from page 1317.]

Enact seat belt standards more stringent than state law

". . .we must conclude that the matter of seat belt usage has been addressed by state law and the city is therefore preempted from enacting more stringent regulations through local ordinances on the same topic." [Opinion No. 98-0335; excerpt from page 2180.]

Adopt landscaping ordinance for developed property

"We are of the opinion that a municipality does not have authority under home rule or other statutes to adopt a landscaping ordinance which sets forth requirements for landscaping for previously developed property in commercial and industrial zones." [Opinion No. 97-0651; excerpt from page 2667.]

SOVEREIGN IMMUNITY

Prior the Mississippi Supreme Court's decision in *Pruett v. City of Rosedale*,[38] the state and its subdivisions enjoyed judicially established sovereign immunity. As a matter of public policy, the courts had determined, in general, that the state was immune from suits for damages. In *Pruett*, the Supreme Court abolished the judicially created doctrine of sovereign immunity. As a result, a flurry of legislative actions and judicial proceedings has followed. *Stokes v. Kemper County Board of Supervisors*[39] contains an excellent and concise history of the legislative actions taken in response to *Pruett*, up to the date of the *Stokes* ruling.[40] Following the enactment of the Mississippi Tort Claims Act, the Mississippi Supreme Court has repeatedly recognized that *Pruett* has since been superseded by statute.[41]

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[38] 421 So. 2d 1046 (Miss. 1982).

[39] 691 So. 2d 391 (Miss. 1997).

[40] See Addendum A to this chapter. In addition to the maximum amounts set out in the applicable Code sections, insurance may be purchased. If insurance is purchased, the maximum amount of liability is increased to the policy limits of the coverage if the policy limits are more than the statutory limits.

[41] See *Jackson v. Daley*, 739 So. 2d 1031 (Miss. 1999); *Gressett v. Newton Separate Mun. School Dist.*, 697 So. 2d 444 (Miss. 1997); *McKay v. Boyd Const. Co., Inc.*, 571 So. 2d 916 (Miss. 1990); *McFadden v. State*, 542 So. 2d 871 (Miss. 1989); *Webb v. County of Lincoln*, 536 So. 2d 1356 (Miss. 1988).

At the present time, the issue of sovereign immunity is dealt with in Title 11, Chapter 46 of the *Mississippi Code*, which makes up the Mississippi Tort Claims Act, or "MTCA." The Supreme Court has stated:

> The MTCA provides sovereign immunity to the State and its subdivisions and allows for a limited waiver of that protection if certain statutory requirements are met. The MTCA is the exclusive remedy of a claimant alleging injuries due to the negligence of the State or its political subdivisions and employees. The Act further sets out certain acts for which a government entity and its employees may never be held liable. Even if a political subdivision or government entity has waived sovereign immunity for a certain act of negligence, the MTCA still provides a limitation of liability thereby capping the amount of applicable damages for which it may be held liable.[42]

The Court of Appeals recognized that after the Supreme Court abolished common-law sovereign immunity in *Pruett*, the Supreme Court later expressly stated that it did so "'because the judiciary was not the appropriate branch of government to regulate sovereign immunity,'" and that the *Pruett* decision was a mandate for the legislature "'to assume full responsibility for the regulation of sovereign immunity.'"[43]

In the MTCA, the Legislature has declared that it is the policy of the State of Mississippi that the state and its political subdivisions are immune from suit "on account of any wrongful or tortious act or omission or breach of implied term or condition of any warranty or contract, including but not limited to libel, slander or defamation . . . ."[44] Municipalities are specifically included within the definition of political subdivisions.[45] The statute provides that the acts or omissions from which political subdivisions (including municipalities) are immune include those which are "governmental, proprietary, discretionary or ministerial in nature."[46]

In a recent case dealing with the distinction of a discretionary function, the Supreme Court stated:

> The history of sovereign immunity in Mississippi shows that municipalities were not given immunity with regard to proprietary functions until recently. This Court considers a municipality a political subdivision, which entitles it to the protections of the MTCA. One of the protections with which a municipality can shield itself is the waiver-of-immunity exemption based upon the exercise of a discretionary function. Therefore, when a municipality, such as the City, otherwise could be liable for a discretionary decision that resulted in damage to another, it is shielded from liability through the protections of the MTCA.

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[42] Mississippi Mun. Liability Plan v. Jordan, 863 So. 2d 934, 945 (Miss. 2003).
[43] *Knight v. Mississippi Transp. Com'n*, 10 So. 3d 962, 967 (Miss. Ct. App. 2009) (quoting *Wells ex rel. Wells v. Panola County Bd. of Educ.*, 645 So. 2d 883, 889 (Miss. 1994)).
[44] *Code,* § 11-46-3.
[45] *Code,* § 11-46-1(i).
[46] *Code,* § 11-46-3(1).

> The City's decision is discretionary because it meets both prongs of the public-policy function test.[47]

The Act then waives immunity (after July 1, 1993, for municipalities) to the extent of the maximum liability set out in § 11-46-15.[48] Currently, the Act provides that for claims or causes of action arising from acts or omissions occurring from July 1, 1993, to July 1, 1997, liability is capped at $50,000.00; from July 1, 1997, to July 1, 2001, at $250,000.00; and from July 1, 2001, at $500,000.00.[49]

The act also sets up an exclusive method by which claims may be brought.[50] New procedures which must be followed include the following:

> Every notice of claim required by subsection (1) of this section shall be in writing, delivered in person or by registered or certified United States mail. Every notice of claim shall contain a short and plain statement of the facts upon which the claim is based, including the circumstances which brought about the injury, the extent of the injury, the time and place the injury occurred, the names of all persons known to be involved, the amount of money damages sought and the residence of the person making the claim at the time of the injury and at the time of filing the notice.[51]

The waiver of immunity is not absolute. Immunity is maintained in the case of actions or omission:[52]

- Arising out of a legislative or judicial action or inaction, or administrative action or inaction of a legislative or judicial nature;

- Arising out of any act or omission of an employee of a governmental entity exercising ordinary care in reliance upon, or in the execution or performance of, or in the failure to execute or perform, a statute, ordinance or regulation, whether or not the statute, ordinance or regulation be valid;

- Arising out of any act or omission of an employee of a governmental entity engaged in the performance or execution of duties or activities relating to police or fire protection unless the employee acted in reckless disregard of the safety and well-being of any person not engaged in criminal activity at the time of injury;

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[47] *Fortenberry v. City of Jackson*, -- So. 3d --, 2011 (Miss. 2011) (internal citations omitted).
[48] See Addendum A for previous limits imposed by the Act up to the date of the 1997 *Stokes* ruling.
[49] *Code,* § 11-46-15(1).
[50] *Code,* § 11-46-7.
[51] *Code,* § 11-46-11(2).
[52] *Code,* § 11-46-9(1).

- Based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a governmental entity or employee thereof, whether or not the discretion be abused;

- Arising out of an injury caused by adopting or failing to adopt a statute, ordinance or regulation;

- Which is limited or barred by the provisions of any other law;

- Arising out of the exercise of discretion in determining whether or not to seek or provide the resources necessary for the purchase of equipment, the construction or maintenance of facilities, the hiring of personnel and, in general, the provision of adequate governmental services;

- Arising out of the issuance, denial, suspension or revocation of, or the failure or refusal to issue, deny, suspend or revoke any privilege, ticket, pass, permit, license, certificate, approval, order or similar authorization where the governmental entity or its employee is authorized by law to determine whether or not such authorization should be issued, denied, suspended or revoked unless such issuance, denial, suspension or revocation, or failure or refusal thereof, is of a malicious or arbitrary and capricious nature;

- Arising out of the assessment or collection of any tax or fee;

- Arising out of the detention of any goods or merchandise by any law enforcement officer, unless such detention is of a malicious or arbitrary and capricious nature;

- Arising out of the imposition or establishment of a quarantine, whether such quarantine relates to persons or property;

- Of any claimant who is an employee of a governmental entity and whose injury is covered by the Workers' Compensation Law of this state by benefits furnished by the governmental entity by which he is employed;

- Of any claimant who at the time the claim arises is an inmate of any detention center, jail, workhouse, penal farm, penitentiary or other such institution, regardless of whether such claimant is or is not an inmate of any detention center, jail, workhouse, penal farm, penitentiary or other such institution when the claim is filed;

- Arising out of any work performed by a person convicted of a crime when the work is performed pursuant to any sentence or order of any court or pursuant to laws of the State of Mississippi authorizing or requiring such work;

- Under circumstances where liability has been or is hereafter assumed by the United States, to the extent of such assumption of liability, including, but not

limited to, any claim based on activities of the Mississippi National Guard when such claim is cognizable under the National Guard Tort Claims Act of the United States, 32 USCS 715 (32 USCS 715), or when such claim accrues as a result of active federal service or state service at the call of the Governor for quelling riots and civil disturbances;

- Arising out of a plan or design for construction or improvements to public property, including, but not limited to, public buildings, highways, roads, streets, bridges, levees, dikes, dams, impoundments, drainage channels, diversion channels, harbors, ports, wharfs or docks, where such plan or design has been approved in advance of the construction or improvement by the legislative body or governing authority of a governmental entity or by some other body or administrative agency, exercising discretion by authority to give such approval, and where such plan or design is in conformity with engineering or design standards in effect at the time of preparation of the plan or design;

- Arising out of an injury caused solely by the effect of weather conditions on the use of streets and highways;

- Arising out of the lack of adequate personnel or facilities at a state hospital or state corrections facility if reasonable use of available appropriations has been made to provide such personnel or facilities;

- Arising out of loss, damage or destruction of property of a patient or inmate of a state institution;

- Arising out of any loss of benefits or compensation due under a program of public assistance or public welfare;

- Arising out of or resulting from riots, unlawful assemblies, unlawful public demonstrations, mob violence or civil disturbances;

- Arising out of an injury caused by a dangerous condition on property of the governmental entity that was not caused by the negligent or other wrongful conduct of an employee of the governmental entity or of which the governmental entity did not have notice, either actual or constructive, and adequate opportunity to protect or warn against; provided, however, that a governmental entity shall not be liable for the failure to warn of a dangerous condition which is obvious to one exercising due care;

- Arising out of the absence, condition, malfunction or removal by third parties of any sign, signal, warning device, illumination device, guardrail or median barrier, unless the absence, condition, malfunction or removal is not corrected by the governmental entity responsible for its maintenance within a reasonable time after actual or constructive notice;

- Arising out of the administration of corporal punishment or the taking of any action to maintain control and discipline of students, as defined in § 37-11-57, by a teacher, assistant teacher, principal or assistant principal of a public school district in the state unless the teacher, assistant teacher, principal or assistant principal acted in bad faith or with malicious purpose or in a manner exhibiting a wanton and willful disregard of human rights or safety; or

- Arising out of the construction, maintenance or operation of any highway, bridge or roadway project entered into by the Mississippi Transportation Commission or other governmental entity and a company under the provisions of § 1 or 2 of Senate Bill No. 2375, 2007 Regular Session, where the act or omission occurs during the term of any such contract.

In addition, a governmental entity shall also not be liable for any claim where the governmental entity:

- Is inactive and dormant;
- Receives no revenue;
- Has no employees; and
- Owns no property.

A one (1) year statute of limitations is imposed. However, the filing of the notice mentioned above extends the statute of limitations by 120 days from the date the designated officer receives the notice of the claim.[53]

Cases brought under the act are to be tried in the circuit court by a judge without a jury.[54] The case is to be heard in the county in which the act or omission occurred; the right to have the case heard in other courts is specifically removed.[55]

A Torts Claim Fund is created by the act.[56] The fund is administered by the Mississippi Torts Claim Board.[57] Unless a "government entity," as defined by the Act, is insured, it must participate in the fund; municipalities, as "political subdivisions" are required either to purchase insurance, to establish such self-insurance reserves, or to provide a combination of such.[58]

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[53] *Code,* § 11-46-11(3).
[54] *Code,* § 11-46-13(1).
[55] *Code,* § 11-46-13(2).
[56] *Code,* § 11-46-17.
[57] *Code,* § 11-46-19.
[58] *Code,* § 11-46-17(3).

If a political subdivision purchases liability insurance, it can be sued for amounts exceeding applicable statutory liability limit under the Act.[59] However, in 2003, the Supreme Court held this did not apply to municipality that participated in Mississippi Municipality Liability Plan (MMLP), because that plan's risk-sharing agreement was found to be self-insurance or a risk-sharing pool; therefore, liability was limited to $50,000 in a wrongful death action based on the death of a motorist who was killed in collision with police officer.[60]

Though the Act purports to eliminate liability for "proprietary activities," the issue would still arise after the passage of the Act because of the effective dates of the legislation. With the passage of time and the running of statutes of limitations the distinction has become less and less important.

Because of the nature of municipalities as a "municipal corporation" they are vested with powers of two types; one is governmental and the other proprietary. The distinction has been important in the past because of the difference in the potential for municipal liability. The Mississippi Supreme Court addressed the distinction in *Thomas v. Hilburn*, 654 So. 2d 898 (Miss. 1995) (city not entitled to immunity when city garage employee after pulling a police car out of the mud, collided with another car, because the operation of a service garage and tow truck for the maintenance of city vehicles was a proprietary function), as follows:

> A city or municipality is immune from suit when the injury stems from the performance of a governmental function; however, the city does not enjoy such immunity when it is responsible for an injury arising from the performance of a proprietary function. *Morgan v. City of Ruleville*, 627 So. 2d 275, 279 (Miss. 1993); *Webb v. Jackson*, 583 So. 2d 946, 952 (Miss. 1991). As we noted in *Morgan,* the line between governmental and proprietary functions has been best drawn in *Anderson v. Jackson Municipal Airport Authority*, 419 So. 2d 1010 (Miss. 1982). In *Anderson*, the Court explained:
>
>> The classifications are broad, very general, and the line between the two is quite frequently difficult to define. Nevertheless, there are certain activities which courts choose to call "governmental" for which no liability is imposed for wrongful or tortious conduct. These are activities or services which a municipality is required by state law to engage in and perform.
>>
>> On the other hand, there are activities in which a municipal corporation engages, not required or imposed upon it by law, about which it is free to perform or not. Such activities the courts call "proprietary or corporate." This Court has judicially construed other permissible "public and governmental" activities to be "corporate or proprietary." 419 So. 2d at 1014-15.

[59] *Code,* § 11-46-17(4).

[60] Mississippi Mun. Liability Plan v. Jordan, 863 So. 2d 934 (Miss. 2003).

The *Anderson* Court further enumerated those municipal activities which have been determined to be governmental as distinguished from proprietary functions. In holding that the operation of a swimming pool was a proprietary function, the Court in *Morgan* resolved the dichotomy between governmental and proprietary functions by stating simply, "[p]roprietary activities are those which, while beneficial to the community and very important, are not vital to a City's functioning (zoo, football stadium)." *Ibid*. at 279.[61]

Though the list may not be totally complete, the Supreme Court footnoted functions which fall into each of the classifications. The Court said:

The *Anderson* Court found that the following had been held to be governmental functions:

> the decision whether to place traffic control devices at an intersection; establishment and regulation of schools, hospitals, poorhouses, fire departments, police departments, jails, workhouses, and police stations; the adoption and enforcement of ordinances and regulations for the prevention of the destruction of property by fire and flood, and the manner and the character of the construction of the buildings.

The *Anderson* Court listed the following as having been held to be proprietary functions: The operation of a city dump; the construction and maintenance of sewage outlets to and from buildings; the maintenance and repairing of streets; the construction and maintenance of sidewalks; the operation and management of an electrical power plant by a municipality; the construction of a nuisance, such as a hog pond, close to the plaintiff's residence; the operation by the city of a fair, baseball park, or football stadium; the operation of a fire hydrant; the hauling of dirt and trash by the city; the operation and maintenance of a zoo; the creation of a dangerous situation regarding trees near sidewalks, streets or neutral areas; the operation of river landings for ingress and egress by boats; the construction and maintenance of a bridge over a gully or ditch near a sidewalk or street; the construction and maintenance of a drain to provide for controlling rainfall; the offensive odors from a negligently operated sewage system; the supervision of the construction of a wall of a building not owned by the city; the overhead traffic control signal lights and stop signs at intersection[s].[62]

[61] 654 So. 2d at 901.
[62] 654 So. 2d at 901 (internal citations omitted).

CLASSIFICATION, CREATION, ABOLITION, AND EXPANSION

In compliance with the mandates of § 88 of the *Mississippi Constitution of 1890*, the Legislature adopted statutes related to the classification, creation, abolition, and expansion of municipalities. Though the original statutes have been amended on numerous occasions, Title 21 Chapter 1 of the *Mississippi Code* contains those statutes today.

Classification

All municipalities in the state are divided into three (3) classes. Municipalities with a population of two thousand (2,000) or more are classified as cities, those with a population of less than two thousand (2,000) but more than three hundred (300) are classed as towns, those with three hundred (300) or fewer inhabitants are villages.[63] If a new federal census changes the population so that a municipality is in a different class, the governing authorities are required to enter an order on the minutes changing the municipality to the proper class. This order is to be filed with the secretary of state. The census is conclusive as to the class of a municipality.[64] Municipalities are to operate under the corporate name of "The City of _____," "The Town of _____," or the "Village of _____" according to the proper classification.[65]

Creation

General Requirements. A new municipality may be created in Mississippi provided the area has the following characteristics:[66]

- One square mile of territory;
- Population of at least 300;
- At least one (1) mile of hard surface streets (either existing or under construction);
- At least six (6) streets making up the one (1) mile of hard surfaced streets; and
- A public utilities system (water and/or sewer) existing or under construction.

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[63] *Code,* § 21-1-1.
[64] *Code,* § 21-1-3.
[65] *Code,* § 21-1-5. The municipal authorities have the option of changing the name of the municipality itself by complying with § 21-1-7. To do so, they must prepare in writing the proposed change. The proposed change must be published (or posted if there is no newspaper). If 1/10th of the qualified electors protest the change within ten (10) days after completion of publication or posting the proposed change, approval of the change by a majority vote is required. Otherwise, the change will go into effect after approval by the governor.
[66] *Code,* § 21-1-1.

The Petition. If an area possesses these characteristics, it may incorporate as a town or city on the petition containing signatures of at least two thirds (2/3) of the qualified electors residing in the area. Normally, failure to include this minimum number of signatures is not amendable; however, the Supreme Court has allowed amending if a clerical error was made.[67] The petition must meet the following requirements:

- Describe that area proposed to be incorporated;
- Contain a map or plat of the area to be incorporated;
- Set forth the corporate name of the new municipality;
- Set forth the number of inhabitants in the new municipality;
- Set forth the assessed valuation of the real property in the area according to the latest available assessment;
- State the aims of the petitioners in seeking to incorporate;
- Set forth the municipal and public services the municipality proposes to provide;
- Set forth the reasons that the public convenience and necessity requires a new municipality and contain a statement of the names of the person's the petitioners desire to be appointed as officers of the new municipality; and

- Be sworn to by at least one (1) of the petitioners.

Once the necessary signatures are obtained the petition must be filed in Chancery Court.[68]

Notice. After the petition is filed in the Chancery Court, a date is set for the hearing by the Chancellor. Notice of the time of the hearing must be given by publication in a newspaper, to all persons interested in, affected, or having objections to the proposed annexation.[69] If there is an existing municipality within three (3) miles of the area to be incorporated, process must be served on it at least 30 days prior to the hearing.[70]

Hearing. At the time set forth in the notice,[71] a hearing is to be held in chancery court. At the hearing, any evidence related to the issues of "public convenience and necessity" or reasonableness may be presented. If the proposed incorporation is found to be reasonable and

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[67] "We have previously held that the two-thirds-signature element is a mandatory and jurisdictional requirement, and a petition for incorporation cannot be amended to include additional signatures." *City of Jackson v. Byram Incorporators*, 16 So. 3d 662, 673 (Miss. 2009). However, the Byram Incorporators' "failure to include page three *when filed* was a clerical error, not a failure to comply with the specific requirements of § 21-1-13." *Ibid.* (emphasis in original).

[68] *Code,* § 21-1-13.

[69] *Code,* § 21-1-15. This notice must meet the following requirements: be in a newspaper published in or having a general circulation in the area to be incorporated; be published once each week for three consecutive weeks; the first publication must be at least 30 days prior to the date of the hearing; and the publication must contain a full legal description of the territory to be incorporated.

[70] *Code,* § 21-1-15.

[71] As a practical matter, if the case is contested, there will usually be a continuance.

required by the public convenience and necessity, the chancellor is to grant the incorporation as requested. If not, the incorporation is to be denied. Additionally, the chancellor may allow only a part of the area to be incorporated.[72]

If the chancellor grants the incorporation, in whole or part, a decree is to be entered which shall contain the following:[73]

- A declaration that the municipal corporation is created;
- An accurate description of the boundaries of the new municipality;
- Classification of the new municipality as a town or city; and
- The names of the officers of the municipality.

A map of the new municipality must be filed with the chancery clerk.[74]

Public Convenience and Necessity. Factors that the court should look to determine whether the incorporation is required by the public convenience and necessity were initially summarized by the Mississippi Supreme Court in *City of Pascagoula v. Scheffler*, 487 So. 2d 196 (Miss. 1986).[75] The Court has said:

This Court has set forth the following factors to aid the chancellor's determination of public convenience and necessity:

- The governmental services presently provided;
- The quality of services and adequacy of all services provided;
- The services expected from other sources;
- The impairment of an immediate right vested in an adjoining city; and
- The substantial or obvious need justifying incorporation.[76]

Reasonableness. The following factors have been identified as indicating reasonableness in an incorporation case:

- Whether a proposed area has definite characteristics of a village;
- Whether the residents of the proposed area for incorporation have taken initial steps toward incorporation;
- Whether a nearby city has initiated preliminary proceedings toward annexation;
- Whether there have been any financial commitments toward incorporation or annexation proceedings;
- Whether a neighboring city has the prerogative to contest incorporation;
- Whether incorporation affects an existing city within three miles;

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[72] *Code,* § 21-1-17. The Chancellor cannot enlarge the area.
[73] *Code,* § 21-1-17.
[74] *Code,* § 21-1-17.
[75] More recently, the Supreme Court revisited the *Scheffler* holdings in *City of Jackson v. Byram Incorporators*, 16 So. 3d 662, 671 (Miss. 2009).
[76] *City of Jackson v. Byram Incorporators*, 16 So. 3d 662, 681 (Miss.,2009) (citing Scheffler, 487, So. 2d at 200-01).

- Whether population of the area shows an increase and continuity of settlement;
- Whether a community has a separate identity;
- Whether natural geographical boundaries separate an area from other municipalities;
- Whether transportation is affected;
- Whether incorporation will affect the interest of landowners in the affected area;
- Whether cost of operating the municipality is prohibitive;
- Whether an estimated tax base of proposed area will support incorporation; and
- Whether the overall welfare of residents of the affected area is improved by incorporation.[77]

These factors are "by no means exhaustive," and instead are to be used as "examples of those to be considered by the chancery court when making a determination of reasonableness." Going further, the Court has stated: "These factors may overlap with those determinative of public convenience and necessity. No one factor per se determines reasonableness, but a consideration of all pertinent factors gives guidance to reach an ultimate conclusion."[78] The Supreme Court has made it clear: "No one factor per se determines reasonableness, but a consideration of all pertinent factors gives guidance to reach an ultimate conclusion."[79]

Effective Date. The decree creating a new municipality becomes effective ten (10) days after it is entered.[80] However, if there is an appeal within that ten (10) day period, the effective date is stayed until the Supreme Court rules.[81]

Annexation or Contraction

Procedures are available under the Mississippi Code for a municipality to expand its boundaries by annexation, and to decrease its boundaries by contraction.[82] Annexation may be accomplished in one of two ways with the most common method being initiation by the municipality.[83] However, the citizens of the area sought to be annexed may directly petition the chancery court for inclusion into the municipality.[84] **See Addendum B for an overview of annexation requirements.**

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[77] *City of Jackson v. Byram Incorporators*, 16 So. 3d 662, 675 (Miss. 2009) (citing *Scheffler*, 487 So. 2d at 201-02).
[78] *Scheffler*, 487 So. 2d at 201.
[79] *Byram*, 16 So. 3d at 675 (citing *Scheffler*, 487 So. 2d at 201).
[80] *Code*, § 21-1-17.
[81] *Code,* § 21-1-21. In both incorporations and annexations there is a potential inconsistency in the appeal procedures. § 21-1-21 sets out the manner and time (10 days) in which the appeal is to be taken. However, the Mississippi Supreme Court adopted Rule 4 of the Rules of Appellate Procedures which allows for a thirty-day period. At this point there is no reported decision with respect to the inconsistency.
[82] *Code,* § 21-1-27.
[83] *Code,* § 21-1-27 *et seq*. Though the basic concepts related to annexation are relatively simple, the implementation of a successful annexation planning effort requires considerable planning.
[84] *Code,* § 21-1-45.

Annexation Ordinance. In annexations initiated by the municipality, the first step in the process is the passage of the ordinance. The territory to be annexed must be contiguous to the municipality.[85] Obviously, it may not be a part of another city. The ordinance must set out the following:

- A legal description of the territory sought to be annexed;
- A legal description of the city as it will exist if the annexation is granted;
- A description, in general terms, of the proposed improvements to be made in the annexed territory;
- The manner and extent of the proposed improvements;
- The approximate time in which the improvements are to be made; and
- A statement of the public services the municipality proposes to render in the annexation area.[86]

The Petition. After the ordinance is adopted, the municipality must file a petition in the chancery court of the county in which the property sought to be annexed is located. The petition must contain the following:[87]

- A statement of the fact that the ordinance has been adopted;
- A request for the enlargement of the municipality;
- A certified copy of the ordinance of annexation; and
- A map or plat of the municipality as it will exist if the annexation is approved.

Where two or more municipalities are seeking to annex the same land, or overlapping areas of land, the previous rule had been that petitions filed prior in time were prior in jurisdiction, encouraging a race to the courthouse, meaning that subsequent petitions would not be considered until the first-filed petitions were adjudicated; if the first municipality was successful with its petition, the subsequent-filing municipalities would be left with no day in court. The Supreme Court overturned this rule in 2004, however, stating:[88]

> [W]e address this issue today as a guidance to the bench and bar. Until this case, we have not been faced with a situation where a chancellor has found more than one annexation petition concerning the same plot of land to be reasonable. Under the present day circumstances where there is competition among multiple municipalities for the same land, it is essential that a chancellor evaluate the competing interests of the other city or cities when considering the twelve indicia in the totality of the circumstances. Given this Court's concerns regarding judicial economy, it is certainly reasonable for a chancellor to consolidate competing petitions for one trial. This is particularly so given the considerable expense and time involved in each annexation case. Accordingly, we today declare as antiquated the prior jurisdiction doctrine as it relates to annexation litigation, and

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[85] There is one exception to this rule related to airports.
[86] *Code,* § 21-1-27.
[87] *Code,* § 21-1-31.
[88] In re Enlargement and Extension of Mun. Boundaries of City of D'Iberville, 867 So. 2d 241, 251 (Miss. 2004).

> to the extent that any of our prior cases have recognized and applied this doctrine, these prior cases are to that limited extent overruled.[89]

The Supreme Court has also held that under certain circumstances, annexation pleadings are amendable pursuant to Rules 15 and 81 of the Mississippi Rules of Civil Procedure, as well as other case law.[90] The Court stated: "So that our interpretation is clear, we clarify today that in annexations proceedings, when errors appear in the legal description of the territory proposed to be annexed ***and/or*** in the legal description of the entire boundary as changed after enlargement/annexation, such errors may be amended pursuant to our rules of civil procedure and our case law."[91]

Notice. After the petition is filed, notice must be provided in the same time and manner as is required for an incorporation.[92]

Hearing. At the hearing all persons having an objection may appear and present evidence.[93] The chancellor is to hear the case based on the issue of reasonableness.[94] If the chancellor finds the annexation reasonable, a decree is to be entered granting the annexation. As in incorporation cases, if the burden of proof is not met, the annexation should be denied. The chancellor has the option of granting the annexation in part. No territory not described in the ordinance may be added by the chancellor. The decree of the chancellor is effective ten (10) days after entry if no appeal is taken.[95]

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[89] Ibid.

[90] In re Extension of Boundaries of City of Hattiesburg, 840 So. 2d 69, 80 (Miss. 2003).

[91] *Ibid.* (emphasis in original).

[92] *Code,* § 21-1-31. *Code,* § 21-1-15 [Publication in the newspaper, posting in the annexation area and service of process on municipalities within three (3) miles of the territory to be annexed].

[93] Unlike other litigated matter, it is not necessary that written pleadings be filed to allow a party to object. The Mississippi Supreme Court deliberately chose to preserve this right when they adopted the Mississippi Rules of Civil Procedure. Rule 81 states in part that the Rules of Civil Procedure are to "apply to all civil proceedings but are subject to limited applicability in the following actions which are generally governed by statutory procedures . . . (11) creation of and change in boundaries of municipalities . . . ." Miss. R. Civ. P. 81 (2009).

[94] *Code,* § 21-1-33 provides that the chancellor is also to determine the issue of "public convenience and necessity." The Mississippi Supreme Court struck this requirement down in annexation case in 1953 in the case of *Ritchie v. Brookhaven*, 217 Miss. 860, 65 So. 2d 436, sugg. of error overruled 217 Miss. 876, 65 So. 2d 832 (1953). See also *Bassett v. Town of Taylorsville*, 542 So. 2d 918 (Miss. 1989). The Court held that the issue of "public convenience and necessity" was legislative in nature and not subject to judicial review. It is important to contrast the Court's holding in annexations with incorporations. In the case of annexations, the issue of public convenience and necessity is considered by the municipality's legislative body and a determination is made. In incorporation cases the same is not true. Thus, it would appear that "public convenience and necessity" must still be proven in incorporation cases. Nonetheless, the Court has held a chancellor's consideration of public convenience and necessity in an annexation case to be harmless error that was, at worst, mere surplusage. *In re Extension, Enlarging of Boundaries of City of Laurel*, 922 So. 2d 791 (Miss. 2006).

[95] *Code*, § 21-1-33.

The Supreme Court has held that a municipality may repeal its annexation ordinance following the court hearing, but before the decree becomes effective, even after the decree has been entered by the chancellor.[96] The Court found that subsequent to entry but prior to the effectiveness of the decree, a city may repeal its ordinance seeking annexation, even if the issue is on appeal or before the chancery court on remand.[97] This is so because the statute provides that – if the matter is appealed – the chancellor's decree is not effective until ten days after the final determination of the appeal of the decree.[98] In that case, the city seeking annexation presented on remand an ordinance repealing its initial ordinance seeking annexation, along with a motion to set aside the previous decree granting annexation.[99] The Supreme Court found that the chancery court erred in denying the city's motion to set aside the decree granting annexation, as the court had no authority to force annexation in the face of a repeal ordinance from the municipality.[100]

Reasonableness. In a series of cases arising since the adoption of the current annexation statutes in 1950, beginning with *Dodd v. City of Jackson*, 238 Miss. 372, 39697, 118 So. 2d 319, 330 (1960), the Mississippi Supreme Court has dealt with the issue of what is a reasonable annexation. The Court has often summarized those primary indicators or indicia to be considered as follows:

- The municipality's need for expansion;
- Whether the area sought to be annexed is reasonably within a path of growth of the city;
- The potential health hazards from sewage and waste disposal in the annexed areas;
- The municipality's financial ability to make the improvements and furnish municipal services promised;
- The need for zoning and overall planning in the area;
- The need for municipal services in the area sought to be annexed;
- Whether there are natural barriers between the city and the proposed annexation area;
- The past performance and time element involved in the city's provision of services to its present residents;
- The impact (economic or otherwise) of the annexation upon those who live in or own property in the area proposed for annexation;
- The impact of the annexation upon the voting strength of protected minority groups;
- Whether the property owners and other inhabitants of the areas sought to be annexed have in the past, and for the foreseeable future unless annexed will, because of their reasonable proximity to the corporate limits of the municipality, enjoy the (economic and social) benefits of proximity to the municipality without paying their fair share of the taxes; and
- Any other factors that may suggest reasonableness vel non.[101]

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[96] In re Extension of Boundaries of City of Sardis, 954 So. 2d 434, 437 (Miss. 2007).
[97] Ibid.
[98] *Code,* § 21-1-33.
[99] *Sardis*, 954 So. 2d at 436.
[100] *Ibid.* at 437.
[101] City of Jackson v. Byram Incorporators, 16 So. 3d 662, 683 (Miss. 2009) (quoting In re

Additionally, several of these primary indicia also have court recognized lists of further considerations, or other "sub-indicators," for lack of a better word, to help courts determine if an indicia favors a certain city attempting annexation; however, frequently, not all sub-indicators are present in an annexation case.[102] The Court has been clear that these twelve indicia, as well as the sub-indicators are " 'not separate and distinct tests in and of themselves ... [and] the chancellor must consider all [twelve] of these factors and determine whether under the totality of the circumstances the annexation is reasonable.' "[103] In keeping with the "totality of the circumstances" analysis, the Court has also held that all twelve factors must be considered and no one factor is dispositive of reasonableness.[104]

The Impact of Annexation on Schools. Prior to 1986, § 37-7-611 of the Mississippi Code of 1972 provided that in municipalities having a municipal school district, school district boundaries expanded with the limits of the municipality. That section of the code was repealed in 1986. However, questions arose over the preclearance of the matter under the Voting Rights Act of 1965. After one trip to the Mississippi Supreme Court and three to the United States Supreme Court the issue was finally settled when the United States Department of Justice precleared the repeal of § 37-7-611. Now municipal annexation has no impact on school district lines.

Appeal. The same rules apply to annexation appeals as to appeals in incorporation cases.[105]

Post Annexation. If the annexation is successful, a certified copy of the decree must be sent to the secretary of state.[106] A map of plat of the approved boundaries is to be submitted to the chancery clerk for recordation in the official plat book.[107]

Citizen Initiated Annexation. Citizens in unincorporated areas[108] may initiate an annexation under the provisions of §§ 21-1-47 and -45. The following requirements must be met:

Extension of the Boundaries of Winona v. City of Winona, 879 So. 2d 966, 972 (Miss. 2004)). See also Extension of Boundaries of City of Ridgeland v. City of Ridgeland, 651 So. 2d 548, 551 (Miss. 1995); Bassett v. Town of Taylorsville, 542 So. 2d 918, 921 (Miss. 1989).

[102] See Addendum B, which includes a list of these so-called "sub-indicators."

[103] In re Extension of Boundaries of City of Winona, 879 So. 2d 966, 972-73 (Miss. 2004) (quoting In re Enlargement & Extension of Mun. Boundaries of City of Biloxi, 744 So. 2d 270, 276 (Miss. 1999)).

[104] *Byram*, 16 So. 3d at 683; *Winona*, 879 So. 2d 972-73.

[105] *Code,* §§ 21-1-37 and 21-1-21. The Mississippi Supreme Court has emphasized the obligation of the municipality to make certain that the record of the proceedings is complete in the court below. In *Norwood v. In Matter of Extension of Boundaries of City of Itta Bena*, 788 So. 2d 747 (Miss. 2001) the court permitted parties who had not participated in the trial to appeal on the issue of jurisdiction. In the absence of a record showing proper posting of notice the Court held that the annexation was void.

[106] *Code,* § 21-1-39.

[107] *Code,* § 21-1-41.

[108] *Code,* § 21-1-45 of the *Code* mistakenly utilizes the words "incorporated territory adjacent to any municipality." The Mississippi Supreme Court resolved the issue in *In Re Ridgeland*, 494 So. 2d 348 (Miss. 1986).

The territory sought to be included must be contiguous to the municipality and
A petition must be filed and signed by two thirds (2/3) of the qualified electors of the area sought to be included.[109]

A petition cannot be filed within two (2) years of the date of an adverse determination of any proceedings for the inclusion of the same territory.[110]

Deannexation

The same statute which grants citizens of an adjoining territory the right to initiate an annexation gives citizens of existing cities the right to seek deannexation.[111] The procedures are the same as for citizen-initiated annexations and are covered by the same statutes. This has been a little used remedy in the state. The Mississippi Supreme Court recently rendered a decision in one of the few deannexation cases to arise since the adoption of the 1950 statutes.[112] The Court held that the test is the same for annexations and deannexations – reasonableness.

Combination

Two (2) or more cities may combine by following the procedures set out in § 21-1-43. The following requirements must be met:

- The municipalities must be adjacent;
- The governing authorities of each city must adopt an ordinance;[113]
- A petition must be filed in the chancery court;[114]
- The ordinance must state the name of the new city; and
- The chancellor must find the combination reasonable.

The decree of the chancellor shall properly classify the new municipality as a town or city.[115] The qualified electors of any territory contiguous to and adjoining any existing municipality and the qualified electors of any territory which is a part of an existing municipality, may be included in or excluded from such municipality, as the case may be, in the manner hereinafter provided. Whenever the inhabitants of any incorporated territory adjacent to any municipality shall desire

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[109] The petition must: accurately describe the territory to be included; set forth the reasons the territory should be included; be sworn to by at least one (1) of the petitioners; and have attached a plat of the municipality as it will exist if the territory is added.
[110] *Code,* § 21-1-45.
[111] *Code,* § 21-1-45 provides:
[112] See *In re Exclusion of Certain Territory from City of Jackson*, 698 So. 2d 490 (Miss. 1997) (petition for deannexation found to be reasonable).
[113] The ordinance must meet the same requirements as an ordinance for annexation.
[114] The petition must meet the same requirements as a petition for annexation.
[115] The statute provides that a new village cannot be created in this manner because two villages may not combine unless the combined population is at least 500. (§ 21-1-43). However, the statute now also provides that only cities or towns may be created; thus, the creation of new villages is no longer allowed. (§ 21-1-1).

to be included therein, and whenever the inhabitants of any territory which is a part of an existing municipality shall desire to be excluded therefrom, they shall prepare a petition and file same in the chancery court of the county in which such municipality is located, which said petition shall be signed by at least two-thirds of the qualified electors residing in the territory proposed to be included in or excluded from such municipality. Said petition shall describe accurately the metes and bounds of the territory proposed to be included in or excluded from such municipality, shall set forth the reasons why the public convenience and necessity would be served by such territory being included in or excluded from such municipality, as the case may be, and shall be sworn to by one or more of the petitioners. In all cases, there shall be attached to such petition a plat of the municipal boundaries as same will exist in the event the territory in question is included in or excluded from such municipality. No territory may be so excluded from a municipality within two years from the time that such territory was incorporated into such municipality, and no territory may be so excluded if it would wholly separate any territory not so excluded from the remainder of the municipality. No petition for the inclusion or exclusion of any territory under this section shall be filed within two years from the date of any adverse determination of any proceedings originated hereinafter under this chapter for the inclusion or exclusion of the same territory.

Post Combination Operation. After the combination, the governing authorities of both cities continue to serve until the next regular election. The mayor of the larger city becomes the mayor of the new city. Tax assessments and levies continue until the next time they would be set by law. The ordinances of the larger city become effective for the new city.[116]

Abolition

Though a new municipality must have at least 300 persons, existing villages may continue to operate.[117] However, if a municipality drops below 50 inhabitants according to the latest U.S. Census, it will be automatically abolished.[118] Additionally, a municipality is automatically abolished if it fails to hold official meetings for a period of twelve (12) consecutive months or if it fails to hold municipal elections for two (2) consecutive elections.[119]

Municipalities of fewer than 1,000 inhabitants may voluntarily abolish the town or village by taking the following steps:

- An ordinance must be adopted setting forth the reasons for dissolution;
- A petition must be filed in the chancery court seeking to abolish the municipality;
- A hearing must be set;
- Notice of the hearing must be properly given;[120]
- A hearing must be held with those opposed being given the right to appear; and
- The chancellor must determine that the abolition is reasonable.

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[116] *Code,* § 21-1-43.
[117] *Code*, § 21-1-1.
[118] *Code,* § 21-1-49.
[119] *Code,* § 21-1-51.
[120] Notice is given in the same manner as for annexations or incorporations.

ADDENDUM A

Previous Legislative Sovereign Immunity in Mississippi until the *Stokes* holding.

YEAR	STATUTE	DESCRIPTION	EXPOSURE LIMITATIONS
1984	Ch. 495, Laws 1984 (S.B. 2441)	Original law, providing sovereign immunity to State and political subdivisions, with waiver under certain circumstances; new law applicable only to claims against the State accruing after 7/1/85 and against political subdivisions accruing after 10/1/85	No exposure beyond $500,000
1985	Ch. 474, Laws 1985 (H.B. 983)	Reenacted 1984 Act and postponed effective date of law to 7/1/86 and 10/1/86, respectively	No exposure beyond $500,000
1986	Ch. 438, Laws 1986 (S.B. 2166)	Reenacted 1985 Act and postponed effective date of law to 7/1/87 and 10/1/87, respectively	No exposure beyond $500,000
1987	Ch. 483, Laws 1987 (S.B. 2454)	Reenacted 1986 Act and postponed effective date of law to 7/1/88 and 10/1/88, respectively; repealed § 4 of 1984 Act, as reenacted and amended in 1985 and as amended in 1986 (removing language later found to be unconstitutional); added § 6, which brought language back	For cause of action accruing between 7/1/88 and 7/1/89, not beyond $25,000; 7/1/89 and 7/1/90, not beyond $200,000; after 7/1/90, not beyond $500,000
1988	Ch. 442, Laws 1988 (H.B. 937)	Reenacted 1987 Act and postponed effective date of law to 7/1/89 and 10/1/89, respectively	7/1/89-7/1/90 $25,000 7/1/90-7/1/91 $200,000 after 7/1/91 $500,000
1989	Ch. 537, Laws 1989 (H.B . 339)	Reenacted 1988 Act and postponed effective date of law to 7/1/90 and 10/1/90, respectively	7/1/90 - 7/1/91 $25,000 7/1/91-7/1/92 $200,000 after 7/1/92 $500,000
1990	Ch. 518, Laws 1990 (H.B. 945)	Reenacted 1989 Act and postponed effective date of law to 7/1/91 and 10/1/91, respectively	7/1/91-7/1/92 $25,000 7/1/92-7/1/93 $200,000 after 7/1/93 $500,000
1991	Ch. 618, Laws 1991 (S.B. 3242)	Reenacted 1990 Act and postponed effective date of law to 7/1/92 and 10/1/92, respectively	7/1/92-7/1/93 $25,000 7/1/93-7/1/94 $200,000 after 7/1/94 $500,000

Source: *Stokes v. Kemper County Bd of Sup'rs*, 691 So. 2d 391 (Miss. 1997). Legislative Sovereign Immunity post-*Stokes* is omitted.

ADDENDUM B

I. Overview of Annexation
- A. Why Annex
  - 1. Inadequate Land Resources
  - 2. Control Peripheral
    - a) Sub-standard Development
    - b) Incompatible Land Use
    - c) Traffic Arteries
  - 3. Expansion of Tax Base
  - 4. Need for Municipal Services

- B. Overview of Legal Process
  - 1. Two Ways City Boundary Can Be Expanded
    - a) City Initiated Annexation
    - b) Citizen Initiated Inclusion
  - 2. Deannexation
  - 3. Incorporation
  - 4. "Reasonableness" Is the Common Thread

- C. What Is Reasonable?
  - 1. Twelve Indicia recognized by courts
  - 2. So-called "sub-indicators" sometimes present

II. Pre-Annexation Planning
- A. Annexation Study
  - 1. Formal Written Report
  - 2. Informal Report
  - 3. Type of Annexation
    - a) Incremental
    - b) Phased
    - c) Comprehensive

- B. Planning Team
  - 1. Urban Planners
    - a) In House
    - b) Outside Consultant
    - c) Attorneys
    - d) City Attorney
    - e) Special Counsel
  - 2. City Staff
  - 3. Engineer
  - 4. Financial Planner

C. Indicia of Reasonableness and “sub-indicators”

1. Municipality’s Need for Expansion
   a) Spillover development into the proposed annexation area;
   b) Internal growth;
      Population growth;
      City's need for development land;
      Need for planning in the annexation area;
      Increased traffic counts;
      Need to maintain and expand the City's tax base;
      Limitations due to geography and surrounding cities;
      Remaining vacant land within the municipality;
      Environmental influences;
      Need to exercise control over the proposed annexation area;
      Increased new building permit activity
2. Path of Growth
   a) Spillover development in annexation area;
   b) Annexation area immediately adjacent to City;
   c) Limited area available for expansion;
   d) Interconnection by transportation corridors;
   e) Increased urban development in annexation area;
   f) Geography;
   g) Subdivision development
3. Potential Health Hazards
   a) Potential health hazards from sewage and waste disposal;
   b) Large number of septic tanks in the area;
   c) Soil conditions which are not conducive to on-site septic systems;
   d) Open dumping of garbage; and
   e) Standing water and sewage
4. Municipality’s Financial Ability
   a) Present financial condition of the municipality;
   b) Sales tax revenue history;
   c) Recent equipment purchases;
   d) Financial plan and department reports proposed for implementing and fiscally carrying out the annexation;
   e) Fund balances;
   f) City's bonding capacity; and
   g) Expected amount of revenue to be received from taxes in the annexed area.
5. Need for Zoning and Overall Planning

6. Need for Municipal Services
    a) Requests for water and sewage services;
    b) Plan of the City to provide first response fire protection;
    c) Adequacy of existing fire protection;
    d) Plan of the City to provide police protection;
    e) Plan of the City to provide increased solid waste collection;
    f) Use of septic tanks in the proposed annexation area; and
    g) Population density.
7. Natural Barriers
8. Past Performance
9. Social and Economic Impact
10. Impact on Minority Voting Strength
11. Fair Share
12. Other Factors

D. Need for Expansion
1. Population Changes
    a) Inside City
    b) In Surrounding Area
2. Population Projections
3. Land Use Absorption
    a) Land Use Patterns
    b) Household Size
    c) New Construction
    d) Demolitions
    e) Vacant Land
        (1) Developable Land
        (2) Undevelopable Land
        (3) Constrained Land
    f) Transportation Corridors

E. Path of Growth
1. Spillover Growth
    a) Residential
    b) Commercial
    c) Industrial
2. Extension of Public Facilities and Utilities
3. Transportation Corridors
4. Contiguous Nature of Annexation Area
5. Barriers to Paths of Growth
    a) Natural
    b) Geopolitical
    c) Developmental

F. Potential Health Hazards
    1. Sewerage Disposal
        a) Existence of Septic Tanks
        b) Soil Conditions
        c) Central Sewer
    2. Solid Waste Disposal
        a) Curbside Collection
            (1) Frequency of Collection
        b) Central Collection (Dumpsters)
        c) No Collections
        d) Open Dumping
    3. Pest Control
        a) Mosquito Control
            (1) Spraying
            (2) Breeding Site Control
        b) Rat Control

G. Financial Ability
    1. Financial Reserves
    2. Bonding Capacity
    3. Revenue Structure
    4. Capital Improvements Plan for Existing City
    5. Capital Improvements Plan for Annexation Area
    6. Cost of Providing Additional Services in Annexation Area
    7. Revenues from Annexation Area

H. Need for Zoning and Overall Planning
    1. Planning Capability of City
        a) Personnel
        b) Ordinances
            (1) Zoning
            (2) Subdivision Regulations
            (3) Standard Codes
    2. Planning Capability of County
        a) Personnel
        b) Ordinances
            (1) Zoning
            (2) Subdivision Regulations
            (3) Standard Codes
    3. Transportation Planning
    4. Utility Planning

I. Need for Municipal Services
   1. Level of Urbanization in the Annexation Area
      a) Existing
      b) Reasonably Anticipated
   2. Level of Existing Services in the Annexation Area
      a) Services Already Provided by City
      b) Services Provided by Another Governmental Entity
      c) Services Provided by Private Entities
   3. Cost of Existing Services in the Annexation Area
   4. Level of Usage of City Services by Annexation Area Residents
      a) Parks and Recreation
      b) Public Facilities

J. Natural Barriers
   1. Natural
      a) Rivers, Bays, and Other Bodies of Water
      b) Flood Plains
      c) Ridge Lines
      d) Topography
   2. Geopolitical
      a) Another Municipality
      b) County Line
      c) Water, Sewer, Garbage Collection, or Fire District Boundaries
      d) Certificated Area
   3. Man Made
      a) Limited Access Highways
      b) Existing Development

K. Past Performance
   1. Time Frame for Providing Services to Areas Annexed in the past
   2. Promises Made in Prior Annexations
   3. Excuses for Bad past Performances
      a) Natural Disasters
         (1) Hurricane
         (2) Floods
      b) Funding
      c) Changes of Conditions
      d) War or Military Preparedness

L. Diminution of Minority Voting Strength
   1. The Annexation Should Not Illegally Diminish the Voting Strength of a Protected Minority under Section Five of the Voting Rights Act of 1965
      a) Applies to the Existing Population of the City and the Annexation Area and the Projected Population as a Result of the Annexation of Uninhabited Areas

M. The Impact on Those Who Live or Own Property in the Annexation Area
   1. Economic Impact
      a) Tax Increases
      b) Utility Rate Reduction or Increase
      c) Reduction in Fire Insurance Rates
      d) Income Tax Deductions for Property Tax
      e) Increased or Decreased Value of Land
   2. Social Impact
      a) Impact of Increased Regulations
         (1) Positive or Negative
         (2) Restrictions on Personal Freedoms (i.e. Animal Control Ordinance)
   3. Enhanced Governmental Services and Facilities
   4. Any Other Impact

N. Fair Share
   1. Whether the Property Owners and Other Inhabitants of the Annexation Area Enjoy the Benefits of Proximity to the City Without Paying Their Fair Share in Taxes
      a) Community of Interest
      b) Dependence on the City for Social and Economic Opportunities
      c) Benefit from Reduced Fire Insurance Rates Because of Proximity to City
      d) Utilization of the City's Public Facilities

O. Other Factors
   1. "Central City Blues"
   2. Anything Else That Impacts "Reasonableness"

P. Open Meetings Act
   1. Annexation Is "Litigation" Which May Be Discussed in Executive Session on Properly Closing of Meeting

Q. Public Hearings
   1. A Municipality Is Not Required to Hold a Public Hearing or Give Notice of its Intent to Annex. Jackson v. Flowood, 331 So. 2d 909 (Miss. 1976).
   2. Gulfport Decision

R. Water and Sewer Systems
   1. Certificates of Public Convenience and Necessity
   2. Value of System
      a) Facilities
      b) Certificate of Public Convenience and Necessity
   3. Farmers Home Indebted System
   4. Fire Protection vs. Domestic Service

5. Other Municipalities
    a) One Mile Corridor
    b) Five Mile Corridor
6. Municipal Utility Commissions

S. Review and Revision
1. Fine Tuning
    a) Financial
    b) Program of Services and Facilities
    c) Identity of Opposition
    d) Discovery
2. Adoption of Five-Year Plan
    a) Plan of Services
    b) Plan for Capital Improvements

T. Impact of Schools
1. Code, § 37-7-611
2. Repeal of Code, § 37-7-611 (July 1, 1987)
3. Code, § 21-1-59
4. Greenville Municipal School District v. Western Line Consolidated School District
5. Dupree I
6. Dupree II

III. Legal Requirements
A. Sources of Annexation Law
1. Section 88 of the Mississippi Constitution
2. Title 21 Chapter 1 of the Code
3. Mississippi Supreme Court Cases
4. Mississippi Rules of Civil Procedure
5. United States Code
6. Federal Court Cases
7. Section Five of the Voting Rights Act of 1965

B. The Legal Process
1. Adoption of the Ordinance
2. Petition Filed in the Chancery Court
3. Publication of Notice
4. Summons on Surrounding Cities
5. Application for a Hearing Date
6. Hearing
7. Decision
8. Appeal

C. The Ordinance – Legal Requirements
   1. Legal Description of the Area to Be Annexed
   2. Legal Description of the City as Enlarged
   3. Describe the Improvements to be Made
      a) The Manner and Extent of Improvements
      b) The Approximate Time in which the Improvements Are to be Made
   4. A Statement of the Services to Be Rendered

D. The Petition – Legal Requirements
   1. Recite the Fact of Adoption of the Ordinance
   2. Ask for Enlargement of the City
   3. Have Attached a Certified Copy of the Ordinance
   4. Have Attached a Map or Plat of the Boundaries as They Will Exist in the Event the Annexation Is Approved

E. Parties
   1. ". . . All Parties, Interest In, Affected By, or Being Aggrieved By . . ."
      a) Individuals
      b) Industry
   2. Municipalities Within Three Miles of Any of the Territory Annexed
   3. Counties
   4. School Board

F. Process
   1. Publication
      a) Number of Times
      b) Where Published
      c) When Published
   2. Posting
      a) How Many Postings
      b) Where Posted
         (1) Public Place
         (2) What If There Is No Public Place
   3. Summons

IV. Trial Preparation
   A. Discovery
      1. Interrogatories
      2. Request for Admissions
      3. Request for Production of Documents
      4. Depositions

B. Exhibit Preparation
   1. Maps
   2. Charts
   3. Photos
   4. Documents
   5. Tables

C. Potential Settlement
   1. Objectors Identified
   2. Deletion of Portions of Annexation Area
      a) Sperry Rand Decision
      b) Examples
         (1) Gulfport
            (a) Mississippi Power – Tax Exemptions
            (b) North Gulfport – Enhanced Plan
            (c) HCDC Agreements
         (2) Southaven
            (a) Utility Agreements – Horn Lake Water Association

D. Witnesses
   1. Identification
   2. Selection
   3. Preparation

V. Trial
   A. Procedure
      1. Statutory
      2. Rule 81, Mississippi Rules of Civil Procedure
         a) Written Pleadings Not Required
         b) Appeal Bond of $500 Stays Proceedings
      3. Appeal Time
         a) Statute – Ten (10) Days after Decree Entered
         b) Mississippi Supreme Court – Rules 30 Days after Decree Entered

   B. Burden of Proof
      1. The Burden of Proving the Annexation Is Reasonable Is on the City

   C. Path of Growth
      1. Spillover Growth
         a) Residential
         b) Commercial
         c) Industrial
      2. Extension of Public Facilities and Utilities
      3. Transportation Corridors
      4. Contiguous Nature of Annexation Area

5. Barriers to Paths of Growth
    a) Natural
    b) Geo-Political
    c) Developmental

D. Potential Health Hazards
1. Sewerage Disposal
    a) Existence of Septic Tanks
    b) Soil Conditions
    c) Central Sewer
2. Solid Waste Disposal
    a) Curbside Collection
        (1) Frequency of Collection
    b) Central Collection (Dumpsters)
    c) No Collections
    d) Open Dumping
3. Pest Control
    a) Mosquito Control
        (1) Spraying
        (2) Breeding Site Control
    b) Rat Control

E. Financial Ability
1. Financial Reserves
2. Bonding Capacity
3. Revenue Structure
4. Capital Improvements Plan for Existing City
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6. Cost of Providing Additional Services in Annexation Area
7. Revenues from Annexation Area

F. Need for Zoning and Overall Planning
1. Planning Capability of City
    a) Personnel
    b) Ordinances
        (1) Zoning
        (2) Subdivision Regulations
        (3) Standard Codes
    c) Planning Capability of County
        (1) Personnel
        (2) Ordinances
            (a) Zoning
            (b) Subdivision Regulations
            (c) Standard Codes
            (d) Transportation Planning
            (e) Utility Planning

G. Need for Municipal Services
   1. Level of Urbanization in the Annexation Area
      a) Existing
      b) Reasonably Anticipated
   2. Level of Existing Services in the Annexation Area
      a) Services Already Provided by City
      b) Services Provided by Another Governmental Entity
      c) Services Provided by Private Entities
   3. Cost of Existing Services in the Annexation Area
   4. Level of Usage of City Services by Annexation Area Residents
      a) Parks and Recreation
      b) Public Facilities

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      b) Flood Plains
      c) Ridge Lines
      d) Topography
   2. Geo-Political
      a) Another Municipality
      b) County Line
      c) Water, Sewer, Garbage Collection, or Fire District Boundaries
      d) Certificated Area
   3. Man-Made
      a) Limited Access Highways
      b) Development

J. Past Performance
   1. Time Frame for Providing Services to Areas Annexed in the Past
   2. Promises Made in Prior Annexations
   3. Excuses for Bad Past Performances
      a) Natural Disasters
         (1) Hurricane
         (2) Floods
      b) Funding
      c) Changes of Conditions
      d) War or Military Preparedness

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   1. The Annexation Should Not Illegally Diminish the Voting Strength of a Protected Minority under Section Five of the Voting Rights Act of 1965
      a) Applies to the Existing Population of the City and the Annexation Area and the Projected Population as a Result of the Annexation of Uninhabited Areas

L. The Impact on Those Who Live or Own Property in the Annexation Area
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      b) Utility Rate Reduction or Increase
      c) Reduction in Fire Insurance Rates
      d) Income Tax Deductions for Property Tax
      e) Increased or Decreased Value of Land
   2. Social Impact
      a) Impact of Increased Regulations
         (1) Positive or Negative
         (2) Restrictions on Personal Freedoms (i.e. Animal Control Ordinance)
         (3) Enhanced Governmental Services and Facilities
         (4) Any Other Impact

M. Fair Share
   1. Whether the Property Owners and Other Inhabitants of the Annexation Area Enjoy the Benefits of Proximity to the City Without Paying Their Fair Share in Taxes
      a) Community of Interest
      b) Dependence on the City for Social and Economic Opportunities
      c) Benefit from Reduced Fire Insurance Rates Because of Proximity to City
      d) Utilization of the City's Public Facilities

N. Witnesses
   1. Mayor
   2. Department Heads
      a) Chief Financial Officer
      b) Police Chief
      c) Fire Chief
      d) City Engineer
      e) Public Works Directors

O. Fair Share
   1. Whether the Property Owners and Other Inhabitants of the Annexation Area Enjoy the Benefits of Proximity to the City Without Paying Their Fair Share in Taxes
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Q. Witnesses
   1. Mayor
   2. Department Heads
      a) Chief Financial Officer
      b) Police Chief
      c) Fire Chief
      d) City Engineer
      e) Public Works Directors
   3. Urban Planner
   4. Financial Consultant
   5. Mississippi Rating Bureau Representative
   6. Public Health Officer
   7. Insurance Agents
   8. Private Citizens

R. Options of the Court
   1. Approve the Annexation in Full
   2. Approve a Part of the Annexation and Delete Portions of the Territory
   3. Deny the Annexation in Full
   4. The Chancery Court Cannot Increase the Size of the Annexation

VI. Post Trial
A. Effective Date
   1. An Annexation Is Effective
      a) Ten (10) Days after the Date of the Chancellor's Decree If There Is No Appeal
      b) Ten (10) Days after the Date of the Final Determination by the Supreme Court If There Is an Appeal
   2. Note the Conflict Caused by the Change in the Time for Appeal

B. Appeal
   1. The Record
   2. Briefing
      a) Appellant's Brief
      b) Appellee's Brief
      c) Reply Brief
   3. Motion for Expedited Appeal
   4. Oral Argument

C. Tax Liability
   1. Subjecting Newly Annexed Citizens to Taxation for Debt of the Existing City Is Not Unconstitutional. Bridges v. Biloxi, 253 Miss. 812, 178 So. 683, 180 So. 2d 154, 180 So. 2d 641, App. Dism'd 383 US 574, 16 L.Ed. 2d 106, 86 S. Ct. 1077 (1965)
   2. Annexations Completed by June 20 Are Taxed for the Entire Year

D. Post Trial Notifications
   1. Secretary of State
   2. Chancery Clerk
   3. United States Census Bureau
   4. State Rating Bureau
   5. State Tax Commission

E. Preclearance
   1. Annexation
   2. Wards
   3. Other Affected District

CHAPTER SIX

OFFICERS, BOARDS, AND COMMISSIONS[1]

Sumner Davis

In code charter municipalities using the mayor-board of aldermen form of government, the mayor and board may provide that the municipal judge, the marshal or chief of police, and the tax collector be appointive rather than elective.[2] In addition, the mayor and board have the power and authority

> to appoint a street commissioner, and such other officers and employees as may be necessary, and to prescribe the duties and fix the compensation of all such officers and employees. All officers and employees so appointed 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.[3]

In 1976, mayor-board of aldermen cities were given specific authority to establish the position of chief administrative officer (CAO) of the municipality. The establishment of the CAO position requires a two-thirds vote of the mayor and board of aldermen, but the first CAO may not be appointed by the mayor and board until after the next general municipal election. The CAO may hold one or more other appointive positions in the municipality and may perform such administrative duties and functions as the mayor and board delegate to him.[4]

Under a commission government, the council (mayor and commissioners) possesses the power "to create, fill or discontinue any and all offices and employments. . . ."[5] This power includes the right to increase or decrease compensation at any time, to make and enforce rules and regulations governing officers and employees, and to remove any officer appointed by the council.[6]

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[1]This chapter is an update of Chapter IV, "Officers, Ordinances and Boards," in *A Manual of Mississippi Municipal Government*, 4th Edition (1987), edited by Dana B. Brammer and published by the Public Policy Research Center, College of Liberal Arts, The University of Mississippi. The author and the editors gratefully acknowledge the permission of the Public Policy Research Center, Dana B. Brammer, Director Emeritus, to reproduce, adapt, and use this material in this manner.
[2]*Code*, § 21-3-3.
[3]*Code*, § 21-3-5.
[4]*Code*, § 21-3-25(2) through § 21-3-25(5).
[5]*Code*, § 21-5-9.
[6]*Code*, § 21-5-9.

The laws governing council-manager government provide that all officers and employees of the municipality, except the mayor and councilmen, shall be appointive.[7] The city attorney, auditor, and police justice (if any) must be appointed by the council, but it is discretionary with the council whether they or the city manager shall appoint the city clerk and treasurer. All other department heads and municipal employees are appointed by the city manager.[8]

Under the mayor-council form of government, commonly referred to as the "strong mayor" form of government, all officers and employees other than the mayor and council must be appointed. The law allows the council to appoint a clerk of council (not subject to veto by the mayor). However, the city clerk and all other department heads must be appointed by the mayor with confirmation by the council. Subordinate officers and employees are to be appointed and removed by the directors of the various departments, subject to the restrictions of any civil service system which may be in effect. At the discretion of the council, and with its advice and consent, the mayor may appoint a chief administrative officer to coordinate and direct the operations of the various departments and functions of municipal government. The CAO shall serve at the pleasure of the mayor and shall be answerable solely to the mayor. He shall be excluded from any municipal civil service system.[9]

An interesting sidelight on the powers of a municipal governing body is the fact that it can arbitrarily increase or decrease the salary of any appointive officer during his term of office. The Attorney General of Mississippi in a situation involving a mayor-board of aldermen municipality has ruled:

> I advise you that it is my opinion. . . [that] the governing authorities of a municipality have the power to fix the compensation of the appointive officers and employees at such amount as they deem proper and to change same from time to time as they see fit.[10]

Although this ruling concerned a mayor-board of aldermen municipality, it would apply equally to any other form of municipal government in Mississippi.

Officers to be elected to a municipal office must qualify as municipal electors.[11] The general laws provide that in all cases the governing body of a municipality shall be elective. Whether or not other officers are elective will depend upon the form of government and the ordinances of the particular municipality.[12]

Appointments by the Governing Body. The governing authorities shall appoint all officers to be appointed by them at the first regular meeting of the group after each regular municipal election.

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[7]*Code,* § 21-9-21.
[8]*Code*, § 21-9-29.
[9]*Code*, § 21-8-7, § 21-8-13, § 21-8-23, and § 21-8-25.
[10]Letter dated January 9, 1954, from Attorney General J. P. Coleman to Mr. A. C. Edmonson, Town Clerk, Edwards, Mississippi.
[11]Qualifications for municipal electors may be found in Chapter Fifteen.
[12]For additional information on elective and appointive officers, see Chapter Four.

The officers so appointed will take the oath of office, and all officers and employees handling money or having custody of public funds shall give bond, with sufficient surety, in a penalty not less than $10,000 for commission and council forms of government and $50,000 for mayor-board of alderman, mayor-council and council-manager governments.[13] At the discretion of the governing authorities, municipalities may purchase "errors and omissions insurance" for municipal officers and employees.[14]

Appointment of City Attorney. Annually, the governing authorities may appoint an attorney-at-law, prescribe his duties and determine his compensation. In the event legal work that goes beyond that anticipated in the contract is needed by the municipality, the governing authorities, by a unanimous vote, may increase the attorney's salary commensurately. Additional legal assistance or financial advice may also be obtained by the governing authority of the municipality over and above the services supplied by the regular attorney. In the case of the city attorney or any other attorney serving the municipality in the matter of issuing or refunding bonds, he may not be compensated at a rate higher than 1 percent (1%) of the bonds issued or refunded.[15]

DUTIES OF CERTAIN MUNICIPAL OFFICERS

Municipal Clerk.

The clerk of each municipality is designated by statue, and serves as:

- Auditor, *Code,* § 21-15-21.
- Bookkeeper, *Code,* § 21-35-11, § 21-39-5.
- Custodian of the official seal, *Code, §* 21-15-17.
- Clerk of the police court, *Code,* § 21-23-11 (see also Chapter Sixteen)
- Registrar of voters, *Code,* §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 *Code,* § 23-15-39(3).
- *Ex officio* treasurer (in municipalities not having depositories), *Code,* § 21-3-5 and § 21-39-19.

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

- 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; *Code,* § 21-19-25.

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[13]*Code,* § 21-15-3; and §§ 21-3-5, 21-5-9, 21-7-11, 21-8-23, and 21-9-21. The premium on the surety bond shall be paid by the municipality.
[14]*Code*, § 21-15-6.
[15]*Code,* § 21-15-25.

- 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"); *Code,* § 21-15-17.
- Keep a "Docket of Claims," in municipalities of 2,000 or more, or in others so ordering, *Code,* § 21-39-7.
- 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"), *Code,* § 21-15-19
- Make monthly financial reports to the governing body at its regular meeting; *Code*, § 21-35-13
- Keep the ordinance book; *Code*, § 21-13-13 and § 21-15-17.
- Copy the assessment rolls; *Code*, § 21-33-41.
- Certify and publish the levy for municipal taxes; *Code*, § 21-33-47.
- Certify certain tax levy information to the Department of Revenue; *Code,* § 21-33-47.
- Issue warrants; *Code,* § 21-39-13.
- Certify copies of ordinances whenever proof of their existence is needed in judicial proceedings *Code,* § 21-13-17.

For additional information about the many varied financial duties of the clerk listed above, see Chapter Nine.[16]

Legal responsibility for preserving public records of the municipality rests with the governing authorities, but in practice the clerk assumes this duty. For a detailed account of record management, see Chapter Fourteen.

Deputy Clerk. Every municipality may appoint one or more deputy clerks who shall have all of the powers and responsibilities of the clerk. His pay is to be set by the governing authorities and he is removable from office at the pleasure of such authorities. He takes the same oath of office as does the clerk and the certificate of his appointment is made a part of the permanent records of the office of the clerk.[17]

Marshal or Chief of Police. The marshal or chief of police shall be the chief law enforcement office of the municipality and shall have control and supervision of all police officers employed by said municipality. The marshal or chief of police shall be an ex-officio constable within the boundaries of the municipality, and he shall perform such other duties as shall be required of him

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[16]Within the discretion of the governing authorities of any municipality with 75,000 or more inhabitants, a fiscal or financial department may be established and its director shall be authorized to act in all financial matters as the city clerk is authorized to act. *Code*, § 21-17-15.
[17]*Code,* § 21-15-23.

by proper ordinance. Before performing any of the duties of his office, the marshal or chief of police shall give bond, with sufficient surety, to be payable, conditioned and approved as provided by law, in an amount to be determined by the municipal governing authority (which shall be not less than Fifty Thousand Dollars ($50,000.00)). The premium upon said bond shall be paid from the municipal treasury. If any marshal or chief of police shall fail to perform any of the duties of his office, it shall be the duty of the district attorney or county attorney upon receiving notice thereof to immediately file quo warrantor proceedings against such official.[18]

Tax Collector. "The tax collector shall collect municipal taxes during the time and in the same manner and under the same penalties as the state and county taxes are collected." He shall be governed by the general revenue laws of the state and must make the required reports to the governing authorities. The full amount of his collections shall be paid to the municipality, and his compensation and commissions shall be determined by the governing authorities and paid by the issuance of warrants.[19]

Mayor. Irrespective of the form of municipal government, each Mississippi mayor:

> shall from time to time communicate, in writing, to the governing body such information and recommend such measures as in his opinion may lead to the improvement of the finances, the police, health, security, ornament, comfort and general prosperity of the municipality.
>
> . . . shall be active and vigilant in enforcing all laws and ordinances for the government of the municipality, and he shall cause all other officers to be dealt with promptly for any neglect or violation of duty.
>
> . . . shall have power, when he deems it proper, to require any officer of the municipality to exhibit his accounts or other papers, and to make report to the governing body, in writing, touching any subject or matter he may require pertaining to his office.
>
> . . . is authorized to call on every male inhabitant of the municipality over twenty-one (21) years of age and under sixty (60) years to aid in enforcing the laws.
>
> . . . shall have the power to remit fines and forfeitures, and to vacate and annul penalties of all kinds, for offenses against the ordinances of the municipality, by and with the consent of the governing body. However, a fine, forfeiture or penalty shall not be remitted, vacated or annulled unless the reasons therefore be entered on the minutes by the clerk, together with and as a part of the order so doing.[20]

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[18]*Code*, § 21-21-1.
[19]*Code*, § 21-33-53; see also Chapter Nine.
[20]*Code,* § 21-15-7 through § 21-15-15.

BOARDS, COMMISSIONS, AND AUTHORITIES

The general laws of Mississippi provide for the creation of municipal commissions, boards, or authorities for the management and control of schools, parks, public utilities, ports, hospitals, libraries, civil service administration, municipal employees retirement and police and firemen's relief and disability funds, elections, zoning adjustment, public housing, and public health.

The School Board. In 1986, the Mississippi Legislature enacted a "uniform school law."[21] This law was designed to reorganize and simplify the management of school districts throughout the state. Municipal school districts will continue to be governed by a board of five trustees chosen for overlapping five-year terms.[22]

Where the school district boundaries are coterminous with the boundaries of the municipality, the trustees will be elected by the governing body of the municipality. If fifteen percent (15%) or more of the pupils enrolled in a municipal separate school district reside in added territory outside the corporate limits, then at least one (1) member of the board of trustees of such school district shall be a resident of the added territory outside the corporate limits. In the event the added territory of a municipal separate school district furnishes thirty percent (30%) or more of the pupils enrolled in the schools of such district, then not more than two (2) members of the board of trustees can be residents of the added territory outside the corporate limits.[23]

The Park Commission.[24] At the discretion of the governing authorities of any municipality, a park commission may be created, composed of three (3) to seven (7) members, to manage and control all of the parks, playgrounds, and swimming pools established and maintained by the municipality. The "park commissioners" must be qualified electors of the municipality and must not hold any other municipal office.

In a municipality operating under the mayor-council form of municipal government, the governing authorities, in their discretion, may create an advisory park and recreation commission which shall serve as an advisory board on all such matters. The board should consist of five (5) to nine (9) members, and in those municipalities which have been divided into five (5) wards, the commission shall consist of not less than five (5) nor more than seven (7) members; in those municipalities which have been divided into seven (7) wards, the commission shall consist of not less than seven (7) nor more than nine (9) members; in those municipalities which have been divided into nine (9) wards, the commission shall consist of nine (9) members, and providing that at least One (1) resident of each of the wards in the municipality be appointed to the commission.

The governing authorities of the municipality determine what, if any, compensation the park commissioners will receive. When first appointed by the governing authority (appointed by the mayor and confirmed by the city council in municipalities operating under a mayor-council form of government), the terms of office of the park commissioners shall be one (1) for one (1) year,

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[21] *Code,* §§ 37-6-1 *et seq*.
[22] *Code*, § 37-6-7 and § 37-7-203.
[23] *Code,* § 37-7-203.
[24] *Code*, § 21-37-33 through § 21-37-43.

one (1) for two (2) years, and so on for the number of members on the park commission. Thereafter, the term of each commissioner shall be for as many years as the number of members on the commission. (In a municipality operating under a mayor-council form of government, the governing authorities set a term of office for park commissioners by ordinance.) A member of a park commission may be removed by the governing authorities for inefficiency, incompetency, or any other cause.

The governing authorities of the municipality appropriate and pay to the park commission, annually, the amount of funds necessary, in the opinion of the governing authorities, to properly operate and maintain the municipality's parks, playgrounds, and swimming pools. Any funds derived from other sources by the park commission must be spent on park and recreational facilities and activities. If they create a park commission, the governing authorities may levy and collect, annually, an ad valorem tax not to exceed two (2) mills to construct, support, and maintain parks and playgrounds and for other recreational purposes. All funds in the hands of the park commission must be placed in the municipal depository and shall be considered municipal funds.

Given their charge to manage and control recreational facilities for a municipality (except in the case of a park commission in a municipality operating under a mayor-council form of government where their role is advisory, as noted above), a park commission has a full range of powers, duties, and responsibilities – personnel administration, fiscal control, establishment of regulations pertaining to use of the municipality's recreational facilities, etc. The park commission must report quarterly to the governing authorities on the fiscal condition of the park commission and all commission activities. An annual report must also be made to the governing authorities in the form of a detailed statement covering the entire management and operation of the municipality's park and recreational facilities.

Public Utilities Commissions.[25] The governing authorities of a municipality may create a public utility commission to control and mange a waterworks system; water supply system; a sewerage system; a sewerage disposal system; a gas producing, generating, transmission or distribution system; an electric producing, generating, transmission or distribution system a garbage disposal system; a rubbish disposal system, including incinerators; or any combination of the above named utilities, plus a motor vehicle transportation system. Three (3) to five (5) public utility commissioners are appointed by the governing body of the municipality. Their terms vary from three (3) to five (5) years in length and compensations is fixed and determined in a manner similar to that of the park commissioners. Where there are three (3) members of the commission, the term of office shall be for a period of three (3) years, where there are four (4) members the term of office shall be for a period of four (4) years, and where there are five (5) members the term of office shall be for a period of five (5) years. However, for the first appointment of commissioners at the formation of the commission, one (1) commissioner shall be appointed for a term of one (1) year, one (1) commissioner for a term of two (2) years, one (1) commissioner for a term of three (3) years and, where necessary, one (1) commissioner for a term of four (4) years, and one (1) commissioner for a term of five (5) years, so that thereafter the term of office of one (1) commissioner shall expire each year. Where the governing authorities of the

[25] *Code*, § 21-27-11 and § 21-27-13.

municipality do not elect to create a commission, then any system or systems owned and operated by the municipality shall be controlled and managed by the governing authorities of the municipality, who shall have all the power and authority conferred upon the public service commission. (Under the council-manager form of government, the commission is appointed by the mayor and council and not the manager.)

Port Commissions.[26] Any municipality which is designated a port of entry by the United States government must set up a port commission to exercise jurisdiction over the port and terminals, vessels and wharves, common carriers, and public utilities using the port. The commission must be composed of five (5) members appointed for terms of four (4) years. The commissioners must be residents of the municipality in which the port is located. The governor will appoint one member; the county board of supervisors will appoint one member–both of whom must be skilled and experienced in maritime affairs. The governing body of the municipality appoints three (3) members, only one of whom must be skilled and experienced in maritime affairs. However, in Natchez, Greenville, and Vicksburg, the municipal governing body serves as the port commission.[27]

Board of Trustees of a Municipal Hospital.[28] The governing body of any municipality operating a municipally owned "community hospital" (defined as: any hospital, nursing home and/or related health facilities or programs, including without limitation, ambulatory surgical facilities, intermediate care facilities, after-hours clinics, home health agencies and rehabilitation facilities, established and acquired by boards of trustees or by one or more owners which is governed, operated and maintained by a board of trustees[29]) must appoint a board of trustees to manage the hospital or facility. The board shall be made up of five (5) to seven (7) members, as the municipality chooses; and they shall serve for a term of five (5) years from the date of their appointment. They will be appointed by the governing body of the municipality. Each appointee must be a citizen or resident of the municipality. The first board members shall be appointed for terms which will permit staggered appointments in the future. Where a municipality and a county or other political subdivision share ownership of a hospital or related health facility, the board of trustees shall be appointed by the respective owners on a pro rata basis comparable to the ownership interests.

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[26]*Code*, § 59-5-17.
[27]*Code*, § 59-1-1 and § 59-1-3.
[28]*Code,* § 41-13-29.
[29]*Code*, § 41-13-10.

CHAPTER SEVEN

OPEN MEETINGS, PUBLIC RECORDS, CONFLICTS OF INTEREST

Tom Hood

The Mississippi Ethics Commission has the following duties under the Ethics in Government Law:

- Provide forms for the filing of financial disclosures by public officials and candidates and make the completed forms available for public inspection upon request;

- Receive sworn complaints and subsequently investigate alleged violations of the law by public servants; and

- Issue written advisory opinions to public servants with regard to any standards of conduct set forth in the conflict of interest laws.

The Ethics Commission also enforces the Open Meetings Act and the Public Records Act.

OPEN MEETINGS ACT

The Mississippi Open Meetings Act was adopted in 1975 and is recorded in Chapter 41, Title 25 of the Mississippi Code of 1972, Annotated. Section 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 Basics

- Public meetings must be open to the public.
    - Board Meetings
    - Work Sessions
    - Board Retreats
    - Committee Meetings
- Executive session must follow specific procedure and only for reasons listed in statute.
- 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.

Notice

- Regular meetings of some public bodies are set in statute. (depends on form of municipal government)
- 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.
- Copy of the notice must be placed in the minutes.
- Must also post notice of called special meetings on web site and email or fax notice not less than 1 hour before the meeting to anyone who requests it. (in addition to posting paper notice)
- Web site/email/fax notice does not apply to municipalities with population less than 25,000.

Minutes

- Minutes must be kept for all meetings, whether in open or executive session.
- Minutes must be recorded, but not necessarily approved, within 30 days after meeting.
- 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.
- They can be in different locations, so long as one location is open to the public.
- Equipment (speaker phone) must be located in place where board normally meets and allow members of board and public to hear deliberations.
- Votes must be clearly audible or visible to members of the board and public.

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 these 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
- The Legislature may enter executive session for any reason.
- cases of extraordinary emergency
- Prospective purchase, sale or leasing of lands
- 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.
- Preparation of professional licensing exams
- Location, relocation or expansion of a business
- Budget matter which may lead to termination of employee
- Certain PERS board investments
- Community hospital boards have additional reasons.

Enforcement Procedure for Open Meetings Act

Section 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. Section 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" are not meaningful reasons.

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-09-007
Hall vs. Miss. Trans. Commn.

- 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-09-008
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-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-09-005
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.

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.

PUBLIC RECORDS ACT

The Mississippi Public Records Act was adopted in 1983 and is recorded in Chapter 61, Title 25 of the Mississippi Code of 1972, Annotated. Section 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 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.

Response and Costs

- 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.
- Denial of request must be in writing.
- Public body may require prepayment of reasonably calculated actual costs 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.

Confidential Business Information

- Public records furnished by third parties which contain trade secrets or confidential commercial or financial information may be exempt from disclosure.
- Public body must give notice to third party which has 21 days to seek a protective order.
- If protective order is not obtained by third party, then public body must produce.

Other Exemptions

- Academic records exempt from public access, see §37-11-51.
- Appraisal records exempt from access, see §31-1-27.
- Archaeological records exempt from public access, see §39-7-41.
- Attorney work product exemption, see §25-1-102.
- Birth Defects Registry, see §41-21-205.
- Bureau of vital statistics, access to records, see § 41-57-2.
- Charitable organizations, registration information, exemption from public access, see §79-11-527.
- Concealed pistols or revolvers, licenses to carry, records, exemption, see §45-9-101
- Confidentiality, ambulatory surgical facilities, see §41-75-19.
- Defendants likely to flee or physically harm themselves or others, see §41-32-7.
- Environmental self-evaluation reports, public records act, exemption, see § 49-2-71.
- Hospital records, Mississippi Public Records Act exemption, see §41-9-68.

- Individual tax records in possession of public body, exemption from public access requirements, see §27-3-77.
- Insurance and insurance companies, risk based capital level requirements, reports, see §83-5-415.
- Judicial records, public access, exemption, see §9-1-38.
- Jury records, exempt from public records provisions, see §13-5-97.
- Licensure application and examination records, exemption from Public Records Act, see §73-52-1.
- Medical examiner, records and reports, see §41-61-63.
- Personnel files exempt from examination, see §25-1-100.
- Public records and trade secrets, proprietary commercial and financial information, exemption from public access, see §79-23-1.
- Workers' compensation, access to records, see §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

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

- Complaint is filed with Commission. Complaint is sent to public body, which can respond. Commission may dismiss complaint, make preliminary finding or hold a hearing.
- Ethics Commission may order public body to comply with law.
- Ethics Commission can mediate disputes.
- Either party may appeal de novo or enforce Ethics Commission order in local chancery court.
- Complaints can still bypass the Ethics Commission and go straight to chancery court.

Public Records Opinions

- R-13-022 & 023: Ward vs. City of Tupelo
  Text Messages and Emails send 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.

MISSISSIPPI ETHICS LAWS

The Mississippi Ethics Commission administers Title 25, Chapter 4, Mississippi Code of 1972, 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 Section 25-4-105(2), Miss. Code of 1972)
- Use of Office (Section 25-4-105(1), Miss. Code of 1972)
- Contracting (Section 25-4-105(3)(a), Miss. Code of 1972)
- Purchasing Goods and Services (Section 25-4-105(3)(b), Miss. Code of 1972)
- Purchasing Securities (Section 25-4-105(3)(c), Miss. Code of 1972)
- Insider Lobbying (Section 25-4-105(3)(d), Miss. Code of 1972)
- Post Government Employment (Section 25-4-105(3)(e), Miss. Code of 1972)
- Insider Information (Section 25-4-105(5), Miss. Code of 1972)

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, Section 25-4-105(2) and Section 25-4-105(1), Miss. Code of 1972.

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 no violation of Section 109, Miss. Const. of 1890, Section 25-4-105(2) or Section 25-4-105(1), Miss. Code of 1972, should arise.

10-005-E A city may purchase real property from a business which employs the mayor's spouse. Under these particular circumstances, neither the mayor or his spouse will have any prohibited interest in the purchase, and no violation of Section 109, Miss. Const. of 1890, or Section 25-4-105(2), Miss. Code of 1972, will result. Nevertheless, the mayor must fully recuse himself from the matter in compliance with Section 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 Section 25-4-105(2), Miss. Code of 1972.

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 Section 25-4-105(2), Miss. Code of 1972.

10-038-E Appointing a lease holder to the airport board will not automatically result in a violation of Section 109, Miss. Const. of 1890, or Section 25-4-105(2), Miss. Code of 1972, but it is inadvisable for a number of reasons. Among other concerns, the mayor should carefully consider whether appointing an individual to the same airport board with which he holds a hangar lease is consistent with the public policy set forth in Section 25-4-101, Miss. Code of 1972.

10-042-D A real estate brokerage firm owned by the mayor's spouse may accept a sales commission on a home where the transaction is partly funded by a city-approved grant program and where her agency represents the seller without violating Section 109, Miss. Const. of 1890, or Section 25-4-105(2), Miss. Code of 1972. However, the mayor's spouse may not accept her portion of a sales commission on a home where her agency represents the buyer. Additionally, the mayor must recuse himself from all down payment assistance grants to comply with Section 25-4-105(1) and Section 25-4-101.

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 Section 25-4-105(2), Miss. Cod of 1972, 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.

10-063-E A member of the board of directors of a convention and visitors bureau may not sell advertisements to the bureau. Section 109, Miss. Const. of 1890, and its statutory parallel, Section 25-4-105(2), Miss. Code of 1972, prohibit a member of a public board from having any direct or indirect interest in a contract with the government which is funded or otherwise authorized by that board during his or her term of for one year thereafter.

10-102-E An employee of a city/county recreation commission may not serve as an alderman when the board of aldermen funds the recreation commission. The employee would have a prohibited interest in any appropriation of funds by the board of aldermen to the recreation commission as proscribed in Section 109, Miss. Const. of 1890, and Section 25-4-105(2), Miss. Code of 1972.

Section 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.

OPINIONS

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 Section 25-4-105(1), Miss. Code of 1972, and creates an appearance of impropriety under Section 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 Section 25-4-105(1), Miss. Code of 1972, and the public policy codified in Section 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 Section 25-4-105(1), Miss. Code of 1972. It appears the alderman's business will benefit if the proposed ordinance is adopted.

'**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

10-026-E A city commissioner may accept employment with a nonprofit corporation with which the city has a lease of nominal value, but the commissioner must fully recuse himself from any deliberation or action by the city commission involving the lease in compliance with Section 25-4-105(1), Miss. Code of 1972.

10-050-E A member of a city council may not participate in discussions and actions involving a lease between the city and a church of which the councilman is a member and which employs the councilman's spouse. The church is a business with which the councilman is associated, and he must fully recuse himself from any matter which would benefit the church, in compliance with Section 25-4-105(1), Miss. Code of 1972.

"**Relative**" is the public servant's:

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

OPINIONS

10-024-E Pursuant to Section 25-4-105(1), Miss. Code of 1972, no public servant may use their position to obtain or attempt to obtain a pecuniary benefit for a "relative," as defined in Section 25-4-103(q). Therefore, only an official whose relative meets the definition is restricted from participating in the award of a grant to their relative.

10-031-E An individual may be appointed chief of police in a municipality when the individual's spouse owns an offender monitoring company which performs services for various court systems. However, the spouse's company may not provide services to the municipal court, pursuant to Section 25-4-105(3)(a), Miss. Code of 1972. Additionally, in compliance with Section 25-4-105(1), the chief must fully recuse himself from all discussions about monitored sentencing in cases where his department is the arresting agency but which are not heard in municipal court.

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 Section109, Miss. Const. of 1890, or Section 25-4-105(2), Miss. Code of 1972, should occur under these facts, and the alderwoman's recusal should prevent a violation of Section 25-4-105(1).

10-052-E The principal attorney for the city may employ the dependant son of an alderman to work at her home. Under the facts presented, the alderman will have no interest

in the contract for legal representation, and no violation of Section 109, Miss. Const. of 1890, or Section 25-4-105(2), Miss. Code of 1972, should result. However, if compensation paid to the alderman's son by the city attorney or spouse exceeds $2,500.00 annually, then the alderman should recuse himself from the payment of the law firm's fees and renewal of the law firm's representation of the city, in compliance with Section 25-4-105(1).

10-056-E The mother-in-law of an alderman-at-large may be appointed to the municipal housing authority. Even if the appointment were to result in a pecuniary benefit to the appointee, no violation of Section 25-4-105(1), Miss. Code of 1972, would result since the mother-in-law is not defined as a "relative" of the alderman-at-large.

10-066-E The chief of police may not send police cars to an auto repair shop owned by his son-in-law. Section 25-4-105(1), Miss. Code of 1972, 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 Section 25-4-105(1), Miss. Code of 1972, and the public policy codified in Section 25-4-101, all city employees should refrain from referring residents to another city employee for private work.

10-089-E While Section 25-4-105(1), Miss. Code of 1972, prohibits a public servant from using his or her position in government to obtain any pecuniary benefit for a "relative," the city employee's wife's brother is not defined as a relative. However, the part-time employer of the city employee is a business with which he is associated, and he may not take any action which results in a monetary benefit to the business, in compliance with Section 25-4-105(1), Miss. Code of 1972.

Subsection (3)(a) – The Contractor Prohibition

No public servant shall: (a) 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,

Except:

- 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 Section 25-4-105(3)(a), Miss. Code of 1972, not 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 Section 25-4-105(3)(a), Miss. Code of 1972, no public servant of the town may be a contractor or vendor to the town.

10-083-E A repair shop owned by the spouse of an employee of the city's mass transit division may perform repairs on division vehicles. If the employee has no ownership interest and exercises no control over the contract, the transactions will not violate Section 25-4-105(3)(a), Miss. Code of 1972. However, the employee must not use her position in the mass transit office to obtain or attempt to obtain any benefit for her husband's business in violation of Section 25-4-105(1).

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 Section 25-4-105(3)(a), Miss. Code of 1972, 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 Section 25-4-105(1).

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

No public servant shall: (b) 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.

Subsection (3)(c) – Purchasing Securities

No public servant shall: (c) 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.

Subsection (3)(d) – Inside Lobbying

No public servant shall: (d) 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.

Subsection (3)(e) – Post Government Employment

No public servant shall: (e) 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 Section 25-4-105(3)(e), Miss. Code of 1972, should occur if the city employee retires, begins working for the company and then sells merchandise to the city. Pursuant to Section 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.

Section 25-4-105(4) – Exceptions to Subsection (3)

- 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 Section 25-4-105(2). The employee would still have to recuse himself or herself from any action which might otherwise violate Section 25-4-105(1).

Section 25-4-105(5) – Insider Information

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.
- Nonpublic information may not be revealed if it might result in a monetary benefit to anyone.
- Could apply to a former public servant.

THE COMPLAINT PROCEDURE FOR THE MISSISSIPPI ETHICS IN GOVERNMENT LAW

General

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

- Violations of the Ethics in Government 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.

Complaints

Before the Ethics Commission can conduct an investigation, someone must file a sworn complaint with the Commission alleging a violation of law by a public official or public employee. All complaints, investigations and investigative records are confidential until and unless the Commission votes to remove confidentiality.

Investigations – *Code*, § 25-4-21

If a complaint filed with the Ethics Commission alleges a violation of law by a public servant, the Commission will authorize a confidential investigation of the complaint. In the course of an investigation, the Commission is empowered to administer oaths upon witnesses and issue and serve subpoenas on witnesses or for the production of records. When a complaint does not allege a violation of law, the Commission may dismiss the complaint without conducting an investigation.

Once the investigation is complete, the Commission must confidentially send a copy of the complaint to the person against whom it was filed, the respondent. The Commission is not able to protect the identity of the person who filed the complaint. Anyone receiving a complaint from the Ethics Commission has thirty (30) days within which to respond to the complaint.

Ethics Hearings

The Commission may enforce the Ethics in Government Laws through hearings held before the Commission or an independent hearing officer, to determine whether a respondent violated the law and, if so, what penalty or penalties should be imposed, if any. Hearings in ethics cases are conducted according to the Mississippi Rules of Civil Procedure and the Mississippi Rules of Evidence. A violation must be proven to the Commission by clear and convincing evidence.

Penalties

Public servants can be censured by the Commission and fined up to $10,000.00. The Commission may also recommend to the Circuit Court for Hinds County that the elected official be removed from office. The Commission may also order restitution or other equitable or legal remedies to recover public funds or property unlawfully taken, as well as unjust enrichment, although not public funds. Any pecuniary benefit received by a public servant in violation of the Ethics in Government Laws may be declared forfeited by the Commission for the benefit of the governmental entity injured.

Any contract made in violation of the Ethics in Government Laws may be declared void by the governing body involved or by a court of competent jurisdiction, and the contractor or subcontractor will receive no profit.

The Attorney General, the Commission, or any governmental entity directly injured by a violation of the Ethics in Government Laws may bring a separate civil lawsuit against the public servant or other person or business violating the provisions of this article for recovery of damages suffered as a result of such violation. The Ethics in Government Laws do not preclude civil or criminal liability under other laws or causes of action.

Appeals

Any person aggrieved by a decision of the Commission made pursuant to its hearing procedures may appeal to the Circuit Court for Hinds County, Mississippi, and execution of the Commission's decision is stayed upon the filing of a notice of appeal.

Other Penalties – *Code*, § 25-4-31

Any person who violates the confidentially of a Commission proceeding is guilty of a misdemeanor and may be fined up to $1,000 and imprisoned for up to one year. Any person who willfully and knowingly files a false complaint with the Commission or who willfully and knowingly affirms, reports or swears falsely in regard to any material matter before the Commission is guilty of a felony and if convicted may be fined $1,000 to $10,000 and imprisoned for up to 5 years.

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 most 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 by 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 – *Code*, § 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 – *Code*, § 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 – *Code,* § 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 – *Code,* § 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
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CHAPTER EIGHT

PLANNING, ZONING, AND SUBDIVISION CONTROL

Robert L. Barber Sr.

Planning is a way to link what is desired with what actually may occur. If a municipality plans adequately for its development, not only will it be prepared for change, but it can accomplish desired change and can prevent or lessen the effects of undesired change. Planning enhances the ability of a municipality to determine its future.[1]

THE COMPREHENSIVE PLAN

Sometimes referred to as the "community master plan" or "general development plan," the comprehensive plan is one of the most important tools a municipality can develop to enhance quality of life and advance important economic and developmental goals. In short, a comprehensive plan is the general framework by which development controls (zoning, subdivision codes, historic preservation plans, design review, etc.) are created and related to existing community conditions and community goals. To pass legal muster all planning programs must be based on protection and advancement of the general health, safety, welfare of the community.

Usually, a comprehensive plan is a document, or series of documents, accompanied by maps, setting forth the type of community which exists today and what the goals and policies are for future development or redevelopment of a community. A comprehensive plan is long-range, with a time horizon of at least twenty years, but based on present information and assumptions.

Uses of the Comprehensive Plan

A solid plan has a number of significant roles to play in a community. The absence of a sound plan and planning process will place a community at a significant disadvantage in these areas.

The Legal Role - Because the plan is a declaration of municipal policy and purpose, in zoning litigation, courts have often looked at the existence of a plan as evidence that a municipality has considered all relevant issues in the zoning of a particular parcel. Sound planning forms the rational basis for the administration of land use and development controls within a community.

Role in Community Education - Through an inventory of its resources, the process of developing a plan can be a way for a municipality to determine its strengths and weaknesses. The inventory is usually undertaken early in a planning project. If the planning process is open, the views of all segments of the community can be articulated and consensus can be reached.

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[1]Mel Scott, *American City Planning Since 1890* (Berkeley and Los Angeles: University of California Press, 1975), 152.

Role in Guiding Development - Private developers may use the plan as a gauge to measure the reaction of a community to a specific proposal prior to the submission of development plans. The planning commission can use the document as a guide to specific project approvals or disapprovals. Because it provides a broad view of the municipality, the plan may help separate and distill the issues in a dispute over a specific parcel of property.

The Coordination Role - The existence of a plan helps coordinate the activities of various municipal departments, public utilities, and other jurisdictions. Roads, water, sewers, schools, parks, and the like can all benefit from coordinated direction.

The Role in Planning - The plan can be used as a framework for additional planning by a municipality, for example, a closer study of a small redevelopment area.

Preparation and Adoption of the Plan

By statute the plan must address land use, transportation, housing, and community facilities. However, optional elements may be included addressing historic preservation, community design, redevelopment, neighborhood plans, and other more specific development concerns. Enabling authority for planning in Mississippi is set out in Chapter 1 of Title 17 of the *Code*.[2] The responsibility for creating a comprehensive plan may be granted to a municipal planning commission created by the municipal governing authority.

Once a plan is drafted, usually with considerable public input and the aid of qualified planning consultants, the planning commission will conduct public hearings as required by statute.[3] The rules and procedures of the commission should provide for such hearings. The plan is presented to the public, and questions are answered. The planning commission then considers the comments and questions, and the document may be amended several times before being recommended to the elected officials. The level of acceptance of a plan will be enhanced by the level of the public participation throughout the process.

Municipal authorities may conduct a public hearing or hearings to consider adoption of the plan or any revision or amendment to an existing plan. The elected body may hold the hearing or hearings or delegate the task to the planning commission. Notice of the public hearing must be published not less than 15 days prior to the hearing in a newspaper of general circulation in the county or counties where the municipality is located. The hearing may be informal, but all interested parties must be given an opportunity to be heard, and should be allowed to submit their comments in writing.[4]

Implementation of the Plan

Once the official comprehensive plan is adopted and filed with the municipal clerk, efforts should then be directed towards implementation of the plan. Implementation in its most common

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[2]*Code*, § 17-1-1 through § 17-1-39.
[3]*Code*, § 17-1-15.
[4]*Code*, § 17-1-15 and § 17-1-17.

form is provided through the administration of zoning and subdivision regulations. Other desirable tools include capital improvements plans, design guidelines, historic preservation ordinances, and economic development incentives. Such implementation ordinances should be based upon and consistent with the recommendations of the comprehensive plan.

It is the planning commission's responsibility to monitor development trends and problems with implementation of the plan, to make recommendations regarding zoning changes, to review and make recommendations on subdivision proposals, and to participate in the annual budget making process for the municipality. If there is municipal planning staff, it is the commission's responsibility to provide policy direction for that staff. All these activities should be guided by and relate directly and consistently to the official comprehensive plan.

Depending upon the pace of change in the community and its environs, the plan should be reviewed on an regular basis so that it remains responsive to the needs and issues of the people it affects. An increased number of rezoning requests or public improvement projects that are not consistent with the plan any indicate a need to update the plan.

ZONING

Zoning is the delineation of a city into areas, or zones, and the establishment of rules to govern land use and the location, bulk, height, shape, use and coverage of structures within each zone. Zoning is the primary implementation tool of the comprehensive plan. The plan establishes general areas for each use expected over the long term. Zoning delineates specific areas that are considered suitable for development of each use in the short term and protects developed areas from intrusion by incompatible uses.

Traditional Zoning Ordinances

A traditional zoning ordinance consists of two primary elements–the zoning text, which defines each zone and the conditions of use which are allowed in it, and the zoning map, which locates each zone in the municipality. As long as a zoning ordinance conforms to adopted planning purposes, including protection of public health, safety and welfare, it is considered a legitimate exercise of the basic police power of local government. However, there are ways in which that power can be abused.

A municipality cannot treat property owners in a discriminatory or arbitrary fashion. There must be a reasonable basis for different classifications of areas, and rules must be applied reasonably to specific properties.

Zoning typically divides a community into residential, commercial, and industrial zones. The zones can be further refined into more detailed areas such as single family, multifamily, retail, office, light industrial, manufacturing, institutional, open space, and the like.

Each district should contain a statement of intent, indicating the district's prime function, the characteristics which distinguish it from other districts, and the reasons for establishing it. The intent must have a substantial relation to the general purposes of zoning.

The number of residences allowed per lot is specified, as are the types of businesses allowed in commercial zones. Uses in each zone are generally of two types–uses allowed by right or under special conditions. Special or conditional uses must be reviewed on a case by case basis, while uses permitted by right require no such case review. Proposals for such uses are only allowed if they meet certain specific requirements designed to ensure they will be compatible with the uses allowed by right in the zone.

Flexible Zoning Controls

Frequently used departures from this traditional form of zoning include planned unit developments, floating zones, overlay zones, performance zoning, central business districts, mixed use zones, traditional neighborhood development and new urbanist provisions.

If the parcel is relatively large, a planned unit development can allow a mixture of uses within a parcel. The overall site plan, including streets, utilities, open space and public facilities, is submitted and approved before zoning is changed. Overall density and intensity of uses are consistent with the ordinance, but regulations do not apply on a lot-by-lot basis.

A floating zone is not shown on the map, hence the term "floating," but allows the legislative body the choice of designating any of several logical locations for a use only when a property owner is ready to proceed with development of the use on a specific site.

The overlay zone is used to meet specific physical, cultural or economic conditions not generally found in the municipality, such as older downtown districts, historic areas, slopes, and floodplains. A commercial district with a downtown district overlay may allow all the same uses as other commercial districts but have no side yard or setback requirements. A slope overlay may require that each lot be large enough or shaped to provide a building site on relatively level ground. An airport overlay may be used to restrict the height of buildings near the flight path or to increase the soundproofing requirements of construction. Historic districts serve a public purpose by preserving historic sites or buildings. Floodplain zones can be used to protect all development from flooding in areas subject to flooding.

Performance zoning allows controlled integration of uses based on the compatibility and individual characteristics of each use. There are fewer use specifications, but the acceptability of each use is determined by how well it meets general criteria relating to such factors as noise, vibration, smoke, odor, dust, glare, heat, hazards, parking, wastes, traffic, electromagnetic fields, and radioactive emissions. The intent is to control the characteristics of uses so that the character and the quality of the district are preserved. Such zoning is particularly common for industrial uses.

Other Requirements of Zoning

Traditional zoning ordinances specify the minimum size of lots, how far buildings must be set back from property lines, the height or number of stories of the buildings, how much parking must be provided, the width of the streets, and other design requirements. The setback, or yard, requirements may be an absolute number, e.g., twenty-five (25) feet from the roadway, or a percentage of the lot width for side yards or depth for front and back yards. Setbacks for property lines abutting streets may be expressed as a measurement from either the edge or the middle of the street's right-of-way. The number of parking spaces required varies with the type of use. While there are recognized standards for parking, the requirements may be modified to meet local conditions, such as the availability of public transportation or the average number of cars per resident. Most building height requirements are expressed as a combination of the height from the ground level to some point on the roof and the number of stories. Street widths are generally specified in accordance with the requirements of the agencies controlling them.

Traditional design requirements may hamper the ability of the land developer to preserve useable open space and valuable natural features. The cluster option found in many ordinances allows smaller lots, if the land gained is preserved as permanent open space. The zero lot line development, which allows side yard requirements to be combined on one side of the building, can produce more useable open space for each residence.

The building size and setback requirements can be replaced by a more flexible lot coverage ratio which limits the maximum ratio between lot and floor space in the building. These ratios are called floor/area ratios or FAR's.

Parking may be shared, if the users sharing the parking have need for the spaces at different times or if an adjoining lot has more spaces than it needs. For example, a day-time use such as an office may share parking with a night-time use such as a theater. The same office may share parking with a church, which would only need the spaces when the offices were closed. These arrangements may be formalized in a covenant which is made between the property owners and which is recorded with the lots.

Nonconforming Uses or Grandfather Provisions

Even the most flexible zoning ordinances cannot cover all situations that exist when the ordinance is adopted. Some properties will not conform to the zone in which they find themselves, e.g., businesses are found in residential zones or buildings are built too close to the lot lines. There are several ways to handle these situations, including simply identifying them and leaving them alone. However the most common is to encourage eventual redevelopment in a way that is consistent with the ordinance.

Nonconforming buildings are usually eliminated by not allowing them to be enlarged, expanded, or, if damaged over a certain point, rebuilt or replaced. If the nonconforming use is discontinued for a specified period of time, it usually may not be resumed, If it is a nonconforming business, the type of business is usually not allowed to be changed unless the new business is more compatible with the neighborhood.

An alternate strategy is to amortize each nonconforming use. The amortization period for structures depends on their current age and expected useful life. Uses are normally accorded the time any equipment used might be expected to be replaced. When the amortization period is over, the building or use must be removed or replaced with a conforming building or use.

Rezoning

The method and procedures for amending the zoning ordinance are set by state law.[5] As with the original adoption of the zoning ordinance, all rezoning must comply with statutory requirements A rezoning is actually an amendment to the existing zoning ordinance and requires the adoption of an ordinance. In general, land may only be rezoned by action of the municipal governing authority after a recommendation has been made by the planning commission and after holding the required public hearing.

Courts have generally held that the burden is upon the applicant for a rezoning to show that either there was a mistake in the original zoning in the form a scrivener's error or that a developmental change has occurred in the area of such a magnitude as justify the proposed rezoning. The governing authority should make note of these findings, or lack thereof, as part of the record.

Two-Thirds Requirement

By statute, an additional super-majority vote requirement exists when the rezoning is protested by the owners of twenty per cent (20%) or more of either of the area of the lots included in such a proposal, or of those immediately adjacent to the rear, and extending one hundred sixty (160) feet, or of those directly opposite, extending one hundred sixty (160) feet from the street frontage of opposite lots. In the event of a protest, the change must be approved by a favorable vote of two-thirds of all of the members of the legislative body.

Spot Zoning

Spot zoning generally describes a situation where property is rezoned for a use prohibited by the original zoning ordinance and out of harmony therewith. This is a common objection raised by those opposed to a rezoning, and is often argued that such a "spot zoning" is designed to favor someone. The validity of a spot zoning decision will depend on the circumstances of the individual use.

Checklist Analysis for Zoning Amendment Decisions

As a guide to determining the appropriateness of a rezoning, the following checklist might be used to evaluate potential zoning decisions:

- Would change be contrary to the general welfare?
- Is an administrative procedure available and preferable to rezoning?
- Would the original purpose of the regulation be thwarted?

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[5] *Code*, § 17-1-15 and § 17-1-17.

- Have procedural requirements been met?
- Are there sites for the proposed use in existing districts permitting such use?
- Is the proposed change contrary to the established land use pattern and the adopted plan?
- Would change create an isolated, unrelated district, i.e., is it spot zoning?
- Have major land uses changed since the zoning was applied, e.g., new expressway, new dam, and so forth?
- Is existing development of the area contrary to existing zoning ordinance, i.e., are there special uses or violations?
- Can the owner of the property realize an economic benefit from uses in accord with existing zoning?
- Would change of present district boundaries be inconsistent with existing uses?
- Would the proposed change conflict with existing commitments or planned public improvements?
- Will change contribute to traffic congestion or dangerous traffic patterns?
- Would change alter the population density pattern and thereby increase, in a detrimental manner, the load on public facilities, schools, sewer and water systems, parks, and so forth?
- Would change combat economic segregation?
- Would change adversely influence living conditions in the vicinity due to any type of pollution?
- Would property values in the vicinity be inflated by the change?
- Would property values in the vicinity be decreased by the change?
- Would change constitute an "entering wedge" and thus be a deterrent to the use, improvement or development of adjacent property in accord with existing zoning ordinance or plan?
- Would change result in private investment which would be beneficial to the redevelopment of a deteriorated area?

Special or Conditional Uses

Zoning codes often set forth special or conditional uses. Special uses are reviewed on a case by case basis to determine the fit between the use and the proposed location. The question of fit or compatibility between use and location provides the opportunity for persons to lobby for or against a proposed use.

In general, a special use can be viewed as a proposed use of land or structures which, due to the unique characteristics of the use, must be reviewed independently of previous land use actions, and is often not classified in any particular zoning district due to the variety of potential impacts it represents in different locations.

Without clear-cut arguments concerning the necessity or compatibility of a use, the allowance of a special use can be viewed as arbitrary. Specific rationale behind the decision should be included in the record of the decision. Adherence to specific criteria or standards used in similar cases provides legal support when conflicts arise.

Standards or criteria for special use approval are often used on municipal applications, not only to provide a rational basis for decision making, but also to gain insight to the petitioner's reasons for the development request. The following are examples of such standards:

- The special use will accommodate, and is necessary for the public health safety and welfare of the community;

- The special use will not alter the essential character of the proposed location and surroundings;

- The location, size, intensity of operation, and access to the site will be appropriate to the orderly development of the area;

- The characteristics of the special use will not impair the value of adjacent parcels and property in the close vicinity;

- The special use will properly locate, design, and screen parking and circulation areas to avoid and alleviate traffic hazards potentially caused by the use; and

- The special use will not create fire or traffic hazards or overtax public utilities.

Variances

The zoning code cannot cover every property situation with a rule and regulation. Properties and uses can be unique. A variation from the zoning code must respond to a "unique hardship" or "practical difficulty," usually of site or existing condition. A variation should be considered a last resort. Inappropriate granting of variances can undermine the entire zoning and subdivision codes, so decisions must be made carefully. If many similar requests arise, the zoning or subdivision codes should be reviewed to determine if either should be changed or if a particular policy should be developed to review such requests.

Site variations are allowances for properties which represent unique hardships in the development of the property. This may concern the angles, distance, and location of the plot lines to each other, which, together or individually, represent obstacles to proposed development. Many variations arise because of new zoning code implementation and the existence of older lots that were subdivided with no regulatory control. Development on such lots with modern structures can require variances to allow use of the property. Municipal officials must make the determination if the requested variance is the result of unique hardship related to the physical configuration of the lot or of building plans not appropriate to the lot.

Existing conditions can also provide unique hardships when existing structures or sites are used for purposes other than the original intent. For example, residential structures which become part of commercial district or special uses on lots created for other purposes.

Use variations are a poor planning practice and of questionable legal validity. A use variation is to allow a use in a certain zoning district that is not presently allowed in that district. The approval of such a request is actually a rezoning of a parcel, because it is allowing a parcel in one zoning district to be used in a manner allowed exclusively in another zoning district. These requests should be considered through the rezoning process.

Standards or criteria for variation approval are often used on municipal application to gain further insight into the petitioner's reasons for the variation request. The standards can generally outline the following concerns:

- The request for variation is distinguished from mere inconvenience of particular physical attributes of the parcel;
- The variation request is valid enough to circumvent existing city ordinance;
- Unique circumstances to the site are evident;
- The requested variation is unique relative to similar properties in the area;
- The unique circumstances have not been created by any person possessing an interest in the property;
- The owners of the subject property did not create the circumstance(s) requested for in the variation; and,
- The variation will not alter the essential character of the locality.

SUBDIVISION ORDINANCES

Governing authorities and planning commissioners must deal with a variety of zoning and land use controls on a regular basis. Subdivision regulations represent one of the most important land use tools available to local government.

While subdivision review is often characterized as a "non-discretionary" or "by right" procedure (assuming the property is properly zoned for the intended use), this is not necessarily true. It is important to remember that it is during this process that important decisions are made concerning the construction of major roads and utilities, the preservation of natural streams and drainage courses, the sizes and shapes of lots, and whether or not properties are developed into building lots or preserved as sites for important public uses, such as schools, parks, and rights-of-way.

Typical Subdivision Procedures

Most subdivision ordinances formally establish a two-step review and approval process for subdivision plats. The first step is review of a "preliminary" or "tentative" plat, followed by approval of a 'final" or "record" plat. In reality, most communities, whether formally adopted as part of the subdivision regulations or informally practiced, use a four-step review process: (1) pre-application meetings, (2) review of the preliminary plat, (3) review of final engineering drawings and specifications, and (4) review and recording of the final plat.

The importance of the first and third steps is often overlooked when a community analyzes its subdivision review process.

Pre-Application Meetings

While not every community formally adopts a pre-application meeting as a required step in the subdivision review process, in reality, most developers will attempt to have one or a series of meetings with the municipal staff in order to identify potential issues before going to the expense of preparing a preliminary plat. Properly organized, the pre-application meetings can benefit both the applicant and the community, and can save the planning commission many hours of meeting time.

The subdivision ordinance should be viewed as a mechanism for implementing the goals and objectives of the comprehensive plan and as the principal guide for the development of a community. The applicant should discuss with municipal staff the policies in the comprehensive plan (including the official map) and the zoning restrictions which may affect the subdivision of the property. Among the items which should be addressed at the pre-application stage are the following:

Public Use Sites - Are any future school, park, or other public use sites shown on the comprehensive plan that would involve the property? If so, will the land be acquired? Will some or all of the property be dedicated to the municipality by the developer?

Transportation - Will major right-of-way dedications be required as part of the subdivision? Will a proposed cul-de-sac need to be made a through street? Will there be access limitations imposed due to the site's frontage on a major thoroughfare?

Environment - Is the property in the flood plain or are there any known wetland areas? As a result of Mississippi's Endangered Species Protection Act, are there any animals in the vicinity that may use the property as a habitat? Are there any structures or sites on the property that are historic?

Engineering and Utilities - Are there general or localized engineering issues which need to be addressed as part of the subdivision, e.g. drainage, general soil suitability, and so forth?

Zoning Issues - Will any types of rezoning or variance requests need to accompany the subdivision application?

Procedural Matters - Does the applicant understand what steps will be involved in the subdivision process and how long approval might take? (This is the all-time, number one question of applicants.) Does the applicant understand the responsibilities involved, e.g., the type of information that must be presented to the planning commission, number of prints required, and so on? Are there any dedications, exaction or impact fees, or other types of fees or payments that are likely to be required as part of the approval process?

Having these questions addressed early in the process can identify and resolve many issues which otherwise would take up an inordinate amount of the planning commission's time during the review of the preliminary plat.

Preliminary Plat Review

The preliminary plat stage is when most major issues related to the subdivision should be resolved. When the preliminary plat review stage is completed, the applicant should know how many lots will be allowed and what is generally expected with regard to major public improvements. The planning commission's review of the preliminary plat should identify and resolve the major design issues associated with the subdivision. One of the key issues to be addressed during the review of a community's subdivision regulations is what function is to be served by the preliminary plat. Is the preliminary plat intended to establish the general planning elements of the subdivision, e.g., approximate rights-of-way width and location of roads, general configuration of lots, and overall relationship to utilities, or should the plat include detailed information concerning engineering issues that may arise during review of the final engineering drawings, e.g., size of water and sewer lines, fire hydrant location, and precise storm drainage design?

The level of information that is required to be submitted during the preliminary plan review process is related to the types of development issues facing a community. Some communities allow an applicant to submit "soft line" designs for street and lot layouts for preliminary plats, but some require additional information such as preliminary storm drainage and traffic reports to make certain critical local issues are addressed prior to the approval of the preliminary plat.

Guarantee of Installation of Public Improvements

It is also recommended that the subdivision ordinance establish specific standards to guarantee installation of required public improvements. Issues related to the form and amount of the performance guarantee are best addressed during the review of the final engineering plans.

Final Plat Review

Following preliminary review and perhaps an engineering review, the final plat must be re-examined to make certain that any design changes that may have been necessary did not cause problems with the configuration and sizes of lots. The plat is also reviewed at this point to make certain the language regarding such matters as dedication of right-of-way, notes regarding setbacks and access limitations, and provision of easements reservation are in the proper legal form.

General Design and Improvement Standards

All subdivision applications should be reviewed for consistency with the Comprehensive plan. Such review should include attention to the following design and improvement standards:

- Lot and block size standards;
- Easement requirements;
- Standards for subdivision monuments;
- Public land dedication and reservation standards;
- Street right-of-way and pavement standards;
- Private street standards;
- Intersection design and improvement standards;
- Standards for cul-de-sac streets;
- Sidewalk and bikeway requirements;
- Mass transit planning standards;
- Subdivision and development involving flood plain areas;
- Preservation of streams and natural drainage courses;
- Storm water detention;
- Recognition of wetland areas;
- Tree protection and preservation standards;
- Erosion and sedimentation control measures;
- Preservation of important historic and cultural resources;
- Toxic waste clearance or elimination;
- Connection to public utility systems;
- Over-sizing of public facilities;
- Storm sewer design;
- Public water system design;
- Sanitary sewer system design;
- Underground utility requirements;
- Solid waste storage and disposal;
- Subdivision and development entrance signs;
- Common landscaped and fencing areas; and,
- Common recreation areas.

Standards for establishing homeowners associations: The inclusion of these standards in the subdivision ordinance gives the applicant, as well as the staff and Planning Commission, a thorough understanding of the types of issues which must be considered and addressed when submitting an application for subdivision approval.

CHAPTER NINE

FINANCIAL ADMINISTRATION

Thomas S. Chain

Municipalities are responsible for providing a variety of governmental services. To facilitate provision of these services, state law grants the governing authorities (board of aldermen, city council, etc.) of each municipality with specific powers, such as the right to raise revenue, expend money, and hold property. The exercise of these powers demands strict financial administration and accountability.

Financial administration is the management of assets and liabilities. The goal of financial administration is to ensure that assets, such as cash, are accounted for and managed according to law, so they will be sufficient to meet the needs of the municipality in a cost-effective manner. This goal is best accomplished by setting up a system that protects assets from loss or waste and provides financial information to the governing authorities in a timely fashion.

The governing authorities of each municipality should give careful consideration to the design of its system of financial administration. The system must comply with state law and the State Auditor's regulations. However, each municipality has authority to tailor the system to meet its own needs. The system may be designed to produce any information the governing authorities require. In establishing a system of financial administration, a municipality may employ as many people as necessary and may use manual or computer methods. Consultation with other municipalities and Certified Public Accountants (CPAs) can be helpful in the design of the system.

The first step in setting up a financial administration system is the employment of competent personnel. By law, the municipal clerk has most of the financial administration duties. If the clerk is elected, he should be given qualified support personnel; if the clerk is appointed, he should, above all, be qualified in financial administration. The clerk must have knowledge of accounting and municipal legal requirements. Municipalities may provide necessary education for its employees, such as participation in the Mississippi State University Extension Service's Certification Training Program for Municipal Clerks and Tax Collectors which is administered by the Center for Government & Community Development.

A good accounting system produces the information necessary for proper management of the municipality. The system should be continuously reviewed to ensure that all needed information will be produced. For example, large cash balances may only be invested if it is known that it is actually available. The most important thing to remember is that the information must be distributed in a timely fashion to everyone who needs the information.

The following sections of this chapter deal with specific areas of responsibility in a system of financial administration. These important obligations should be understood to achieve proper financial administration.

STATE LAWS AND REGULATIONS

To a large degree the financial administration of a municipality is dictated by state law and regulations issued by the State Auditor. It is very important to understand what must be done and how it is to be done. Failure to follow legal procedure could result in a loss of municipal resources and personal liability on the part of the municipal officials.

Title 21 of the *Code* (Volume 6) contains most of the laws concerning municipal financial procedures. A review of Chapter 33 (Taxation and Finance), Chapter 35 (Municipal Budget) and Chapter 39 (Contracts and Claims) in Volume 6 is recommended. In addition, municipal officials should read the *Municipal Audit and Accounting Guide* (*MAAG*). This guide contains regulations prescribed by the State Auditor and should be on file in the city clerk's office.

BUDGETING

Budgeting is the cornerstone of financial administration and is the responsibility of the governing authorities. It is the once-a-year process of evaluating the needs of the municipality and its resources. The budget process is the time when priorities are established and the hard decisions of what will and will not be done are made.

The budget process is one of the times when information from the financial administration system is most important. The best way to predict the future is to look at the past.

Budget Laws

Chapter 35 of Title 21 of the *Code* outlines the general budgeting process. This chapter sets the budget year, publication and public hearing requirements, and the form of the budget. It also requires the State Auditor to prescribe the forms and procedures, sets the procedure for emergency expenditures and loans, allows for budget revisions, and requires annual audits. The State Auditor's forms and procedures are included in the *MAAG*.

Code, § 27-39-201 *et. seq.* requires that all taxing entities shall hold a public hearing at which time the budget and tax levy for the upcoming fiscal year shall be considered. *Code,* § 27-39-203 specifies the form of the public notice. The statute requires additional wording during a reappraisal year. Failure to publish the reappraisal wording will allow the Department of Revenue to withhold the homestead reimbursement for that year. This public hearing and notice is in addition to the public hearing and notice requirements of *Code*, § 21-35-5.

Code, § 21-35-17 imposes personal liability upon responsible municipal officials if the budget is exceeded. *Code*, § 21-35-33 imposes criminal responsibility upon municipal officials who do not comply with budget laws.

Budget Preparation Process and Calendar

The budget is best developed within a formal "building block" process. To manage the various steps in budget preparation, it is advisable to use a budget calendar. A budget calendar sets deadlines for each step of this process. The following budget calendar is suggested, but it may be adjusted to meet the needs of the municipality. The stages of this process are outlined in the following table:

Month	*Steps in the Budget Process*
May	Starting the Budget Process 1. Policy making – What will be done, how it is done, and deadlines 2. Assigning personnel – Who will do what 3. Requesting information – Past practices and outcomes, legal changes, budget officer's forecast, new initiatives, and obligations
June	Initiate Procedure for Departmental and Outside Agency Requests 1. Distribute departmental budget worksheets and policies – Forms from *MAAG* 2. Contact dependant groups for budget request – Library, airport, legal donees, etc. 3. List of obligations – Debt payments, shared cost, etc.
July	Receive and Consider Request 1. Compare to past request 2. Ask of justification 3. Determine available funding
August	Prepare the Recommended Annual Budget 1. Use forms from the *MAAG* 2. Issue public notice of budget and tax levy public hearing (§ 27-39-203 for wording of notice) 3. Hold public hearing and adopt tax levy 4. Adjust budget as finally agreed upon
September	Adopt and Implement Final Budget 1. Adopt budget by September 15 2. Issue public notice of final budget and tax levy 3. Inform departments and others affected by budget 4. Make budget available to departments 5. File with municipal clerk

Monthly Budget Report

Code, § 21-35-13 requires a budget report be made to the governing authorities at each month's regular board meeting. This report presents the status of the budget, including the revenues and expenditures to date and current charges. With each report, an evaluation should be made to ensure that budget estimates are on track and sufficient funds are available to pay current bills.

Budget Amendments

Code, § 21-35-25 allows the governing authorities to revise the budget. Routine revisions may be made as often as are necessary; however, at the point where a department's total budget has been revised up or down by 10 percent or more, public notice must be given of the budget amendments.

There are revision limitations. During the first three months of office, while operating under the prior governing authority's budget, the new governing authorities are limited to one revision if a deficit is evident. This revision must be made no later than the August regular meeting. Also, the budget must be revised by the July regular meeting if a deficit occurs or a revenue item is not realized.

Emergency Expenditures

Code, § 21-35-19 and § 21-35-21 allow the governing authorities, with a unanimous vote, to authorize emergency expenditures in the event of emergencies specified in the law – fire, flood, storm, health, etc. The law allows an emergency loan to be made and the budget to be revised for the emergency.

Code, § 33-15-17 through § 33-15-31 should be reviewed for local organization of emergency management authority and special powers which take effect when the governor declares a state of emergency.

REVENUE SOURCES

Providing public services costs money. State laws grant municipalities authority to impose certain taxes and charges for its services. *Code*, § 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 *Code*, § 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 *Code*, § 27-39-321 to a growth of 10 percent over prior year dollar collections, unless allowed by a special election. *Code*, § 27-39-203 requires a public notice and hearing for the budget and proposed tax levy, and *Code*, § 21-33-47 requires certification to certain other governmental agencies and public notice of the final tax levy.

Code, § 21-33-53 requires municipalities to 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 *Code*, § 25-7-21. With an interlocal cooperative agreement (*Code*, § 17-13-9), the county may conduct the sale of land for delinquent taxes and the subsequent land redemptions.

Utility system rate collections are another important revenue source. *Code*, § 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. *Code*, § 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 *Code*, § 21-33-301. The authority for lease purchases is *Code*, § 31-7-13 (e); for notes as an alternative to bonds, *Code*, § 17-21-51; and for revenue shortfalls, *Code*, § 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 *Code*, § 39-3-7 or the general fund may transfer money to the utility system under *Code*, § 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, *Code*, § 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 *Code*, § 21-27-57 or funds develop through unexpected efficiency and all debt is paid off as provided by *Code*, § 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

Code, § 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

Code, § 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. *Code*, § 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. *Code*, § 21-39-7 goes a step further and requires a formal claims docket for municipalities with populations of more than 2,000.

Code, § 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 Attorney General's Opinion to Ronald S. Cochran of March 8, 1996, provides insight into exceptions to the claims system. *Code*, § 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. § 66 of the *Mississippi Constitution* and *Code*, § 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.

Code, § 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.

Code, § 21-39-11 allows claimants to appeal to circuit court if they wish to challenge the governing authority's decision. *Code*, § 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

Code, § 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.

Code, § 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, *Code*, § 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. *Code,* § 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. *Code,* § 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. *Code,* § 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. *Code,* § 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. *Code,* § 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. *Code,* § 21-15-38

- Deputy Municipal Clerks
  Deputy clerks are required to give bond in an amount not less than $50,000.00.
  Code, § 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. *Code,* § 21-17-5

Cash Investments

Code, § 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

Code, § 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.

ACCOUNTING

Code, § 21-35-11 requires the city clerk to maintain accounting records as prescribed by the State Auditor. The State Auditor prescribed the accounting system in the *MAAG*. As required by *Code*, § 21-35-11, the system is designed to be on a cash basis to show the status of the budget.

Generally, this cash basis system requires journals to record all receipts and checks written. These are classified as revenues and expenditures as set out in the budget. Each month, this journal is totaled into a ledger. This system may be manual or computer-based. It may also contain such additional information as the municipality may require. These are public records and must be available to the public for inspection during normal office hours.

PROPERTY

Providing services requires the use of real and personal property. *Code*, § 21-17-1 provides authority for municipalities to acquire, hold and dispose of property. *Code,* § 17-25-25 provides authority and procedures for municipalities to dispose of property. As with cash, property must be accounted for and secured. It should also be managed to assure legal use, proper maintenance, and continued need.

Real Property

Code, § 21-17-1 provides that real property may be purchased for municipal purposes. However, *Code*, § 43-37-1 requires that an appraisal be made and the appraised value communicated to the owner. Certain real property may be lease-purchased under *Code*, § 31-8-1.

Real property disposal must be made by public sale or public auction after three weeks of advertising in accordance with *Code*, §21-17-1 and *Code,* § 17-25-25. There is a special procedure for a sale to a particular buyer: it must be in the municipal interest and foster community, economic, educational, etc. interest. Real property may also be donated to certain not-for-profit corporations.

Personal Property

The *MAAG* requires that certain personal property be accounted for and tagged. Municipal policy should assign responsibility for property items, and an annual inventory must be held to verify custody. Missing items must be justified, or responsible officials could be held liable.
Code, § 17-25-25 provides for the disposal of personal property. Personal property may be

disposed of by the governing authority through private sale, public sale, public auction, trade-in, or "junking." Such disposal and its justification should be documented on the minutes. Fair market value must be received, unless the property is being transferred to a state agency, another governing authority, or an organization to which the municipality has authority to appropriate money. In this case, the terms of the agreement must be documented on the minutes as well.

Marking Motor Vehicles

Code, § 25-1-87 requires motor vehicles to have the name of the municipality marked in 3 inch letters on the sides and 1½ 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.

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.

ANNUAL AUDIT

Mississippi Code § 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 Mississippi Code § 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.

STATE AUDITOR'S SERVICES

The State Auditor's office does not perform routine financial audits of municipalities. The State Auditor does assign personnel to check municipal motor vehicles for proper markings and to investigate activities in municipalities when property may have been illegally purchased or used. Investigations may be initiated by citizen complaints (which are kept confidential) or the State Auditor's own initiative.

To provide up-front help, the State Auditor issues a monthly publication entitled *Technicalities* which is mailed to each municipality and which may be viewed or downloaded over the Internet at www.osa.ms.gov. This publication provides answers to commonly asked questions and provides information about recent legal changes. Municipal officials should read *Technicalities* and keep copies on file for future reference.

The State Auditor also maintains a hotline at 1-800-321-1275. This number may be used to contact his office. His department of technical assistance has staff members on call to help municipal officials understand their legal options. If there is any doubt about the legality of a contemplated financial action, technical assistance should be requested.

CHAPTER TEN

AD VALOREM TAX ADMINISTRATION

Frank McCain, Joe B. Young, and Janet Baird

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 § 2 1-33-45 and § 27-39-307 of the *Mississippi Code of 1972:*

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[1]

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....

Classes of Property[2]

The Mississippi constitution and law 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. All other property that does not meet the exact definition for Class I falls into the Class II category. 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.

In order to assess Class I and II properties, the assessor must first determine who owns each parcel of land in the county. This is accomplished by taking inventory of the county with a mapping system that identifies ownership from deeds, wills, court decrees, and other documents.

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[1] *Code,* §§ 27-35-1 through 27-35-167.
[2] *Const.,* § 112.

Once ownership is determined, the assessor visits each parcel to value the property and any buildings or other improvements that add value to the land. The assessor must accomplish this task by using rules and guidelines provided by the Department of Revenue (DOR).

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 registration fee for a new tag is $14.00; there is a $12.75 renewal registration fee to purchase a decal alone. Most of this fee money is sent to the State. The privilege license for a car is $15.00 and the privilege license for a truck is $7.20. The proceeds from the sale of privilege licenses are retained primarily by the county. 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).

Audits and Responsibilities

The county tax assessor is responsible to value Classes I, II, and III annually. § 27-35-50 of the Mississippi Code reads in part:

> § 27-35-50. True value determination
>
> …(2) With respect to each and every parcel of property subject to assessment, the tax assessor shall, in ascertaining true value, consider whenever possible the income capitalization approach to value, the cost approach to value and the market data approach to value, as such approaches are determined by the State Tax Commission. For differing types of categories of property, differing approaches may be appropriate. The choice of the particular valuation approach or approaches to be used should be made by the assessor upon a consideration of the category or nature of the property, the approaches to value for which the highest quality data is available, and the current use of the property...

In order to make sure the county is maintaining its values on Class I, II, and III property, the DOR conducts annual audits called assessment ratio studies. The DOR will divide the values placed on the roll by the county by an arms-length market-sale or by an appraisal made by DOR personnel. The Department of Revenue then evaluates these ratios with three (3) statistical tests. If the county fails any one of the three (3) tests, it is given a period of time to bring its records into compliance. If this deadline is not met, the DOR withholds county homestead exemption reimbursement funds until the county is in compliance.

Each county is required by Title *35,* Part VI, Subpart 02, Chapter 06 of the Administrative Code to update all real and personal property within a four-year cycle. A minimum of 25% of all personal property parcels must be physically reviewed and updated each year. All real property must be physically visited within the four-year period and all land schedules and building indexes must be updated within this time period to meet current sales data. Each county must also fly aerial photography and update all county tax maps within a specific time period as established by the DOR rule.

In addition, in order to spend the proceeds of the special one mill tax levy, the board of supervisors must see that the county has the minimum number of state certified appraisers on staff and meets other certification requirements. Application must be made annually to the DOR to approve the spending of this money; it is escrowed until approval is received.

The board of supervisors works with the assessor in insuring equity in its tax rolls. While the assessor is required to do these tasks, he simply cannot complete them without the support and funding necessary to establish equity. Once the assessor files the assessment rolls with the board on the first Monday in July, the board is then responsible by law to make sure all assessments are equitable. After equalizing the rolls, the board opens them up for public inspection. The board of supervisors then acts as a board of equalization in hearing assessment appeals at the August meeting. After the assessor delivers the tax rolls to the board (on or before the first Monday in July), any changes to an assessment must be made by the board of supervisors. Any taxpayer dissatisfied after the August assessment hearings may appeal the decision of the board to the circuit court. In case of such an appeal, the suit is filed against the board of supervisors.

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"

True value is defined in § 27-35-50 of the *Code:*

> True value shall mean and include, but shall not be limited to, market value, cash value, actual cash value, property value and value for the purposes of appraisal for ad valorem taxation. . . . In arriving at the true value of all Class I and Class II property and improvements, the appraisal shall be made according to current use, regardless of location. In arriving at the true value of any land used for agricultural purposes, the appraisal shall be made according to its use on January 1 of each year, regardless of its location; in making the appraisal, the assessor shall use soil types, productivity and other criteria. . .

The point here is that *true value* and *market value* are not the same. Agricultural values, for example, can be much less than the actual market value of the property.

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

Title 21, Chapter 33, Article 45 of the Mississippi Code 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 15. 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 *(Code,* **§** 27-51-1 *et seq.)*.[3] 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 15 and published by September 30[4]) 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 § 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 § 27-39-307 and § 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 § 27-39-307 each such levy shall be separately stated in the resolution, and the law authorizing same shall be expressly stated therein.

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[3] *Code,* § 27-39-307.
[4] *Code,* § 2 1-35-5.

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 § 39-3-5 of the *Code,* 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.

Advertising Prerequisite to Budget and Ad Valorem Revenue Hearing

The board of aldermen is required by § 27-39-203 of the *Code* 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. The form and procedure is outlined in § 27-39-203 of the *Code.*

COLLECTION OF AD VALOREM TAXES

The main role of the governing authority in the collections process is one of support for the tax collector. Obviously, it is a tremendous task, annually, to collect on every item of taxable property in each county and distribute the funds accurately. The board must provide funds for adequate staff, materials, supplies, equipment, and items necessary for the tax collector to be able to perform the necessary tasks.

The board also has the authority to work with the board of supervisors to set up interlocal agreements for the collection of ad valorem taxes for the municipality. That authority can be found in § § 27-41-2 and 17-13-7 of the *Code.*

Another collection function of the board is to approve certain reports that the tax collector presents annually. The collector is required by law to submit, for board approval, a report on personal property accounts that have been found to be insolvent.

Another report that the collector must furnish to the board annually is a list of bad checks that the collector has determined to be non-collectible. This is only done after the collector has followed proper legal channels to attempt to collect on these bad checks.

SPECIAL AD VALOREM TAX EXEMPTIONS

Homestead Exemption[5]

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.

General administration of the homestead exemption law is vested in the Department of Revenue. The board of supervisors is required to perform a variety of duties *(Code,* § 27-33-37) and to exercise certain authority as follows:

- The president of the board of supervisors will receive applications for homestead exemption at each regular monthly meeting from the clerk of the board.

- The board will pass on the correctness and eligibility of each application. The board will indicate if each application should be approved, disapproved, or if further information is needed.

- If any application is disallowed, the board will notify the applicant immediately in writing.

- Applicants whose applications have been disallowed will be given the opportunity to appeal the decision of the board in the next regular meeting of the board.

- The board will review the Homestead Exemption Supplemental Roll (listing of applicants receiving homestead exemption) and vote on its approval.

- The Department of Revenue will send notice of any homestead disallowance to the clerk of the board. The board will notify the applicant(s). A hearing will be conducted by the board to allow applicant(s) an opportunity to respond to the disallowance. The board will then respond with an acceptance or objection to the disallowance. The Department of Revenue will respond to all objections. The decision of the Department of Revenue with respect to objections is final.

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[5]*Code,* §§ 27-33-1 through 27-33-79.

Industrial Exemptions[6]

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 *(Code,* § 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

[6] *Code,* §§ 27-31-101 through 27-31-117.

- Telecommunications enterprises meeting minimum criteria established by the Mississippi Development Authority.

§ 27-31-105 of the *Code* 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 following:

Bureau of Exemptions & Public Utilities
Department of Revenue
P.O. Box 960
Jackson, MS 39215

Telephone: 601-923-7634
Fax: 601-923-7637

Glossary of Selected Terms Related to Industrial Tax Exemptions

Manufacturing Business	A business where tangible personal property is produced or assembled
Processing Business	An establishment engaged in services such as manufacturing-related, computer-related, communications-related, energy-related, or transportation-related services, but the term "processing facility" does not include an establishment where retail merchandise or retail services are sold directly to retail customers.
Distribution Business	A business where shipments of tangible personal property is processed for delivery to customers, but "distribution" does not include a business which operates as a location where retail sales of tangible personal property are made directly to retail customers.
Research and Development Business	A business engaged in laboratory, scientific, or experimental testing and development related to new products, new uses for existing products, or improving existing products; but research and development does not include any business engaged in efficiency surveys, management studies, consumer surveys, economic surveys, advertising, promotion, or research in connection with literary, historical or similar projects.
Warehousing Business	A business primarily engaged in the storage of tangible personal property. The term "warehousing business" does not include any establishment which operates as a location where retail sales of tangible personal property are made to retail customers.
Telecommunications Enterprises	Entities engaged in the creation, display, management, storage, processing, transmission or distribution for compensation of images, text, voice, video or data by wire or by wireless means, or entities engaged in the construction, design, development, manufacture, maintenance or distribution for compensation of devices, products, software or structures used in the above activities. Companies organized to do business as commercial broadcast radio stations,

television stations or news organizations primarily serving in-state markets shall not be included within the definition of the term "telecommunications enterprises."

Free Port Warehouses[7]

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 quality 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 expemption 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.

[7] *Code,* §§ 27-31-51 through 27-31-61.

CHAPTER ELEVEN

PURCHASING

Thomas S. Chain

WHY MUNICIPALITIES MAKE PURCHASES

State law allows municipalities to provide certain services. These services include providing utilities, streets, parks, fire protection, etc. Sometimes state law is specific regarding what may be purchased; but, usually, purchasing is simply implied. This means purchasing of commodities and services related to accomplishing the functions of municipal government is necessary and legal.

HOW MUNICIPALITIES MAKE PURCHASES

State law does not directly prescribe a purchasing system that must be used by municipalities. Therefore, a municipal governing authority (Board of Aldermen, City Council, City Commission, Board of Selectmen, etc.) must develop its own purchasing procedure and policies.

MUNICIPAL PURCHASING POLICIES

- **Who May Make Purchases**
  The purchasing policy should specify who may make purchases and the limits of their purchasing authority. The policy may include appointment of a purchasing clerk or authorization of department heads or others to purchase. If a purchasing clerk is appointed, a requisition procedure (ideally in written form) should be defined to allow designated employees to communicate purchase requirements (specifications, justifications, knowledge of vendors, etc.) from municipal departments to the purchase clerk. To the extent practical, purchasing authority should be separated from requisitioning and receiving to reduce the opportunity for theft.

- **Limits to a Purchasing Agent's Authority**
  § 25-1-43 of the *Code* prohibits municipal officers from entering into contracts without authorization by the governing authority. This means the purchasing policy of the governing authority should establish clear guidelines defining what contracts may be entered into with or without approval of the governing authority. For example, a contract with negotiated terms should be approved by the governing authority and documented on its minutes.

- **How Contracts Are Documented**
  There must be an obligation for a governing authority to approve a claim (§ 21-39-9 of the *Code*). § 66 of the *Mississippi Constitution* and § 21-17-5 of the *Code* prohibit donations unless there is specific authority in state law to make the donation. A purchasing policy should include a procedure for assuring the governing authority that a purchase obligation exists.

1. **Purchase Orders**
   Municipalities are not required by state law to use written purchase orders. However, municipal policy should consider use of written purchase orders as evidence of contract terms and for control of expenditures and budgets. If written purchase orders are not used, authorized purchasing agents should provide the governing authority with verification (preferably written) that a purchase was authorized. Such verification may be as simple as a department head signing the invoice filed as a claim. A good purchase order system will help prevent unauthorized payments, such as double payments on statements where invoices were already paid.

2. **Receiving Reports**
   As with purchase orders, state law does not require municipalities to use written receiving reports. However, municipal policy should provide a method of assurance (similar to purchase orders) for governing authority claim approvals that goods and services were received as contracted.

- **Charging Budgets For Purchases**
  § 21-35-17 of the *Code* imposes liability upon a responsible official for exceeding the budget. Therefore, municipal policy should require a system to provide information to show that when a purchase is made there is money in the budget to pay for the purchase and that the department whose budget will be charged has authorized the purchase. Also, § 21-35-13 of the *Code* requires the municipal clerk to provide a monthly report to the governing authority showing the effect claims (including claims for purchases) will have upon the budget.

- **Accounting For Purchases**
  Expenditures must be accounted for in the books of the municipality (§§ 21-35-11 and 21-15-21 of the *Code*). This means purchasing policy must assure that all necessary information is obtained in the purchasing process to account for the services and good acquired. For example, the Municipal Audit and Accounting Guide, prescribed by the State Auditor, require equipment costing more than $1,000 and all real property placed in inventory.

- **Special Purchasing Authorities**
  State law provides for special purchasing options. Municipal policy should address when and how these options may be used. [All section or sections (§ or §§) found below are references to the *Code*.]

  - State Contracts – See § 31-7-12 for a description of when such contracts may used and when local purchases may be made for an amount less than state contract, etc.

  - Information Technology Contracts (Computers) – See § 31-7-13 (m)(xi) for when Express Product List purchase should be made, etc.

- Municipal Term Contracts – See § 31-7-13 (n) for when the governing authority should enter such contracts and terms of such contracts.

- Interlocal Agreement Purchasing Contracts – See § 17-13-9 for a discussion of joint purchase contracts with a county, other municipalities, etc.

- State Surplus Property – See § 29-9-9 for when to use and how to account for purchases of surplus property.

- Emergency Purchases – See § 31-7-13 (k) for the process to authorize and report such purchases.

- Disaster Purchases – See §§ 33-15-17 and 33-15-31 for the requirements to authorize and account (reimbursements possible) for such purchases.

- Government Auctions–See § 31-7-13 (m)(v) for the authorization and payment process.

- Mississippi Government Negotiations – See § 31-7-13 (m)(vi) for a discussion of governing authority agreements.

- Sole Source Purchases – See § 31-7-13 (m)(viii).

- Local Motor Vehicle Purchases – See § 31-7-18.

- Minority and Other Preference Purchasing – See § 31-7-13 (s).

- **Purchase Specification Development**
  Municipal policy should provide for how specifications will be developed, when the purchasing clerk may proceed with specifications for a purchase, when the governing authority must approve specifications, and when professionals (engineers, architects, etc.) must approve the specifications (see § 73-13-45 of the *Code*).

- **Advertising for Bids**
  Municipal policy should provide for how advertisement services will be used, who may authorize advertisements, what newspaper or newspapers will be used for advertisements, etc. [§§ 21-39-3, 13-3-31, 31-7-13 (c), etc.]

PURCHASING/LEASING REAL PROPERTY

- § 21-17-1 of the *Code* authorizes municipalities to purchase real property (inside or outside the municipal corporate limits) for all proper municipal purposes.
- § 31-8-1 of the *Code* authorizes municipalities to lease real property for the purposes listed.
- § 43-37-3 of the *Code* requires an appraisal be made and provided to the seller of real property.
- § 57-1-23 of the *Code* (and other special laws and local and private laws) authorizes acquisition of real property for industrial, commercial, etc. purposes.

BIDDING PURCHASES

State Law requires purchases of commodities, printing, construction, and solid waste disposal services to be made pursuant to a specific bidding process. The procedure for this process is presented in § 31-7-13 of the *Code*. § 31-7-55 and 31-7-57 of the *Code* impose civil and criminal penalties for failure to follow state bidding procedures. An overview of state bidding requirements may be found on the State Auditor's web site (www.osa.state.ms.us) under the heading of "Technical Resources." A "hard copy" of the purchase laws found on this web site may be obtained from the Office of the State Auditor, telephone number 1-800-321-1275, or from the Center for Government and Community Development.

State law does not require municipalities to bid for the purchase of real property, employment services, or services not specified in § 31-7-13 of the *Code*. Therefore, municipal governing authorities should develop their own policies regarding how these services will be solicited.

BIDDER QUALIFICATIONS

§ 31-3-21 of the *Code* requires bidders for construction and certain public works contracts to demonstrate they hold a qualified Certificate of Responsibility issued by the State Board of Public Contractors. Other qualifications should be addressed as a matter of board policy or purchase specifications.

PURCHASING BONDS AND INSURANCE

- **Required Bonds and Insurance**
  § 31-5-51 of the *Code* requires bidders for construction and public works contracts to have certain performance and payment bonds and liability insurance to protect the municipality from potential loses.
- **Optional Bonds and Insurance**
  Other bonds (such as bid bonds) and insurance which may be required by individual board policy.

CHAPTER TWELVE

BONDS, BORROWING, AND DEBT ADMINISTRATION

Brad C. Davis, Keith Parsons, and Randall B. Wall

INTRODUCTION

This chapter presents an overview of the different types of bonds, the different purposes for which bonds can be issued, and the processes of issuing, underwriting, marketing, and servicing bonds. Municipal officials need to understand the basics of the bond process so that they can make informed decisions and explain their municipality's special needs to the citizenry. Mistakes in the issuing of bonds can be costly, both fiscally and politically.

NATURE OF MUNICIPAL BONDS

A municipal bond is a written promise of a municipality to pay a specified sum of money (the face value or principal amount) at a specified date or dates in the future (the maturity date or dates) together with periodic interest at a specified rate (compensation paid for use of the money). § 31-13-3[1], provides the following definition:

> "The word 'bond' or 'bonds,' when used in this chapter, shall be deemed to include every form of written obligation that may be now or hereafter legally issued by any county, municipality, school district, road district, drainage district, levee district, sea wall district, and of any other district or subdivision whatsoever, as now existing or as may be hereafter created."

AUTHORITY TO BORROW

Home Rule

A municipality must have specific authority to issue bonds for a particular purpose. Home Rule [§ 21-17-5] does not help in this regard:

> Unless such actions are specifically authorized by another statute or law of the State of Mississippi, this section shall not authorize the governing authorities of municipalities to…issue bonds of any kind….

The foregoing statement meshes with the provisions of § 21-33-327:

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[1] All such section and chapter references throughout this chapter are to sections or chapters of the *Mississippi Code of 1972*, as amended.

> No interest-bearing indebtedness shall hereafter be issued by any municipality, except in the manner hereinabove provided, or as may otherwise be provided by law.

Establishing Authority to Act

A municipality must establish its authority to act by making the necessary findings and determinations required as a condition to taking action. The purpose of the "whereas" portion of a resolution is to make determinations that establish the authority and basis for action in the "therefore" portion. If publication is required prior to directing the issuance of bonds, the fact of publication must be set out. If a debt limit must be satisfied, then those findings must be set out prior to taking action for the issuance of the proposed bonds.

TYPES OF MUNICIPAL BONDS AND DEBT

Most municipal bond offerings in Mississippi are of certain major types. Each type of issue has certain advantages and disadvantages. The type of bonds issued to finance a public improvement depends upon the financing options authorized for the particular purpose, how the proposed financing fits into the overall financial structure of the municipality and upon the circumstances of the particular project to be financed. Readers are cautioned that the provisions authorizing bonds set forth in this chapter do not constitute a comprehensive list, and there are many other specific provisions authorizing or otherwise pertaining to municipal bonds. Those major types of bonds issued by municipalities in Mississippi are as follows:

General Obligation Bonds

General obligation bonds pledge the unlimited taxing power and the full faith and credit of the municipality to meet the required payments of principal and interest (See § 21-33-87 for taxing authority). General obligation bonds are generally limited to a maximum maturity of twenty years and can carry a maximum interest rate of eleven percent [§21-33-315, §75-17-101].

The general obligation bonded indebtedness of a municipality is limited by § 21-33-303 to the greater of (a) fifteen percent of the assessed value of the taxable property within the municipality, according to the last completed assessment for taxation, or (b) ten percent of the assessment upon which taxes were levied for its fiscal year ending September 30, 1984. In computing this limitation, there may be deducted all bonds for school, water, sewerage systems, gas, light, and power purposes and for the construction of special improvements primarily chargeable to the property benefited, for the purpose of paying the municipality's portion of any betterment program, a portion of which is primarily chargeable to the property benefited. The total general obligation bonded indebtedness, both bonded and floating, of a municipality shall not exceed the greater of (a) twenty percent of the assessed value of all taxable property within the municipality, according to the last completed assessment for taxation, or (b) fifteen percent of the assessment upon which taxes were levied for the municipality's fiscal year ending September 30, 1984. Excluded from the calculation of the general obligation bond debt limit are all contract obligations which are subject to annual appropriations therefor, and all bonds, or other evidence of indebtedness, issued for school purposes, all obligations payable exclusively from the revenues of any municipality-owned utility, bonds issued for economic development under the

provisions of § 57-1-1 through § 57-1-51, any special assessment improvement bonds issued under the provisions of § 21-41-1 through § 21-41-53, and any indebtedness incurred under § 55-23-8.

Revenue Bonds

Revenue bonds may be issued by a municipality to build, acquire, or improve any waterworks system, water supply system, sewerage system, sewage disposal system, garbage disposal system, rubbish disposal system or incinerator, gas producing, generating, transmission, or distribution system, electric generating, transmission, or distribution system, railroad transportation system for passengers and freight, or motor vehicle transportation system [§ 21-27-23]. Revenue bonds pledge the revenue from the system or combined system to be constructed, acquired, or improved to meet the bond principal and interest payments. Revenue bonds are appropriate debt instruments when the project can be expected to generate sufficient revenue to meet operating and debt service costs. Municipalities usually pay higher interest rates on revenue bonds than on general obligation bonds because revenue bonds are generally considered to carry more risk in terms of repayment of the bonds, although the gap in interest rates has narrowed in recent years for financially sound utility systems.

When issuing revenue bonds, care must be taken to insure that the proposed bond issue is allowed by the terms of the bond documents pertaining to any outstanding revenue bond issues. Such bond documents may impose earnings tests for the issuance of revenue bonds on a parity of lien with the outstanding bonds, or may prohibit the issuance of any subsequent bonds altogether unless the outstanding bonds are first defeased.

The issuing resolution, also sometimes referred to as the bond resolution, is a long-term contract between the issuer and the bondholders. Terms of that contract should be reviewed and any questions should be resolved with bond counsel. Such documents may influence the operation of an enterprise for many years, and their influence can be positive or negative. Additional borrowing can be either effectively negated in such bond documents, or carefully planned to allow future growth and maintenance. Bond sales or bond ratings may be adversely affected or enhanced.

Revenue bonds are limited to a maximum maturity equal to the estimated life of the contemplated system or improvement—in no event longer than thirty years [§ 21-27-45]. Generally, public sale using sealed bids is required. Special provisions, including the authority to sell at private sale and the authority to provide for maturities of up to thirty-five years, are applicable to bond issues sold to the United States government, or any agency thereof. The maximum interest rate to maturity for revenue bonds is limited to thirteen percent per annum [§ 21-27-45 and § 75-17-103].

Special Assessment Bonds

Special assessment bonds are sometimes used to finance improvements in a particular neighborhood or location where the property benefited can be specifically identified or where equity indicates that the property owners should share in the payment for such improvements.

Principal and interest payments, in whole or in part, for these bonds are made by a special assessment on the property benefiting from the improvement.

The following types of improvements may be constructed using special assessment bonds:

- Streets, highways, boulevards, avenues, squares, lanes, alleys, and parks, or any part thereof, may be opened, reopened, widened, graded, paved, repaved, surfaced, and resurfaced, including the construction or reconstruction of curbs and gutters therein [§ 21-41-3(a)].

- Sidewalks may be graded, regraded and leveled, laid, relaid, paved, repaved, surfaced, or resurfaced [§ 21-41-3(b)].

- Water mains, water connections, sanitary disposal systems, sanitary sewers, storm covers, and other surface drains or drainage systems may be laid, relaid, constructed, or reconstructed [§ 21-41-3(c)].

State law mandates a number of specified procedures to be followed by a municipality in authorizing, assessing, and collecting assessments for special improvements [§ 21-41-1 through § 21-41-39]. The special assessments must be made in the manner required by the statute. Streets must be assessed according to the length of the abutting property as a portion of the whole assessment to be made on abutting property. If a majority of property owners owning more than fifty percent of the front footage of the property to be improved and benefited by street improvements and who actually reside on or otherwise occupy the said property file a protest to the proposed improvement, then the improvement will not be made [§ 21-41-7].

If a municipality needs to borrow money to make special improvements which have been authorized under state law, the municipality can issue negotiable notes, certificates of indebtedness, or special street improvement bonds [§ 21-41-41]. Debt so obligated may not exceed the cost of the improvements [§ 21-41-45(1)]. Special assessment bonds are a type of general obligation bonds in that the full faith and credit and taxing authority of the municipality are pledged to repay the bonds. Special assessment bonds are limited to a maximum maturity of twenty years and can carry a maximum interest rate of eleven percent [§ 21-41-43 and § 75-17-101]. Note § 21-41-45(5), which seems to be in conflict with § 21-41-41 and § 21-41-47 as to notice requirements.

Industrial Development Revenue Bonds (IDRBs)

Municipal IDRBs. Industrial development revenue bonds are issued for purposes of industrial development related to products of agriculture, mining, or industry—i.e., the acquisition, construction, equipping, and leasing of facilities related to the manufacturing, processing, assembling, etc. of said products. Projects can be located not more than fifteen miles outside the municipality's corporate limits. Projects must be approved (granted a Certificate of Public Convenience and Necessity) by the Mississippi Development Authority. Bonds issued for such projects are subject to no maximum interest rate and are repaid solely out of the revenue received from leasing the industrial facility. The term of such bonds may not exceed thirty years [§ 57-3-1 through § 57-3-33].

State law also authorizes municipalities to issue "small issue" industrial development revenue notes [redemption term not to exceed ten years] for the purpose of financing projects where the loan to any one project does not exceed five hundred thousand dollars [§ 57-41-1 through § 57-41-17].

State IDRBs with Local Involvement. Industrial Development Revenue Bonds may also be issued by the Mississippi Business Finance Corporation (MBFC) [§ 57-10-201 *et seq*.]. Unlike the structure employed when the municipality acts as issuer, the title to the facilities so financed may remain with the corporate user (as opposed to being held by the issuer and leased to the corporate user). Before the MBFC will proceed to issue the bonds, it will require a resolution from the municipality approving the granting of the ad valorem tax benefits made available under the MBFC statute. In addition, bonds issued by MBFC may provide corporate users of certain types of facilities - including, but not limited to manufacturing facilities, large distribution facilities and telecommunications or data processing facilities - a credit against a portion of the entity's corporate income tax liability under the so-called RED Act [§ 57-10-401 *et seq*.].

Economic Development Bonds with State Involvement

The State of Mississippi has a number of programs to assist or encourage economic development. Those programs included financial assistance and somewhat detailed and complex programs concerning tax incentives. These programs have changed frequently.

For current details on the programs referenced above, and advice as to economic development resources, the Mississippi Development Authority and/or bond counsel should be consulted.

Regional Economic Development Act Bonds

Bond authority for economic development bonds was authorized through the enactment of the Regional Economic Development Act [§ 57-64-1 through § 57-64-31]. This act enables local government units (counties and municipalities) of the state to cooperate and contract with other local government units, and even with political subdivisions from another state, to form regional economic development alliances to share the costs of and revenues derived from a project, and to pledge revenue from a project to secure the payment of bonds. The types of projects for which development alliances may be formed include any of the following which promote economic development or which assist in the creation of jobs:

- Acquisition, construction, repair, renovation, demolition, or removal of buildings and site improvements (including fixtures); potable and nonpotable water supply systems; sewage and waste disposal systems; storm water drainage and other drainage systems; airport facilities; rail lines and rail spurs; port facilities; highways, streets, and other roadways; fire suppression and prevention systems; utility distribution systems, including, but not limited to, water, electricity, natural gas, telephone, and other information and telecommunications facilities, whether by wire, fiber or wireless means (provided that electrical, natural gas, telephone, and telecommunications systems shall be constructed, repaired or renovated only for the purpose of completing the project and connecting to existing utility systems); business, industrial, and technology parks; and the acquisition of

land and acquisition or construction of improvements to land connected with any of the proceeding purposes;

- County purposes authorized by or defined in § 17-5-3 (waterworks and sewage systems for military camps) and § 19-9-1 (uniform system for issuance of bonds except for construction of school buildings);

- Municipal purposes authorized by or defined in § 17-5-3, § 17-17-301 *et seq.* (regional solid waste authority), § 21-27-23 (municipal utility borrowing powers), and 21-33-301 (uniform system for issuance of bonds);

- Refunding of bonds as authorized in § 21-27-1 *et seq.*; and

- A project as defined in § 57-75-5(f)(i) or a facility related to the project as defined in § 57-75-5(d) (such sections pertain to the Mississippi Major Economic Impact Act), or both.

To form an alliance the local government unit must apply to the Mississippi Development Authority for a certificate of public convenience and necessity. Certain details must be authorized by the Mississippi Development Authority and set out in such certificate.

The local government units in the alliance may issue general obligation bonds [§ 19-9-1 through § 19-9-31 and § 21-33-301 through § 21-33-329], tax increment finance bonds [§ 21-45-3 through § 21-45-21], revenue bonds [as authorized by any statute authorizing the issuance of revenue bonds], and special assessment bonds [§ 21-41-1 through § 21-41-47] for the project as authorized in the certificate of public convenience and necessity without regard to whether the activities and improvements are within or without the boundaries of the local government unit.

Every agreement made under this act must be submitted to and approved by the Attorney General in order to be effective. In practice, this is done at the same time as the application to the Mississippi Development Authority.

If any party to the regional economic development alliance shall have authority to undertake a particular project or pursue a particular action with respect to such project, then the alliance shall have identical authority.

An amendment was approved in 2006 to make it clear that private property is covered and could be improved under this act without dedication to a public entity.

Mississippi Major Economic Impact Act

Certain special powers and tax benefits have been granted with respect to large economic development projects under the Mississippi major economic Impact Act [§ 57-75-1, et. seq.]. While bonds issued pursuant to this authority are issued by the State, it is listed here since a municipality may be involved in the process and because this is an extremely important asset for recruiting major economic development projects.

Mississippi Development Bank Bonds

A municipality may issue its note or notes to the Mississippi Development Bank, which is authorized to issue its bonds and to loan proceeds thereof to a municipality in exchange for such note or notes of such municipality. Under the right set of circumstances, this borrowing method can achieve lower interest rates through enhanced credit status for the financing if a diversion of sales taxes or homestead exemption reimbursements is authorized, or if the moral obligation of the State is pledged (for those issues with reserve funds). Except as otherwise provided, the Municipality must comply with the statute pursuant to which the note is issued to the Mississippi Development Bank. The advantages and disadvantages of this approach should be discussed with the municipality's financial advisor and bond counsel.

Pollution Control Industrial Development Revenue Bonds

The governing authority of a municipality, subject to the concurrence of the Mississippi Air and Water Pollution Control Commission, may issue bonds to acquire, purchase, construct, enlarge, expand, improve, operate, maintain, and replace pollution control facilities. These bonds may have a maximum maturity of forty years and carry a maximum interest rate of thirteen percent. Repayment of such bonds must be made from revenue resulting from agreements with an industry to construct, operate, maintain, repair, and replace the pollution control facilities or lease/sale to an industry of the pollution control facilities [§ 49-17-101 through § 49-17-123].

Urban Renewal Bonds

A municipality has the authority to issue bonds to finance the undertaking of urban renewal projects. Such bonds have a maximum maturity of thirty years and can carry a maximum interest rate of thirteen percent. Urban renewal bonds are repayable solely from the income, revenues, and funds of the municipality derived from the carrying out of the urban renewal project, including any contributions from the federal government to the urban renewal project or a mortgage on the urban renewal project [Chapter 35 of Title 43]. The urban renewal provisions expand the authority granted to municipalities as to the types of property and projects that may be financed by municipalities. Further, once the municipality has established its authority to act under the urban renewal laws, flexibility can be gained as to the methods of financing.

Solid/Hazardous Waste Disposal Bonds

A municipality, after obtaining a Certificate of Public Convenience and Necessity from the Mississippi Development Authority, may issue bonds to acquire, own, and lease a project for the purpose of promoting the construction and installation of projects for the collection, treatment, processing, reprocessing, generation, distribution, recycling, elimination, or disposal of solid and hazardous waste products by inducing manufacturing and industrial enterprises, qualified persons, firms, or corporations to locate and construct said projects. The issuing of such revenue bonds is subject to approval by the voters if a written protest requires the calling of an election on the question of the issuance of such bonds. This type of bond issue has a maximum maturity of thirty years and can carry a maximum interest rate of thirteen percent. Such bonds are payable solely out of the moneys to be derived by the municipality from agreements with an industry

located in the municipality to construct, operate, maintain, repair, or replace a solid/hazardous waste project or a lease/sale of such a project to an industry [§ 17-17-101 through § 17-17-135].

Port Improvement Bonds

Certain municipalities are authorized to issue bonds for a number of activities related to the construction and improvement of ports and harbors [§ 59-3-1 through § 59-3-13 and Article 7 of Title 59].

Refunding Bonds

The governing body of a municipality may authorize the issuance of refunding bonds which can be used to refinance outstanding bonds. Sometimes substantial savings can be achieved through such a refunding. Neither an election nor notice of intent is normally required for a refunding, nor is a public sale usually required. Negotiated sales are typical, and in most cases is the only practical way to achieve a refinancing. [§ 31-27-1 *et seq*., § 31-15-1 *et seq*., § 21-27-51 (utility revenue bonds only), and several more limited statutes].

Tax Increment Finance Bonds

Tax Increment Financing ("TIF") Bonds, also referred to as "TIF Bonds," may be used for a variety of infrastructure improvements such as street construction and improvements, parking, utilities, lighting, signalization and related improvements. To initiate this type of financing, the municipality holds hearings and goes through a prescribed procedure for creating a tax increment development plan and a tax increment financing plan that defines a financing district or area. The base level of assessed value within that area is then established and a sufficient portion of the specified ad valorem taxes on any subsequent increase in assessed value over that base on property included in the tax increment financing plan is diverted to satisfy the principal of and interest on the TIF Bonds. Through agreement with a county, both eligible municipal and county ad valorem taxes may be so diverted. Any portion of an increase from an established base of sales taxes within that area may also be diverted to pay such bond. No election or protest petition procedure is required, and public or private sale is authorized. Prior to 2007, any property financed with TIF Bonds was required to be dedicated to the public. In that year, an amendment to § 21-45-9 was approved to allow the governing body to determine that such property does not have to be dedicated where it is in the best interests of such municipality. This allows TIF financing for certain private property if the municipality could have done that type of infrastructure. Due to the nature of the Bonds, negotiated sales are most common for smaller TIF bond issues, with public sales more often used for the larger TIF bond issues [§ 21-45-1 through § 21-45-21].

USDA Utilities and Community Facilities Loans

One of the most common types of water and sewer financing in Mississippi for small municipalities is utility bond issues sold to the United States Department of Agriculture, Rural Utilities Service. That agency has a program of providing financing for utility services in rural areas and smaller municipalities at attractive rates over thirty-five years.

USDA also provides a substantial amount of community facilities loans (the terms of such loans being evidenced by bonds) for buildings, streets, hospitals and other public facilities important to small municipalities and rural areas.

Mississippi Department of Environmental Quality Loans

Various revolving fund loan programs for water and sewer projects are available from time to time through the Mississippi Department of Environmental Quality at attractive rates.

Short Term Debt

- *Borrowing in Anticipation of Taxes*. The governing authorities of a municipality may borrow money for the current expenses of the municipality, including bonded indebtedness, in anticipation of the ad valorem taxes to be collected for the current fiscal year in an amount not to exceed fifty percent of the anticipated, but uncollected, revenue to be produced by the then-current tax levy. The municipality is not required in such borrowing to publish notice of intent to borrow or to secure the consent of the electors of the municipality by election or otherwise. The amount borrowed shall not exceed fifty percent of the anticipated, but then uncollected tax revenues against which the money is borrowed. Money so borrowed shall bear interest at a maximum rate of eleven percent and shall be repaid not later than the following March 15 out of the first moneys collected by reason of the tax levy in anticipation of which such money is borrowed [§ 21-33-325]. Although it has been common in the past to treat these loans rather informally, such loans will not be exempt from federal income taxes unless IRS requirements are complied with (the appropriate IRS form must be filed and a proper federal tax certificate should be completed establishing the facts and expectations essential to the tax exemption).

- *Borrowing in Anticipation of Confirmed Federal Grants or Loans*. Unless prohibited by federal law or otherwise, a municipality that has a binding commitment from the federal or state government for a grant or loan may borrow money in anticipation of receipt of funds from such confirmed grant or loan in an amount not to exceed the amount of the confirmed grant or loan, the amount of interest payable on such interim financing, and the reasonable cost of incurring such indebtedness or issuing the note or notes evidencing such indebtedness. The municipality is not required in such borrowing to publish a notice of intent to borrow or to secure the consent of the electors of the municipality by election or otherwise. Since the primary security for repayment is the grant or loan, care should be taken that the interest costs and transaction costs do not drive the repayment amount over the amount of the loan or grant. Money so borrowed shall bear interest at a maximum interest rate of nine percent [§ 21-33-326].

- *Borrowing for Any Purpose for which Bonds, Notes, or Certificates of Indebtedness Are Authorized by Law (Small Issue Authority)*. The governing authorities of a municipality may issue general obligation notes or certificates of indebtedness to borrow for the following purposes: (1) to accomplish any purpose for which such governing authorities are otherwise authorized by law to issue bonds, notes, or certificates of indebtedness, (2) to pay costs incurred by governing authorities as a result of a natural disaster and (3) to purchase motor vehicles for public safety. The total outstanding indebtedness incurred

under this authority at any one time shall not exceed the greater of one percent of the assessed value of all taxable property located within the issuer according to the last completed assessment for taxation or $250,000. Such indebtedness shall be included in computing the statutory limitation upon indebtedness. The rate of interest for this borrowing may not exceed eleven percent and this indebtedness must be repaid within five years [§ 17-21-51 through § 17-21-55].

Lease Financing

Municipalities are authorized to lease-finance equipment [§ 21-17-1 and § 17-5-15] and public buildings [§ 31-8-3]. Under the lease financing agreement, periodic lease payments shall be made by the municipality and the municipality shall have an option to purchase the leased property upon the expiration of the lease term or upon such earlier date as may be agreed upon. Lease financing revenues may come from any legally-available source. Municipalities are still limited to the ten percent property tax growth cap, however. Generally, with regard to leases involving public buildings, the lessor is a non-profit corporation organized under applicable state law acting on behalf of the municipality for the purpose of financing the acquisition and construction of a public building. The lessee is generally the applicable municipality. If the obligation is subject to annual appropriation, then no notice of intent or election is required and the obligations are not subject to the debt limit of the municipality. As might be expected, interest rates should be somewhat higher than for general obligations of the issuer. Certificates of participation can be issued which give the holders thereof a proportional interest in the lease-purchase obligation [§ 31-8-1 through § 31-8-13]. The obligations of the obligated municipality are treated as bonds or notes of the municipality for federal tax purposes and may qualify for treatment as tax-exempt obligations generally under the same rules as for bonds or notes of the municipality.

Emergency Borrowing

In the event of emergency conditions described in § 21-35-19, municipalities are authorized to borrow money pursuant to § 21-35-21. See also §s 17-21-51 through 17-21-55.

TAX CONSIDERATIONS AND OVERVIEW

There are both federal law and state law considerations.

Federal Tax Law

This is one of the most difficult and complex areas pertaining to municipal bonds. The arbitrage regulations alone are hundreds of pages. We must be content here to make a few important points.

- All interest-bearing debt obligations of municipalities – whether they are called bonds, notes or lease obligations – are treated under the same rules and requirements. References to "bond" law or requirements pertaining to bonds refer to all such debt obligations.

- All municipal bonds do not qualify for federal tax exemption. Even if the bond issue is for a qualifying purpose, the bonds will not be tax-exempt unless a filing is made with the IRS. Special consequences pertain to the types of bonds referred to as private activity bonds, working capital bonds, and arbitrage bonds.

- Private use of a type or to an extent not allowed by the Internal Revenue Code can cause interest on bonds to be taxable. Private activity bonds may qualify for tax exemption under requirements pertaining to bonds for manufacturing purposes, for exempt facility bonds, for 501(c)(3) bonds, and for certain other favored categories.

  It should be noted that what some people think of as public purpose bonds, the IRS thinks of as private activity bonds (industrial parks, facilities with non-qualifying management contracts, facilities with more than allowed private use). Use in excess of the allowed percentages by either the boy scouts or the federal government (a private party for this purpose) may cause the bonds to be treated as private activity bonds.

- Working capital bonds are bonds for working capital instead of for capital improvements. Tax anticipation notes are usually for working capital. These bonds or notes may be tax-exempt, but must be done within strict federal tax requirements and limitations applicable to working capital financings. Generally, the applicable federal tax regulations limit favorable tax-exempt status to short-term obligations or to limited portions of the proceeds of bonds issued for capital improvements.

- Arbitrage bonds: In the bond area, arbitrage refers to taking advantage of the difference between tax-exempt yields and taxable yields. The general rule is that issuers must pay to the IRS any investment returns over the yield that the issuer is paying on its bonds. Much of the tax law in this area is involved with trying to find an exception, and there are a number of them applicable to all or to portions of bond proceeds.

- Reimbursement requirements: The current general rule is that if the municipality is planning to reimburse itself from bond proceeds for money it advanced on a bond-financed project, then it must declare its intent to do so prior to or within 60 days after the initial expenditure. Certain preliminary expenses are excluded from this requirement.

- Taxable bonds: It is generally not a problem under state law to issue bonds that are taxable under federal law so long as such bonds are authorized under state law. It does cost more in terms of higher rates.

State Law

Interest on obligations of the State of Mississippi and political subdivisions thereof is excluded from gross income pursuant to § 27-7-15. There are many statutes that provide specific exemptions.

BANK ELIGIBLE BONDS

Even if interest on bonds are generally exempt from federal income taxes, banks do not really benefit from such exemption unless the bonds are found to be eligible as "qualified tax-exempt obligations" and a designation that the bonds are such is made by the municipality. Note that qualification for this benefit requires positive action on a timely basis. Failure to act will be a failure to qualify. Currently, the ability for a municipality to designate bonds for such treatment is limited to municipalities that reasonably anticipate issuing no more than ten million dollars ($10,000,000) of tax-exempt obligations (including for that purpose obligations issued by its subordinate entities or agencies and obligations it issues on behalf of non-profit entities) in the then current calendar year.

BANK LOANS

Warning: Some issuers continue to think that more informal bank loans are somehow not subject to state law requirements for bonds. However, state statutes provide that no interest-bearing indebtedness may be incurred by any municipality unless the authority for incurring the debt is specifically provided for by statute [§ 21-33-327]. Bank loans, like any other municipal debt, must be authorized, and must follow the requirements of such authority. In order for interest on such loans to qualify for tax-exempt status, those obligations must comply with requirements generally applicable to municipal bonds – including filing the required form with the IRS. In addition, in order for the bank to benefit from the tax-exempt status of such obligations, they must also be designated as "qualified tax-exempt obligations."

LOCAL AND PRIVATE LEGISLATION

A substantial number of municipal bond issues are authorized by local and private legislation, which is legislation that applies only to a particular locality. This may be appropriate where the circumstances are somewhat unique, or where there is a good idea that has not yet been enacted into law.

SECURITIES OVERVIEW – DISCLOSURE AND CONTINUING DISCLOSURE

- Bonds are securities. While municipal bonds are generally exempt from the SEC filing requirements of the United Status Securities and Exchange Commission, they are subject to the anti-fraud provisions.

- Disclosure statements generally referred to as preliminary official statements or official statements are required unless the particular bond issue fits within an exception. Common exceptions: issues below $1,000,000, private placements.

- Continuing disclosure requirements apply if an official statement is required. The issuer must generally file an annual continuing disclosure report with EMMA (Electronic Municipal Market Access), a centralized and internet-based system for free real-time public access for municipal securities. In addition, the issuer must file notice of certain material events upon occurrence thereof. In order to assure compliance, municipalities often contract with bond counsel or other professionals to make a required annual filing.

PUBLIC SALE REQUIREMENTS

§ 31-19-25 requires (among other things) that all bonds sold by any municipality shall be advertised for sale on sealed bids or at public auction, and requires that publication be made at least two times in a newspaper published in the county in which the municipality is situated. The first such publication shall be made at least ten days preceding the date set for receipt of bids. A two percent good faith check or exchange is also required. This section states general rules that will apply in the event there is no applicable statutory provision or interpretation that gets the municipality out of the general rule. Some states contain explicit or implied exemption from this requirement.

VOTING RIGHTS PRECLEARANCE

The Voting Rights Act of 1965 prevented the legal enforcement of voting changes until such changes were precleared by either the U.S. Attorney General or a three-judge panel in the District of Columbia.

On June 25, 2013, the United States Supreme Court held that it is unconstitutional to use the coverage formula in Section 4(b) of the Voting Rights Act to determine which jurisdictions are subject to the preclearance requirement of Section 5 of the Voting Rights Act, Shelby County v. Holder, 133 S. Ct. 2612 (2013). The Supreme Court did not rule on the constitutionality of Section 5 itself. The effect of the Shelby County decision is that the jurisdictions identified by the coverage formula in Section 4(b) no longer need to seek preclearance for the new voting changes, unless they are covered by a separate court order entered under Section 3(c) of the Voting Rights Act.

MAJOR STEPS IN THE PROCESS FOR ISSUANCE OF BONDS

Although not to be considered an exhaustive listing, the following steps are the major steps or procedures usually involved in the process of issuing bonds (certain bond issues may involve only some of these steps):

Resolution of Intent

The governing authority of the municipality must adopt a resolution declaring the intention of the municipality to issue bonds (assuming an election is not called), stating the amount of bonds proposed to be issued and the purpose for which the bonds are to be issued, and specifying the date upon which the governing authority proposes to direct the issuance of the bonds. This resolution of intent must be published in a newspaper at certain times and "posted" under certain conditions [e.g., § 21-33-307].

Protest; Authorization

If, on or before the date of issuance of the bonds, a proper written protest is filed against the issuance of the bonds, an election on the question of the bonds must be called. It should be noted that the municipality's governing authority, in its discretion, may call an election on the question of the issuance of certain types of bonds. The question of pre-clearance of the bond issue election under the terms of the Voting Rights Act of 1965, as amended, should be carefully investigated by the municipality. It is the position of the United States Department of Justice that all special elections require pre-clearance.

1. *General Obligation Bonds.* An election is required if ten percent of the qualified electors of the municipality, or fifteen hundred, whichever is less, file a written protest [§ 21-33-307]. A three-fifths majority of those voting must approve the bond issue for the bonds to be issued [§ 21-33-311]. A simple majority of those voting is required for general obligation community hospital bonds [§ 41-13-19].

2. *Revenue Bonds.* The general rule is that an election is required for such bonds. However, a very large exception is that no election is required unless there is a sufficient protest if the proposed bonds are for improving, repairing, or extending an existing system. In that case, a resolution or notice of intent is published and an election is required only if twenty percent of the qualified electors file a written protest [§ 21-27-43].

3. *Industrial Development Revenue Bonds.* An election is required if twenty percent of the qualified electors of the municipality file a written protest upon published notice of intent to issue such bonds. A simple majority of those voting must approve the bond issue for the bonds to be issued [§ 57-3-11 through § 57-3-17].

If no election is required for the issuance of the bonds or if a required election is successful, the governing authority of the municipality will adopt a resolution authorizing the issuance of the bonds.

Official Statement Preparation and Distribution of Preliminary Official Statement

The Official Statement (or disclosure document) describes in detail the financial resources of the issuer relevant to the proposed bonds, and the details and security pertaining to the proposed bond issue. Investors and underwriters base their decision to commit funds to the issue, in large part, upon the information found in the Official Statement. The Official Statement is also used by the bond rating firm, if any, in assigning a rating to the issue. The Official Statement is referred to as the "Preliminary" Official Statement prior to the bond sale to an underwriter, before re-offering by the underwriter.

Notice of Sale (for non-negotiated bonds)

The governing authority of the municipality will adopt and publish a Notice of Bond Sale for receipt of bids on non-negotiated bonds. The Notice of Bond Sale, a copy of the Preliminary Official Statement (if any), a designation of the bond rating (if applicable), information

concerning bond insurance (if applicable), and bid forms will be disseminated to prospective investors (financial institutions, underwriters, etc.).

Bond Rating and Bond Insurance (if any)

The bond rating (usually done by Moody's Investors Service or Standard and Poor's Ratings Services) is in effect a credit evaluation of the bond issue—a shorthand description of the municipality's credit worthiness with regard to the proposed bonds. In general, the higher the bond rating, the lower the interest rate for sale of the bonds by the municipality. Bond ratings are obtained only upon payment of a fee, and are usually obtained only by larger issuers or for larger issues in Mississippi.

Bond insurance may be obtained if such insurance appears to be cost-effective. The availability and use of such bond insurance has declined dramatically since the beginning of the "Great Recession."

Private Placements

Issues may be sold without Official Statements if sold at "private placement" in compliance with federal securities laws. There is often confusion between the term "public sale" under state law when the issue is sold at bid, and the term "private placement" which refers to qualifying under federal securities laws and regulations for disclosure exemption.

Award

A resolution will be adopted awarding the bonds to the conforming bid presenting the lowest net interest cost if bids are being received. At a negotiated sale, a bond purchase agreement will be executed.

Preparation of Bond Transcript

The municipal attorney and the municipal clerk and/or the municipal administrator will prepare the bond transcript - all legal documents, including appropriate minutes of the governing authority, associated with the bond issue. This may be done just prior to or subsequent to the bond sale. In the former case, a supplemental transcript will be prepared to include the sale. The bond transcript is required for validation and is usually required by the purchaser as a closing requirement.

Validation

This is a process whereby the bond transcript is presented to the Chancery Court (after having been submitted to and having received the approval of the State Bond Attorney – not to be confused with bond counsel). Notice is given to taxpayers to present any legal objection they might have. If properly approved by the court, then a judgment is entered validating the bonds. This is intended to foreclose questions as to the authority to issue the bonds to the extent that matters are properly presented in the bond transcript.

Delivery/Issuance

Bonds are issued when exchanged for payment. Closing papers appropriate to the type of bonds being issued are executed and opinions of bond counsel and attorney for the municipality are delivered. Moneys are deposited as directed.

Post-Closing

Municipal officials should take care to know what their obligations are regarding:

- Federal tax law compliance following the closing, and
- Federal securities law regarding continuing disclosure requirements.

ALPHABETICAL REFERENCE TO CERTAIN PURPOSES

State statutes authorize a municipality to issue bonds for specified purposes. Some – but certainly not all – of those purposes are as follows:

1. Airports for colleges or universities [§ 21-33-301(n)]
2. Airports and air navigation facilities [§ 61-3-1 *et seq*. and § 61-5-1 *et seq*.]
3. Armories [§ 21-33-301(a)]
4. Art centers [§ 21-33-301(a)]
5. Athletic buildings and land [§ 21-33-301(a)]
6. Athletic fields [§ 21-33-301(a)]
7. Athletic stadiums [§ 21-33-301 (a)]
8. Auditoriums [§ 21-33-301(a) and § 31-8-3 (lease financing)]
9. Books for public libraries [§ 21-33-301(c)]
10. Bridges [§ 21-33-301(h)]
11. Cemeteries, including land therefor, equipment, and adornments [§ 21-33-301(g)]
12. Channelization of streams and water courses to control, deflect, or guide the current thereof [§ 21-33-301(k)]
13. Civic art centers [§ 31-8-3 (lease financing)]
14. Community centers [§ 21-33-301(a) and § 31-8-3 (lease financing)]
15. Convention centers [§ 17-3-15]

16. Culverts [§ 21-33-301(h)]

17. Docks, including land and improvements therefor [§ 21-33-301(I)]

18. Drainage systems [§ 21-33-301(d)]

19. Driveways and land therefor [§ 21-33-301(f)]

20. Economic development [§ 21-33-301(q), § 57-64-11 and various provisions in Title 57]

21. Election equipment [§ 21-33-301(m)]

22. Electric plants, distribution systems, or franchises [§ 21-33-301(b) and § 21-27-23]

23. Emergencies [21-35-19 and 17-21-51]

24. Equipment with a useful life in excess of ten (10) years [§ 21-33-301(p)]

25. Fire-fighting equipment and apparatus, including housing and land therefor [§ 21-33-301(1)]

26. Game and fish management projects [§ 49-5-17 and § 55-9-1]

27. Garbage disposal systems [§ 21-27-23]

28. Gas plants, distribution systems, or franchises [§ 21-33-301(b) and § 21-27-23]

29. Gymnasiums [§ 21-33-301(a) and § 31-8-3 (lease financing)]

30. Harbors and appurtenant facilities, including land and improvements therefor [§ 21-33-301(I) and § 59-3-1]

31. Hospitals (public) and health facilities, including land and improvements therefor [§ 21-33-301(j), § 41-13-19, and § 41-73-1 *et seq*.]

32. Houses of correction (public), including land and improvements therefor [§ 21-33-301(j)]

33. Housing [§ 43-33-1 *et seq*.]

34. Jails (public), including land and improvements therefor [§ 21-33-301(j), § 17-5-1 (in cooperation with counties), and § 31-8-3 (lease financing)]

35. Lakes [§ 55-9-1]

36. Library buildings, land, equipment, and books [§ 21-33-301(c) and § 31-8-3 (lease financing)]

37. Machinery with a useful life of over ten years [§ 21-33-301(p)]

38. Markets (public), including land and improvements therefor [§ 21-33-301(j)]

39. Mass transit systems (existing), subject to special election [§ 21-33-301(o)]

40. Motor vehicle transportation system [§ 21-27-23(a)]

41. Municipal buildings [§ 21-33-301(a)]

42. Parking (public) facilities and land therefor [§ 21-33-301(f)]

43. Parks, including land therefor, equipment, improvements, and adornments [§ 21-33-301(g) and § 55-9-1]

44. Parkways and land therefor [§ 21-33-301(f)]

45. Pest houses (public), including land and improvements therefor [§ 21-33-301(j)]

46. Piers, pavilions, bath houses, and other like appropriate structures [§ 21-37-13]

47. Playgrounds (public), including land therefor, equipment, and adornment [§ 21-33-301(g)]

48. Pollution control facilities [§ 49-17-103(c)]

49. Ports, harbors, docks and wharves [§ 59-3-1 *et seq*. and Chapter 7 of Title 59]

50. Protection of a municipality, its streets and sidewalks, from overflow, caving banks, and other like dangers [§ 21-33-301(e)]

51. Public buildings [§ 31-8-3 *et seq*. (lease financing)]

52. Public utility plants, distribution systems, or franchises other than those mentioned elsewhere in this listing [§ 21-33-301(b) and § 21-27-11 *et seq*.]

53. Railroad transportation system for passengers and freight [§ 21-27-23(a)]

54. Redevelopment projects [§ 21-45-9 and § 43-35-21]

55. Recreational facilities, including land and equipment therefor [§ 21-33-301(g) and § 55-9-1]

56. Retirement system funding [§ 21-29-27]

57. Reformatories (public), including land and improvements therefor [§ 21-33-301(j)]

58. Refunding or refinancing outstanding bonds [§ 31-27-1 and § 31-15-1 *et seq.*]

59. Regional Economic Development [§ 57-64-11]

60. Rubbish disposal system or incinerators [§ 21-27-23]

61. Sanitary systems [§ 21-33-301(d)]

62. Sewage disposal systems [§ 21-27-23]

63. Sewerage systems [§ 21-33-301(d) and § 21-27-23]

64. Sidewalks and land therefor [§ 21-33-301(f)]

65. Slaughterhouses (public), including land and improvements therefor [§ 21-33-301(j)]

66. Solid waste facilities [§ 17-17-101 *et seq*. and § 17-17-335 (closure, post closure maintenance and corrective actions)]

67. Stadiums [§ 55-9-1]

68. Storm systems [§ 21-33-301(d)]

69. Streets and land therefor [§ 21-33-301(f) and § 21-41-1 *et seq*.]

70. Swimming pools, including land and equipment [§ 21-33-301(g)]

71. Urban renew project [§ 43-35-1 *et seq*.]

72. Voting machines [§ 21-33-301(m)]

73. Walkways and land therefor [§ 21-33-301(f)]

74. Waterworks plants, distribution systems, or franchises [§ 21-33-301(b) and § 21-27-23]

75. Wharves, including land and improvements therefor [§ 21-33-301(I)]

76. Workhouses (public), including land and improvements therefor [§ 21-33-301(j)]

MISCELLANEOUS STATUTORY PROVISIONS RELATED TO THE ISSUING OF BONDS OR OTHER DEBT

1. § 17-3-9 through § 17-3-19 provide that certain municipalities may issue bonds for convention centers.

2. § 17-5-1 through § 17-5-11 authorize municipalities and counties to jointly issue bonds for the construction, expansion, remodeling and/or maintenance and equipping of a jail in a municipality and authorize municipalities with military camps to issue bonds for certain public works systems or activities.

3. § 21-15-25, in part, specifies the maximum compensation which may be paid to the municipal attorney for bond work.

4. § 21-27-51 authorizes the refunding of municipal utility revenue bonds.

5. § 21-33-313 discusses the engraving, printing, appearance, denomination, registration, and evidencing of interest of bonds.

6. § 21-33-315 specifies maturities, interest, bids, and execution on bonds.

7. § 21-33-317 prohibits the diversion of bond proceeds for a use other than that for which the bonds were issued. A willful diversion is a felony.

8. § 21-33-319 specifies when and for what purpose the balance of bond proceeds may be used.

9. § 21-33-321 establishes the conditions under which any excess in the bond and interest fund may be used to purchase outstanding bonds.

10. § 21-33-323 outlines when and how surplus funds in the bond and interest fund may be invested and details how any interest derived from such investment will be used. A Treasurers Regulation has also been promulgated to cover investment of bond proceeds.

11. § 21-35-19 provides for authority to borrow for emergency expenditures under certain conditions.

12. § 21-35-31 describes the requirement for annual audits. Note requirement for completing audit for current year before close of next succeeding fiscal year and filing with State Auditor within 30 days of completion.

13. § 21-41-49 authorizes the refunding of special assessment bonds.

14. § 21-45-9 authorizes the issuance of tax increment revenue bonds.

15. § 27-7-15 provides for exclusion of interest on obligations of the State and political subdivisions thereof from Mississippi income taxes.

16. § 27-31-1(u) provides for an exemption from ad valorem taxes for any municipal bonds.

17. § 27-105-367 provides for the handling of surplus moneys in a bond and interest fund and the disposition of same when the bond issue has been retired.

18. § 31-13-1 through § 31-13-11 discuss validation of public bonds—the role of the State Bond Attorney, the actions taken by the Chancery Court, the "stamping" of validated bonds, the payment of court costs, and the State Bond Attorney's fees and expenses.

19. § 31-17-45 through § 31-17-59 discuss repurchase, retirement, and cancellation of bonds and repayment of unused funds by the bond paying agent.

20. § 31-19-1 specifies that bonds must be issued on the serial payment plan (unless otherwise authorized).

21. § 31-19-5 specifies the conditions under which the proceeds received from the sale of bonds, notes, and certificates of indebtedness may be invested.

22. § 31-19-7 confirms the validity of the execution of bonds signed by official's no longer in office at the time of the sale or delivery of bonds.

23. § 31-19-13 specifies the procedure for bond payments.

24. § 31-19-25 establishes the procedures for advertisement and sale of bonds. This provision requires public sale of bonds unless private sale is authorized.

25. § 31-19-33 specifies that legal actions related to payment of bonds and coupons must commence within twenty (20) years after the maturity date of the bonds.

26. § 31-21-1 through § 31-21-7, the Registered Bond Act, provide for the registration of bonds in order to bring Mississippi bond laws into conformance with federal legislation, the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). This statute also affects the methods of execution and preparation of bonds.

27. § 31-23-51 through § 31-23-69, the Mississippi Private Activity Bonds Allocation Act, establish regulations relative to the issuance of private activity bonds in order to bring Mississippi's bond laws into conformance with federal legislation, Public Law 99-514.

28. § 31-25-1 through § 31-25-55, the Mississippi Development Bank Act, authorize municipalities to issue certain municipal securities and to sell such securities to the Mississippi Development Bank to raise money for most of the purposes for which municipalities are authorized to issue bonds.

29. § 31-27-1 through § 31-27-25, the Mississippi Bond Refinancing Act, specify the authority and process under which municipalities may issue refunding bonds. § 31-15-1 through § 31-15-27 also provides refunding authority.

30. § 57-64-11, the Regional Economic Development Act, authorizes municipalities to issue bonds for a wide range of economic development purposes.

GLOSSARY OF SELECTED TERMS

Accrued Interest	Interest earned on a bond or security from its last interest date. The purchaser buys this interest at the time the bond is purchased and receives the entire interest on the next coupon date.
Ad Valorem Tax	A tax on the value (or assessed value or taxable value) of property.

Amortization	The systematic reduction of debt through use of serial bonds or term bonds with sinking fund payments on an actuarial basis. Also, the gradual and periodic reduction of premiums and discounts on bonds purchased and sold so as to show the true amount of assets or liabilities represented by the premiums or discounts.
Arbitrage Bond	A bond issued at a low (tax-exempt) interest rate, proceeds of which are invested at a higher (taxable) interest rate in violation of federal tax requirements. Interest earned on arbitrage bonds is fully taxed. Arbitrage profits must be rebated to the Internal Revenue Service to the extent an exemption is not established.
Average Maturity	The number of years from issue which marks the point at which half the principal remains unpaid. It is equal to the total bond years divided by the total number of bonds. The average maturity is important because it demonstrates how rapidly the issue is being paid off.
Balloon Payment	Final principal payment that is much larger than the other principal payments.
Basis Point	One hundredth of a percentage point (0.01%). If an interest rate is 5.25 percent, the 0.25 is referred to as 25 basis points. 100 basis points equal 1%.
Bearer Bond	A bond without an identified owner. The presumed owner is the person who holds it.
Bid	A proposition to purchase an issue offered for sale either in a competitive offering or on a negotiated basis.
Bidding Syndicate	Two or more firms of underwriters that act together to underwrite a bond issue.
Bond Counsel	An attorney retained by the municipality with recognized expertise in municipal finance who assures the purchaser that the bond issue was legally issued and covers tax aspects of such issue. The bond counsel's approving opinion is printed on or accompanies each bond and states that in its opinion the municipality has complied with all legal requirements in the issuance of the bonds and that interest paid on the bonds is exempt from income tax (unless issued as taxable bonds). Without such an opinion the bonds are not marketable.
Bond Register	The permanent and complete record maintained by a government issuer for each bond issue. It shows the amount of interest and principal coming due each date, the bond numbers, and all other pertinent information concerning the bond issue.

Bond Transcript	All legal documents, including appropriate minutes of meetings, associated with the authority to issue a bond.
Call Price	The price at which callable bonds may be redeemed if called.
Callable Bond	A type of bond which permits the issuer to pay the obligation before the stated maturity date by giving notice of redemption in the manner specified in the bond contract.
Capital Improvement Plan	A plan for capital expenditures to be incurred each year over a fixed period of years to meet anticipated needs. It sets forth each project or other contemplated expenditure in which the government is to have a part and specifies the full resources estimated to be available to finance expected expenditures.
Coupon	The part of a bond which serves as proof of interest due. Historically, bondholders have detached coupons, usually at semiannual intervals, and presented them for payment to the issuer's paying agent. Now, bonds must be issued as fully registered bonds without coupons in order to be tax exempt. The term is still in use in such terms as "coupon rate" even though no actual coupon is involved.
Current Yield	Annual interest payable on a bond divided by its current price, expressed as a percent.
Debt Limit	The maximum amount of debt that a governmental unit may incur under constitutional, statutory, or charter requirements. The limitation is usually some percentage of taxable valuation and may be fixed upon either gross or net debt. The legal provision in the latter case usually specifies what deductions from gross funded debt are allowed to calculate net debt.
Delivery Date	Date on which the bonds are exchanged for the purchase price.
Discount	The difference between the par value (face value) of a bond, or other security, and the lesser price for which it is acquired or sold. See Premium.
Financial Advisor	Person who offers a broad range of services to municipalities regarding financial matters.
General Obligation Bond	A bond for which the full faith and credit of the issuer has been pledged for payment.
Interest	Compensation paid or to be paid for use of money, including interest payable at periodic intervals or as a discount at the time a loan is made.

Investment Grade	A bond rated at least "BBB" by Standard and Poor's Corporation or at least "Baa" by Moody's Investor's Service. Bank examiners require that most bonds held in bank portfolios be investment grade.
Maturity	The date on which the principal of a bond becomes due and payable.
Negotiated Underwriting	Contractual arrangements between an underwriter and an issuer of debt in which the underwriter is given the exclusive right to underwrite the issue.
Net Interest Cost	Total interest cost plus discount or minus premium divided by total bond years (net interest cost per $1,000 bond), divided by 10 (to turn result into a percentage).
Official Statement	Document that gives information on the bond issue and the financial, economic, and social characteristics of the issuing entity, and specifies how the funds raised by the issue will be used. Potential bidders and investors use the information included in the statement to evaluate the credit quality of the bonds and to determine the interest rates at which they would purchase the bonds. The official statement reduces the cost to both bidders and investors of acquiring credit information. Such document is referred to as the preliminary official statement until final sale information is determined.
Par Value	The face value of a security. In the case of bonds, it is the amount that must be paid at maturity. Although bonds are usually issued in denominations that are a multiple of $5,000, a quotation of 100 means at par. A $1,000 bond quoted at 98 costs $980 and is selling at a discount. A $1,000 bond quoted at 102 costs $1,020 and is selling at a premium.
Paying Agent	A bank or other institution which acts as the agent for the municipality in making bond interest and principal payments. This bank also usually serves as registrar and transfer agent in keeping a record of all registered owners and in changing the records regarding registered owners upon sales or transfers of bonds.
Point	One percent (1.0%) of the face value of a bond (usually $10, 1% of $1,000). For example, five percent is expressed as 5 points.
Premium	The excess of the price at which a bond, or other security, is acquired over its par value. See Par Value.
Principal	The face amount of a bond exclusive of accrued interest.

Rating	A designation used by analysts or by investor services to represent the relative quality of a bond.
Refunding Bond	Bond used to retire another bond already outstanding. A refunding bond may be sold for cash and an outstanding bond redeemed in cash, or the refunding bond may be exchanged with holders of outstanding bonds.
Registered Bond	A bond listed in the name of the holder. When sold, it must be transferred on the books of the issuer (usually kept by its paying agent). When fully registered, there are no coupons attached to the bond.
Settlement	Exchange of bonds for purchase price.
Underwriter	The investment house (or houses) that purchases a bond offering from the issuing government usually with a view toward public distribution.
Underwriting Syndicate	Two or more underwriters who collectively underwrite a single issue.
Yield	The net annual percentage of income from an investment. See Current Yield and Yield to Maturity.
Yield to Maturity	Percentage return from a bond that takes into account current yield and amortization of any premium or discount.

CHAPTER THIRTEEN

PERSONNEL ADMINISTRATION

Gary E. Friedman

FEDERAL LAWS

Title VII

Coverage

Title VII of the Civil Rights Act of 1964 covers all municipalities that have "fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year."[1] A charge of discrimination under Title VII may be filed by or on behalf of any "individual employed by an employer"[2] or employment applicant. Independent contractors are not covered, but the distinction between an employee and an independent contractor is not always clear. Among the determining factors are the degree of the alleged employer's right to control the manner in which work is to be done, the individual's opportunity for profit or loss, and whether the service rendered requires a special skill.

Prohibited Conduct

Title VII forbids discrimination in hiring, firing, compensation, terms, conditions, or privileges of employment on the basis of race, color, religion, sex, pregnancy, or national origin. Title VII also makes it unlawful for a municipality to limit, segregate, or classify employees or applicants for employment in any way that tends to restrict employment opportunities or status because of race, color, religion, pregnancy, sex, or national origin.[3] Furthermore, it is unlawful to discriminate on the basis of race, color, religion, sex, or national origin in any apprenticeship, training, or retraining program[4] or to indicate a preference based on any of these bases in employment advertisements.[5]

Courts have expanded Title VII's prohibition against sex discrimination to include sexual harassment. An employer is guilty of sexual harassment when it, its supervisors, or agents require sexual favors from an employee in return for job benefits, or when the employer (or any agent) creates a sexually hostile or offensive work environment that unreasonably interferes with an individual's work.[6] In many cases, an employer may not be aware that a supervisor or agent has sexually harassed an employee. In such cases, however, the employer may still be held liable

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[1] 42 U.S.C. § 2000e(b).
[2] 42 U.S.C. § 2000e(f).
[3] 42 U.S.C. § 2000e-2(a).
[4] 42 U.S.C. § 2000e-2(d).
[5] 42 U.S.C. § 2000e-3(b).
[6] 29 C.F.R. § 1604.11(a).

for the acts of the supervisor or agent.[7] In situations involving the creation of a sexually offensive work environment, an employer may be held liable if the employer knew or should have known about the situation.[8]

Three different categories of discrimination under Title VII have been developed by the courts: (1) disparate treatment; (2) disparate impact; and (3) failure to accommodate reasonably an employee's religious observance or practices. The disparate treatment analysis is most frequently employed by the courts. Under this theory, it is unlawful to treat a person less favorably because of the person's race, sex, religion, or ethnic group unless there is a legitimate, non-discriminatory reason for the difference in treatment.

A plaintiff who alleges disparate treatment in hiring has the burden of proving that: (1) he belongs to a protected group; (2) he applied and was qualified for a job for which applicants were being sought; (3) he was rejected despite his qualifications; and (4) the position remained open after his rejection and applicants with the plaintiff's qualifications continued to be sought. This same burden of proof applies to allegations of disparate treatment in other areas such as discharge, discipline, and promotion on the basis of race, color, religion, sex, national origin, or pregnancy.[9] After the plaintiff has met this burden, the employer must show that there was a legitimate, non-discriminatory reason for his action regarding the plaintiff. The plaintiff is then given an opportunity to show that the employer's stated reason was a pretext for the alleged discriminatory act.[10] The plaintiff does not have to introduce additional, independent evidence of discrimination.[11] The "plaintiff's prima facie case, combined with sufficient evidence to find that the employer's asserted justification is false" may permit the jury to decide that the employer unlawfully discriminated.[12]

A "mixed-motive" disparate treatment case is one in which a plaintiff proves that race, gender, etc. was a "motivating factor" in the challenged employment decision. In such a case, the employer must prove by a preponderance of the evidence that the employment decision would have been the same even if the prohibited factor had not been considered.[13] This burden shifting framework for mixed motive cases does not apply to actions brought under the Age Discrimination in Employment Act ("ADEA").[14]

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[7]*Ibid*.; *See also Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986); *Sims v. Brown and Root Industrial Services, Inc.*, 889 F.Supp. 920 (W.D. La. 1995).
[8]*Henson v. City of Dundee*, 682 F.2d 897 (11th Cir. 1982); *Waltman v. International Paper Co.*, 875 F.2d 468 (5th Cir. 1989).
[9] *See Young v. United Parcel Service, Inc.*, 135 S.Ct. 1338 (2015).
[10]*Texas Dept. Of Community Affairs v. Burdine*, 450 U.S. 248 (1981); *Rhodes v. Guiberson Oil Tools*, 75 F.3d 989 (5th Cir. 1996).
[11]*Reeves* v. *Sanderson Plumbing Prods.,Inc.*, 530 U.S. 133 (2000).
[12]*Ibid*. at 148.
[13]*Hopkins v. Price Waterhouse*, 109 S.Ct. 1775 (1989); *Brown v. East Mississippi Electric Power Assn.*, 989 F.2d 858 (5th Cir. 1993).
[14] *Gross v. FBL Financial Services, Inc.*, 557 U.S. 167, (2009).

Another theory of discrimination, disparate impact, involves employment practices that are fair in form but operate more harshly on a protected group than on the unprotected. There are three such employment practices: scored tests, non-scored objective criteria, and subjective criteria. A plaintiff who alleges that any of these employment practices is discriminatory has the burden of showing that the application of a *specific* employment practice disqualifies a disproportional high percentage of employees or applicants in a particular racial, sexual, religious, or ethnic group.[15] This burden can be met by the use of statistics alone but statistical proof is usually bolstered by proof of specific instances of discrimination.[16] Relevant statistics compare the racial, gender, religious, or ethnic composition of the jobs at issue with the composition of the qualified population in the relevant job market.[17]

After the plaintiff meets his burden, an employer who is defending a scored test or non-scored objective criteria, such as a high school diploma requirement, must show that the test or requirement at issue is related to the job for which it is used and is therefore a business necessity.[18] Usually, an expert is needed to show job-relatedness. An employer who is defending the use of subjective criteria, such as supervisory evaluations, must show that the use of these criteria is necessary.[19]

The final theory of discrimination under Title VII involves an employer's affirmative duty to accommodate the religious practices of employees. An employee who alleges this type of discrimination must show that his religious belief is sincerely held and that the belief is the cause of an unfavorable employment decision. Liability may also be found when an employee is not hired because of the employer's belief that an accommodation may be necessary.[20] The employer must then show that it would cause an undue hardship on the conduct of his business to accommodate the employee's religious practice.[21]

Procedure

The Equal Employment Opportunity Commission (EEOC) administrative process is begun by filing a charge of discrimination within 180 days of the last alleged discriminatory act. The

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[15] *Griggs v. Duke Power*, 401 U.S. 424 (1971).
[16] *International Brotherhood of Teamsters v. United States*, 431 U.S. 324 (1977); *Anderson v. Douglas & Lomason Co., Inc.*, 26 F.3d 1277 (5th Cir. 1994).
[17] *Wards Cove Packing Co. v. Antonio*, 109 S.Ct. 2115 (1989); *Watson v. Forth Worth Bank & Trust Co.*, 108 S.Ct. 2777 (1988); *International Brotherhood of Teamsters v. United States*, 431 U.S. 324 (1977); *Griggs v. Duke Power*, 401 U.S. 424 (1971).
[18] *Albemarle Paper Co. v. Moody*, 422 U.S. 405 (1975); *Bernard v. Gulf Oil Corp.*, 890 F.2d 735 (5th Cir. 1989).
[19] *Watson v. Fort Worth Bank & Trust Co.*, 108 S.Ct. 2777 (1988); *Rowe v. General Motors Corp.*, 457 F.2d 348 (5th Cir. 1972).
[20] *See Equal Employment Opportunity Commission v. Abercrombie & Fitch Stores, Inc.*, 135 S.Ct. 2028 (2015) (liability may be found even where employer subjectively lacks knowledge of specific need for accommodation).
[21] *Trans World Airlines v. Hardison*, 432 U.S. 63 (1977); *Eversley v. MBANK Dallas*, 843 F.2d 172 (5th Cir. 1988).

EEOC will investigate the charge and may then conduct an on-site review or hold a "fact-finding conference with the charging party, the party against whom the charge was filed and their witnesses, to determine if there is reasonable cause to believe the charge is true. If no cause is found, the EEOC investigation ends and the charging party have 90 days to sue in federal district court.

If cause is found, the EEOC attempts to settle the charge and, if no settlement is reached, either the Attorney General files suit on behalf of the charging party or the charging party is issued a "right to sue" letter.

Liability Exposure

If an employer loses a Title VII suit, that employer may be required to reinstate the plaintiff and to grant all back pay and employment-related benefits the court finds the plaintiff lost because of the unlawful discrimination. However, if the employment relationship has been so poisoned as to render re-employment inappropriate, the employer may be required to pay the plaintiff "front pay" in lieu of reinstatement. An employer may be held liable for back pay accruing from a date two years prior to the filing of the charge and for the plaintiff's attorneys' fees.[22]

Prior to the 1991 amendments to Title VII, employment discrimination cases were tried by a judge sitting without a jury. The Civil Rights Act of 1991 changed this so that now jury trials are available in employment discrimination cases arising after November 21, 1991.[23] This has generally increased employers exposure to large damage awards. Furthermore, compensatory damages are now available to prevailing plaintiffs for any emotional distress injuries they are found to have received as a result of the employers' unlawful discrimination. The 1991 amendments also provide for plaintiff's expert witness fees to be paid if the employer loses.

Suits that allege that an employer has engaged in a pattern or practice of resistance to the rights protected by Title VII have potential for massive liability. Municipalities that refuse to hire females for their fire or police departments are particularly susceptible to such suits. Pattern and practice suits are brought by the EEOC and can subject an employer to liability for back pay and employment for all affected applicants and past as well as present employees.[24]

<u>Americans with Disabilities Act</u>

Coverage

The Americans with Disabilities Act (ADA) became effective on July 26, 1992. Title I of the Act applies to all municipalities employing 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year. The ADA Amendments Act of 2008 was signed into law on September 25, 2008, and went in effect on January 1, 2009. The

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[22]42 U.S.C. § 2000e-5(g)(k); *Albemarle Paper Co. v. Moody*, 422 U.S. 405 (1975); *Sellers v. Delgado Community College*, 839 F.2d 1132 (5th Cir. 1988).
[23]42 U.S.C. § 2000e.
[24]*General Telephone Co. v. EEOC*, 446 U.S. 318 (1980).

Amendments were intended to overrule Supreme Court cases that restrictively interpreted certain definitions under the ADA.

Prohibited Conduct

The Act forbids an employer from discriminating "against a qualified individual with a disability because of the disability of such individual in regards to job application procedures; the hiring, advancement, or discharge of employees; and employee compensation, job training, and other terms, conditions, and privileges of employment."[25] A "qualified individual with a disability" means an individual with a disability who satisfies the requisite skill, experience, education, and other jobs-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.[26] The term "disability" means, with respect to an individual, "(A) A physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such impairment; or (C) being regarded as having such an impairment."[27]

The ADA Amendments did not change the actual definition of the word "disability" under the original Act. They did, however, change the meaning of some of the words used in the definition and the way those words are applied to individuals.

In the past, the determination of whether an individual was disabled was made with reference to measures that mitigate the individual's impairment.[28] Put differently, if a person was taking measures to correct or mitigate a physical or mental impairment, "the effects of those measures – both positive and negative – [were to] be taken into account when determining whether that person [was] 'substantially limited' in a major life activity and thus 'disabled under the Act."[29]

Under the Amendments, mitigating measures, for the most part, are not to be considered. The Amendments define mitigating measures that are not to be considered as follows:

- medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;
- use of assistive technology;
- reasonable accommodations or auxiliary aids or services; or
- learned behavioral or adaptive neurological modifications.[30]

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[25] 42 U.S.C. § 12112(a).
[26] 29 C.F.R. § 1630.2(m).
[27] 42 U.S.C. § 12102(2).
[28] *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999).
[29] *Ibid*. at 481.
[30] 42 U.S.C. § 12102.

However, "[t]he ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity."[31]

The ADA requires individuals claiming the Act's protection to prove disability by offering evidence that the extent of the limitation in terms of their own experience is substantial with respect to a major life activity.[32] The regulations had formerly defined "substantially limits" as "significantly restricts," but the new Amendments provide the EEOC with a mandate to lower that standard. The EEOC has not yet promulgated a new definition at this time.

The regulations define "physical or mental impairment" as:

- Any physiological disorder, or condition, cosmetic disfigurement or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic lymphatic, skin and endocrine; or

- Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.[33]

The Amendments also define "major life activities" to include functions such as "caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working."[34] Additionally included is "the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions."[35]

The ADA also specifically excludes certain impairments from its coverage, including homosexuality, transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, other sexual behavior disorders, compulsive gambling, kleptomania, pyromania, and current illegal drug use.[36]

The Act lists the following as examples of prohibited discrimination:

- limiting, segregating, or classifying disabled individuals;

- participating in an arrangement or relationship, contractual or otherwise, that has the effect of subjecting a qualified applicant or employee with a disability to discrimination;

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[31] *Ibid*.
[32] *Albertson's Inc. v. Kirkingburg*, 527 U.S. 555 (1999).
[33] 29 C.F.R. §1630.2(h).
[34] 42 U.S.C. § 12102.
[35] *Ibid*.
[36] 29 C.F.R. § 1630.3(d).

- utilizing standards or methods of administration that have the effect of discriminating against disabled individuals or that "perpetuate the discrimination of others who are subject to common administrative control;"

- excluding or denying jobs or benefits because of an individual's relationship or association with a disabled person;

- failing to accommodate disabilities, unless it can be shown that the accommodation would impose an undue hardship on the operation of the employer;

- using employment tests, standard or selection criteria that tend to screen out individuals with disabilities unless the criteria is shown to be job related for the position in question and is consistent with a business necessity; and

- failing to administer employment tests in a manner that accurately reflects the skill, aptitude, or whatever other factor the test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of disabled employees or applicants.[37] The Act also forbids retaliation against an applicant or employee for opposing handicapped discrimination or participating in investigations or proceedings under the Act.[38]

The ADA also requires employers to make "reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless (the employer) can demonstrate the accommodations would impose an undue hardship on the operation of the business. . . ."[39] Reasonable accommodation might include: making existing facilities used by employees readily accessible to and usable by individuals with disabilities; job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modification of equipment or devices; appropriate adjustment or modification of examinations, training material, or policies; and provisions of qualified readers or interpreters.[40] The duty to reasonably accommodate an individual with a disability does not require an employer to bear "undue hardship," which means an action requiring "significant difficulty or experience."[41] The EEOC has stated that unpaid leave days may be appropriate accommodations under some circumstances.[42] In considering whether an accommodation would impose an undue hardship on an employer, the following factors must be considered: (1) the nature and net cost of the accommodation required; (2) the overall size of the business with respect to the number of employees, the number and type of facilities, and the size of the budget; (3) the type of business operation, including the compensation and structure of the work force;

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[37] 42 U.S.C. § 12112(b); 29 C.F.R. § 1630.5-.11.
[38] 42 U.S.C. § 12203.
[39] 42 U.S.C. § 12112(b)(5)(A).
[40] 29 C.F.R. § 1630.2(o)(2).
[41] 29 C.F.R. § 1630.2(p).
[42] "Employer-Provided Leave and the Americans with Disabilities Act," May 9, 2016. *Available at: https://www.eeoc.gov/eeoc/publications/ada-leave.cfm.*

and (4) the impact of the accommodation upon the operation of the business, including the impact on the ability of other employees to perform their duties.[43]

The ADA also restricts inquiries about the health and fitness of applicants and employees. Specifically, the Act forbids a covered entity to "conduct a medical examination or make inquires of a job applicant or employee as to whether such applicant or employee is an individual with a disability or as to the nature or severity of such disability."[44]

However, the Act does allow limited pre-employment inquiries into an applicant's ability to perform a job-related function. An employer may also condition a job offer on results of a physical or mental examination if (1) all new employees are subject to the examination, (2) the information is kept confidential and in separate medical files, and (3) examination results are used only in accordance with the Act.[45]

The ADA allows employers to prefer some physical attributes over others and to establish physical criteria.[46] An employer is free to decide that "physical characteristics or medical conditions that do not rise to the level of an impairment – such as one's height, build, or singing voice – are preferable to others."[47]

Municipalities are generally prohibited from requiring that existing employees undergo medical examinations unless the examination is shown to be job-related and consistent with business necessity.[48]

Finally, municipalities are free to prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees and may hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior that such municipality holds other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism.[49] Furthermore, for the purposes of the ADA, a test to determine the illegal use of drugs shall not be considered a medical examination.

Liability Exposure

A violation of the ADA gives rise to liability by the municipality which is identical to liability for violations of Title VII.[50]

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[43]29 C.F.R. § 1630.2(p)(2).
[44]29 C.F.R. § 1630.13.
[45]42 U.S.C. § 12112(d)(3).
[46]*Sutton, supra* note 25, at 490.
[47]*Ibid*.
[48]42 U.S.C. § 12112(d)(4).
[49]42 U.S.C. § 12114(c).
[50]See section above for a discussion of Title VII.

Family and Medical Leave Act

Coverage

The Family and Medical Leave Act of 1993 (FMLA) applies to all municipalities regardless of the number of employees employed.[51] For an employee to be eligible for family and medical leave, he must have been employed for at least 12 months and have worked 1,250 hours for the municipality during the previous 12 months period.[52]

All eligible employees are permitted a total of 12 work weeks of unpaid leave during any 12 month period for one or more of the following events: (1) the birth of and to care for a son or daughter of the employee; (2) the placement of a son or daughter with the employee for adoption or foster care; (3) in order to care for the spouse, son, daughter, or parent or the employee, if such person has a serious health condition, or to care for a child over 18 years of age who has a serious health condition and is incapable of self-care because of a mental or physical disability; and (4) because of a serious health condition that makes the employee unable to perform the functions of his position.[53] The entitlement to leave for the birth or placement of a son or daughter must be taken within a 12-month period from the date of the child's birth.[54] In 2009, the Department of Labor issued an Administrative Interpretation Letter clarifying the definition of "son or daughter" in the FMLA. The definition now includes any person, whether a biological parent or not, who (1) provides day-to-day care, or (2) provides financial support for the child.

If the employer employs a husband-wife team and both are otherwise eligible for FMLA leave, they are entitled only to 12 weeks between them for a birth or placement of a child for adoption or foster care, or to care for a seriously-ill parent.[55] The limitation does not apply, however, to leave taken by either spouse to care for the other who is seriously ill and unable to work, to care for a child with a serious health condition, or for his own serious illness.[56]

Intermittent leave is also available under the FMLA. Intermittent leave is leave of less than twelve (12) weeks taken in due to a single qualifying reason. An employer must count intermittent leave in smallest time period used in its payroll system. The regulations require employees to make a reasonable effort to schedule intermittent leave so as not to disrupt operations.

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[51] 29 C.F.R. § 825.104(a).
[52] 29 C.F.R. § 825.110(d).
[53] 29 U.S.C. § 2612(a)(1).
[54] 29 U.S.C. § 2612(a)(2).
[55] 29 C.F.R. § 825.201(b). This limitation applies even if the spouses work at different work sites located more than 75 miles apart, or are employed by different divisions of the same operating company.
[56] 29 C.F.R. § 825.202(c). For example, if each spouse took 6 weeks of leave to care for a healthy, newborn child, each could use an additional 6 weeks due to his or her own serious health condition or to care for a child with a serious health condition. 29 C.F.R. § 825.201(b).

A "serious health condition" is defined as an illness, injury, impairment, or physical or mental condition that involves (1) in-patient care in a hospital, hospice, or residential medical care facility, including any period of incapacity or a subsequent treatment in connection with such in-patient care or; (2) continuing treatment by a health care provider which requires the continuous absence from work for a period of more than three full calendar days; or (3) continuing treatment by a health care provider for a chronic condition which, if left untreated, would result in an absence from work of more than three calendar days.[57] Department of Labor regulations from 2009 specify that to establish continuing treatment based on two or more doctor visits, the visits must occur within thirty (30) days of the start of the incapacity, with the first visit falling within seven (7) days of the incapacity. "Chronic conditions" also now require periodic visits of at least twice per year for treatment of the incapacity.

Examples of serious health conditions may include heart attacks, heart conditions requiring heart bypass or valve operations, most cancers, back conditions requiring extensive therapy or surgical procedures, stress, severe respiratory conditions, spinal injuries, appendicitis, pneumonia, emphysema, severe arthritis, severe nervous disorders, injuries caused by serious accidents on or off the job, ongoing pregnancy, severe morning sickness, the need for prenatal care, child birth, and recovery from child birth.

The definition of "serious health condition" does not include (1) conditions that do not involve in-patient care and continuing treatment; (2) illnesses such as the common cold, flu, ear aches, upset stomach, minor ulcers, headaches other than migraines, routine dental or orthodontia problems, or periodontal disease unless complications develop; and (3) cosmetic treatments such as acne or plastic surgery, unless in-patient care is required or complications develop. Treatments for allergies or stress or for substance abuse are serious health conditions if they otherwise meet the definition of a serious health condition.

On October 27, 2009, certain FMLA Amendments were signed into law through the National Defense Authorization Act of 2010. The Amendments expanded the availability and use of military family leave. In particular, the FMLA Amendments allow eligible employees to take up to 12 weeks of job-protected leave in a 12-month period for any "qualifying exigency" arising out of the active duty or call to active duty status of a spouse, son, daughter or parent. In addition, eligible employees are permitted to take up to 26 weeks of job-protected leave in a "single 12-month period" to care for a covered service member with a serious injury or illness.

Under the Amendment provisions, an eligible caregiver may take leave to care for a veteran undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including the National Guard or Reserves) at any time during the five-year period preceding the date on which the veteran undergoes medical treatment, recuperation, or therapy. Put differently, the caregiver may take up to 26 weeks of leave to care for a veteran for up to five years after he or she leaves military service.

[57] 29 C.F.R. § 825.114.

Procedure

The leave required by the FMLA is unpaid leave. However, if the employer provides paid leave for fewer than 12 weeks, it must still provide unpaid leave for the balance of the 12 weeks. In certain circumstances, an eligible employee may elect, or an employer may require the employee, to substitute and use any accrued paid vacation leave, personal leave, or family leave during the 12 week period.

Employees on leave under the FMLA are entitled to be restored to the position of employment they held when they went on leave, or to be restored to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. Employees are not required to requalify for their benefits upon their return to work.

When returning from FMLA qualifying leave, an employee is entitled to be returned to the same position that he held prior to taking leave, or an equivalent position with equivalent benefits, pay and other terms and conditions of employment. An employee's reinstatement rights continue regardless of whether the employee has been replaced or his position has been restructured to accommodate the employee's absence. However, if the employee is unable to perform the essential functions of the position because of a physical or mental condition, the employee has no right to restoration to another position under the FMLA. Taking FMLA leave does not entitle the employee to any greater rights of employment than those to which he or she would have been entitled had he not taken FMLA leave.

Employers are responsible for designating leave taken as FMLA leave and notifying an employee that his leave has been designated as such.[58] An employee's request for FMLA leave must explain the reasons for the needed leave in sufficient detail so as to allow the employer to determine that the leave qualifies under the Act. If the employee fails to explain why the unpaid leave is requested, the leave may be denied.[59] In cases involving the serious health condition of an employee, spouse, parent, or child, the employer may require medical certification of the condition.

Under the FMLA, an employer must notify an employee of the designation of an absence as FMLA leave within five (5) business days of an employer's learning that leave is being taken for an FMLA purpose absent extenuating circumstances. If the employer fails to designate the leave and/or give notice of the designation, the employer may be liable for interference with, restraint, or denial of the employee's FMLA rights.[60]

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[58]29 C.F.R. § 825.300(d).

[59]The employee does not have to mention the FMLA but must provide sufficient detail for the employer to determine whether it is a FMLA qualifying event. *Manual v. Westlake Polymer*, 66 F.3d 758 (5th Cir.1995).

[60] 29 C.F.R. § 825.300(d)(6).

Employers must notify the employee of the amount of leave, in hours, days, or weeks, that will be counted against the employee's FMLA leave entitlement at the time the leave is designated, if the amount is known at that time or at any request by the employee, but in any case no more often than once every thirty days and only if leave was taken in the thirty-day period.[61]

Employees can assert FMLA protection for an absence by notifying an employer as soon as is practicable that the absence was for an FMLA reason. If and when an employee provides notice that leave is needed, the employer must notify the employee of his specific rights under the Act. The employee must also comply with the employer's usual and customary notice requirements for requesting leave.[62]

Employers are prohibited from interfering with, restraining, or denying the exercise of or the attempted exercise of any right provided in the FMLA. They are also prohibited from discharging or discriminating against any person proposing any practice made unlawful by the FMLA. Employers are required to make, keep, and preserve records regarding compliance with the Act.

Liability

The Secretary of Labor may bring an action in court for damages. Employees may also bring an action in federal or state court against an employer for violation of the FMLA. The employee may be awarded reasonable attorney's fees, reasonable experts fees, and other costs. Employers who violate the FMLA will be liable to any eligible employee for damages equal to the amount of any wages, salary, employment benefits, or other compensation denied or lost because of a violation of the Act, including liquidated damages and interest. The employee may also be awarded appropriate equitable relief, including employment, reinstatement, and promotion.

Genetic Information Nondiscrimination Act

The Genetic Information Nondiscrimination Act ("GINA") of 2008 is legislation designed to protect against the misuse of genetic information in health insurance and employment.[63] Title II of GINA contains provisions that prohibit discrimination based upon genetic information in employment.[64] These provisions apply to employers, and their employees, who meet the requirements found in other federal laws.[65]

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[61] 29 C.F.R. § 825.300(d)(6).
[62] 29 C.F.R. § 825.303(c)
[63] Genetic Information Nondiscrimination Act of 2008, Pub. L. No. 110-233, 122 Stat. 881 (codified in scattered sections of 26, 29, and 42 U.S.C.).
[64] GINA § 202.
[65] GINA § 201(2)(A), (B) (identifying as subject employers those with fifteen or more employees, those that form part of state or local governments, and certain federal government entities).

GINA has several basic tenets. It is unlawful for employers to discriminate against employees in terms of hiring, promotion, firing, or any other terms and conditions of employment.[66] Secondly, it is also unlawful for employers to negatively limit, segregate, or classify employees because of genetic information.[67] Finally, it is unlawful for employers to request, require, or purchase genetic information about employees or employees' family members, with limited exceptions.[68] The first exception to requesting, requiring, or purchasing such genetic information is that employers may acquire genetic information if the information is acquired as a result of an inadvertent request or requirement of family medical histories.[69] The second exception applies when the employer offers health care services as part of a wellness program, the employee provides a voluntary written authorization, there are identity protections in place, and the health information is not provided to the employer.[70] A third exception involves exceptions for information provided in compliance with the Family and Medical Leave Act of 1993.[71] The fourth exception involves information publicly available like in the newspaper or in books,[72] and the fifth exception is where the employer is monitoring effects of toxic substances in the workplace and complies with statutory requirements.[73]

Title VI

Coverage

Title VI of the 1964 Civil Rights Act covers any program or activity which receives federal financial assistance[74] for the purpose of providing employment.[75] Agencies that administer the various assistance programs require recipients of federal assistance to adopt affirmative action plans to comply with Title VI.

Prohibited Conduct

Title VI prohibits discrimination on the basis of race, color or national origin.[76] Discrimination on the basis of sex and religion is not expressly prohibited, but sex discrimination is prohibited under the terms of many federal assistance programs to which Title VI applies.

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[66] GINA § 202(a).
[67] GINA 202(a).
[68] GINA § 202(b) (listing actions employers are prohibited from taking in relation to employees' and their families' genetic information).
[69] GINA § 202(b)(1).
[70] GINA § 202(b)(2).
[71] GINA § 202(b)(3).
[72] GINA § 202(b)(4).
[73] GINA § 202(b)(5).
[74] 42 U.S.C. § 2000d.
[75] 42 U.S.C. § 2000d-3.
[76] 42 U.S.C. § 2000d.

Procedure

The federal agency which administers a particular financial assistance program can terminate or refuse to grant that assistance to any recipient who is found to be in violation of Title VI. Before taking such action, however, the agency must notify the recipient of the failure to comply and must attempt to gain voluntary compliance.[77] Any recipient of federal assistance who has been denied assistance because of alleged noncompliance with Title VI is entitled to judicial review of the adverse agency ruling.[78] Furthermore, an aggrieved party may sue to obtain relief from discriminatory practices prohibited by Title VI.[79]

Liability

Termination of federal financial assistance is the main penalty for noncompliance with Title VI.[80] In addition, a non-complying recipient may be subject to injunctive relief requiring compliance[81] and may be required to pay attorneys' fees to the prevailing party in a suit to enforce Title VI.[82]

<u>Title IX</u>

Coverage

Title IX of the Education Amendments of 1972 applies to any education program or activity that receives federal financial assistance and prohibits discrimination on the basis of sex.[83] Title IX regulates the entire operations of a municipality even if only one program is receiving federal assistance.[84] Title IX does not apply to educational institutions controlled by religious organizations if application of the Act "would not be consistent with the religious tenets of such organization"; educational institutions whose primary purpose is the training of individuals for military service or the Merchant Marines and beauty pageant scholarships for higher education Also excluded are social sororities and fraternities, the YMCA, YWCA, Girl and Boy Scouts, and other voluntary youth service organizations traditionally limited to persons of one sex and to persons less than 19 years of age; boy and girl conferences; and father-son or mother-daughter activities.[85]

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[77]42 U.S.C. § 2000d-1.
[78]42 U.S.C. § 2000d-2.
[79]*Cannon v. University of Chicago*, 441 U.S. 677 (1979); *Bossier Parish School Board v. Lemon*, 370 F.2d 847 (1967), *cert. denied*, 388 U.S. 911 (1967).
[80]42 U.S.C. § 2000d-1.
[81]*Bossier Parish School Board v. Lemon*, 370 F.2d 847 (5th Cir. 1967).
[82]42 U.S.C. § 1988.
[83]20 U.S.C. § 1681(a).
[84]20 U.S.C. § 1687.
[85]20 U.S.C. § 1681.

Prohibited Conduct

Title IX applies to employees and students and therefore prohibits discrimination against any student[86] or employee[87] on the basis of sex. This ban on employment discrimination applies to the operations of an entire municipality even if only one program uses federal funds.[88]

Procedure

The procedure for enforcing Title IX is identical to the Title VI enforcement procedure.[89]

Liability Exposure

The potential liability under Title IX is identical to the potential liability under Title VI.[90]

<u>Age Discrimination in Employment Act</u>

Coverage

The Age Discrimination in Employment Act (ADEA) applies to every municipality having twenty (20) or more employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding calendar year.[91] A charge under the ADEA can be filed by any "individual employed by an employer" or by an applicant for employment who alleges discrimination in hiring.

Prohibited Conduct

Under the ADEA, it is unlawful for a municipality to discriminate against employees or job applicants forty (40) or more years old on account of age.[92] Prohibited conduct includes discrimination on the basis of age by refusing to hire, discharging, disciplining, denying employment opportunities, involuntarily retiring, or otherwise discriminating against individuals in the protected age group with respect to compensation, terms, conditions, or privileges of employment. The ADEA also forbids retaliation against an employee or applicant because the individual has opposed any practice prohibited by the Act, has filed a charge, or has participated in any way in a proceeding under the Act. Finally, the Act prohibits any advertisement relating to employment which indicates any preference, limitation, specification, or discrimination based on age.[93]

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[86]20 U.S.C. § 1681(a).
[87]*North Haven Board of Education v. Bell*, 456 U.S. 512 (1982).
[88]20 U.S.C. § 1687.
[89]*See* discussion of Title VI above. *See also* 20 U.S.C. §§ 1681, 1682.
[90]*See* discussion of Title VI above. *See also* 20 U.S.C. § 1681; 42 U.S.C. § 1988; *Cannon v. University of Chicago*, 441 U.S. 677 (1979).
[91]29 U.S.C. § 630(b).
[92]29 U.S.C. § 623 (a); 29 U.S.C. § 631(a).
[93]29 U.S.C. § 623 (e).

Four major exemptions from the ADEA's prohibition exist: (1) where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business; (2) where the differentiation is based on reasonable factors other than age; (3) where a bona fide seniority system or a bona fide benefit plan which is not a subterfuge to evade the Act is being observed; or (4) where an employee is being discharged or disciplined for good cause. An employer who raises the bona fide occupational qualification defense to an ADEA charge must, at a minimum, show that there is a reasonable basis for believing that all or substantially all persons within the affected age group would be unable to perform the duties of the job safely and efficiently.[94]

A plaintiff who alleges that he was discharged because of age discrimination must prove that: (1) he belongs to the protected group (at least 40 years old); (2) he was discharged, or some other adverse employment action was taken; (3) his replacement was either a person outside the protected group, or some other discriminatory action was taken; and (4) he was qualified for the position he was seeking or which he held.[95] This same burden of proof applies to allegations of age discrimination in other areas such as hiring and promotion. However, the factors that a plaintiff must prove may vary on a case-by-case basis.[96] After the plaintiff has met this burden, the employer must show a legitimate, non-discriminatory reason for its action.[97] The plaintiff may then show that the employer's stated reason is a pretext for the alleged discrimination.[98]

Procedure

The Equal Employment Opportunity Commission (EEOC) investigates age discrimination claims upon the filing of a charge within 180 days of the alleged unlawful act of discrimination.[99] An investigation can, however, be initiated by any information available to the EEOC such as news stories and advertisements. The EEOC can terminate its investigation of an age discrimination charge at any time. The EEOC's primary purpose in such an investigation is to attempt to resolve the differences between the charging party and the party charged with discrimination.

A charging party's right to file suit against the municipality is subject to two time limitations. First, the charging party must give the EEOC at least 60 days to attempt to settle the charge.[100] An employee may then file suit at any time beginning at the expiration of the 60 days. If the claimant awaits the outcome of the EEOC investigation, he must file suit within 90 days of receiving his notice of the right to sue.[101] If the EEOC brings suit on behalf of the charging party, that party's right to file suit is terminated.[102]

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[94] *Western Airlines, Inc. v. Criswell*, 472 U.S. 400, 105 S.Ct. 2743, 86 L.Ed. 2d 321 (1985); *Diaz v. Pan American World Airways, Inc.*, 442 F.2d 385 (5th Cir. 1971).
[95] *Meinecke v. H & R Block of Houston*, 66 F.3d 77 (5th Cir. 1995).
[96] *Blackwell v. Sun Elec. Corp.*, 696 F.2d 1176 (6th Cir. 1983).
[97] *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973); *Mooney v. Aramco Services*, 54 F.3d 1207 (5th Cir. 1995).
[98] *Meinecke v. H & R Block of Houston*, 66 F.3d 77 (5th Cir. 1995).
[99] 29 U.S.C. § 626 (d); *see Coke v. General Adjustment Bureau*, 640 F.2d 584 (5th Cir. 1981).
[100] 29 U.S.C. § 626 (d).
[101] 29 U.S.C. § 626 (e).
[102] 29 U.S.C. § 626 (c)(1).

Liability Exposure

A municipality that loses an ADEA suit may be liable for the following: back pay and other benefits lost by an employee or applicant; costs and attorney's fees; and affirmative action measures such as hiring an applicant denied employment, reinstating an employee unlawfully terminated, or promoting an employee unlawfully denied promotion.[103] All of the above costs are multiplied if the plaintiff induces other persons who have suffered discrimination to join in the suit.[104]

A municipality may also be liable for front pay. Although reinstatement is the preferred remedy, front pay may be awarded where the plaintiff shows that reinstatement is not feasible.[105] Courts will reduce an award of front pay by the amount the plaintiff will or should earn in the future by seeking out and taking advantage of opportunities reasonably available to him.[106]

Fair Labor Standards Act

On February 19, 1985, the United States Supreme Court held that state and local governments were subject to the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA).[107] As a result of this decision, many state and local governmental employers and employee organizations identified several areas in which they believed they would be adversely affected by immediate application of the FLSA. In response to these problems, the Fair Labor Standards Amendments of 1985 were enacted into law. These amendments changed certain provisions of the FLSA as they relate to employees of state and local governments. Subsequently, regulations were issued which further clarified the responsibilities to governmental employees under the FLSA.

Coverage

Covered Employees

The FLSA applies to employees of municipalities,[108] but the FLSA definition of "employee" does not include the following:

- Independent contractors;
- Volunteers;
- Apprentices;

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[103]29 U.S.C. §626 (b).
[104]29 U.S.C. § 216 (b); *Woods v. New York Life Ins. Co.*, 686 F.2d 578 (7th Cir. 1982).
[105]*Walker v. Lone Star Gas Co.*, 952 F.2d 119 (5th Cir. 1992).
[106]*Burns v. Texas City Refining, Inc.*, 890 F.2d 747 (5th Cir. 1989); *Hansard v. Pepsi Cola Metropolitan Bottling Co. Inc.*, 865 F.2d 1461 (5th Cir. 1989).
[107]*Garcia v. San Antonio Metropolitan Transit Authority*, 471 U.S. 1049, 83 L.Ed.2d 1016 (1985).
[108]29 U.S.C § 203(e)(1)(2); 29 U.S.C. § 206(a)(d)(1).

- Elected officials and their personal staff, policy-making appointees and advisors to elected officials;
- Employees of legislative bodies; and
- Prisoners

Individuals who fall within one of these categories are not covered by the FLSA.

Independent Contractors

An independent contractor generally is an individual who is engaged in a business of his own. A determination of the relationship depends upon the "economic reality" of the situation.[109] Although no single factor is controlling, the factors to be considered include the following:

- The extent to which the services in question are an integral part of the employer's business;
- The permanency of the relationship;
- The amount of the alleged contractor's investment in facilities and equipment;
- The nature and degree of control by the principal;
- The alleged contractor's opportunities for profit and loss; and
- The amount of initiative, judgment, or foresight in open market competition with others that is required for the success of the claimed independent enterprise.[110]

It is these factors, rather than labeling an individual an independent contractor, that is determinative of the actual relationship between the individual and the employer.[111]

Volunteers

Individuals who donate their services to a public agency for civic, charitable, or humanitarian reasons without contemplation of pay are considered volunteers, not employees of the public agency.[112] Volunteers are not covered by the minimum wage, overtime, or record keeping requirements of the FLSA.[113] Examples of services which might be performed by volunteers include the following:

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[109]*Goldberg v. Whitaker House Cooperative*, 366 U.S. 28 (1961).
[110]U.S. Dept. of Labor, W.H. Publication 1459, "State and Local Government Employees Under the Fair Labor Standards Act" at 4 (May 1985).
[111]*Rutherford Food Corp. v. McComb*, 331 U.S. 722, 729 (1947).
[112]29 C.F.R. § 553.100.
[113]29 C.F.R. § 553.101(a).

- Assisting in a sheltered workshop;
- Providing personal services to the sick or elderly in a hospital or nursing home;
- Assisting in a school library or cafeteria;
- Driving a school bus to carry a football team or band on a trip;
- Working as a volunteer fire fighter or auxiliary police officer;
- Working with retarded or handicapped children or disadvantaged youth;
- Helping in youth programs as a camp counselor; or
- Soliciting contributions or participating in civic or charitable benefit programs.[114]

An individual is considered to be an employee, not a volunteer, when performing the same type of services which the individual is employed to perform for the same public agency.[115] Whether two agencies constitute the same public agency will be determined on a case-by-case basis. However, the Labor Department has stated that one factor to be considered is whether the two agencies are treated separately for reporting purposes in the *Census of Governments* issued by the Bureau of the Census.[116] The phrase "same type of services" means similar or identical services. The more dissimilar the volunteer service activities are compared to those performed during the employee's paid employment, the clearer it is that the individual is acting as a volunteer.[117]

A volunteer may be paid expenses, reasonable benefits, and/or a nominal fee for his service.[118] Expenses include such things as reimbursement for cleaning or for wear and tear on personal clothing worn while performing volunteer service. Also reimbursable are expenses for transportation incurred incidental to providing the volunteer services.[119] Similarly, volunteer status is not lost because of reimbursement for tuition, materials, transportation, and meal costs for a volunteer to attend classes intended to teach them to perform efficiently the services they will provide as volunteers.[120]
Reasonable benefits include inclusion in group insurance programs maintained by the public agency for its employees who perform the same services as the volunteers.[121] Finally, a volunteer can receive a nominal fee, but this cannot be a substitute for compensation and must not be tied

[114]29 C.F.R. § 553.104.
[115]29 U.S.C. § 203(e)(4)(A)(ii).
[116]29 C.F.R. § 553.102(b).
[117]29 C.F.R. § 553.103(a).
[118]29 U.S.C. § 203(e)(4)(A)(I).
[119]29 C.F.R. § 553.106(b).
[120]29 C.F.R. § 553.106(c).
[121]29 C.F.R. § 553.106(d).

to productivity. Factors the Labor Department will consider in determining whether an amount is nominal are the following:

- The distance traveled and time and effort expended by the volunteer;
- Whether the volunteer has agreed to be available at all times or only at certain times; and
- Whether the volunteer provides services as needed or throughout the year.[122]

Apprentices, Trainees, Students, Beginners, and Learners

Whether a trainee, beginner, apprentice, student, or learner is an employee depends on all the circumstances surrounding his activities on the premises of the employer. Such individuals who are undergoing training merely to learn the duties of a job and to become qualified for employment are not employees if they receive no pay for their training time.[123]

In determining whether an individual is an employee, the courts will consider the following:

- The training, even though it includes the actual operation of the facilities of the employer, is similar to training that would be given in a vocational school;
- The training is for the individual's benefit;
- The individual does not displace regular employees, but works under their close supervision;
- The employer that provides the training derives no immediate advantage from the individual's activities, and occasionally the employer's operations are actually impeded;
- The individual is not necessarily entitled to a job at the conclusion of the training period; and
- The employer and the individual understand that the individual is not entitled to wages for the time spent training.[124]

Not all six criteria have to apply if all the facts surrounding the trainee's activities demonstrate that the trainee does nothing that immediately benefits the employer.[125]

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[122] 29 C.F.R. § 553.106(e).
[123] *Waring v. Portland Terminal Co*., 330 U.S. 148 (1947); 29 U.S.C. § 214.
[124] *Wage and Hour Field Operations Handbook* § 10b11.
[125] *Martin v. Parker Fire Protection Dist*., 1993 U.S. App. Lexis 12656 (10th Cir. 1993).

Elected Officials and Their Personal Staff, Appointees, and Legal Advisors

Excluded from FLSA coverage are elected officials and their personal staff members, persons appointed by elected officials to serve in policy making positions, and certain advisors to the elected officials.[126] However, these individuals are excluded from coverage only if they are not subject to the civil service laws of the employing entity.[127] Factors used to determine whether an employee is subject to the civil service laws include the following:

- Whether the position is included in a table of organization for a branch of government or a committee or commission established by a branch of government;

- Whether the individual serves at the pleasure of the elected official.[128]

Members of the elected official's personal staff include only persons who are under the direct supervision of, and have regular contact with, the elected official.[129] To be excluded as an immediate advisor, an individual must serve on the elected official's staff and advise him on constitutional or legal matters.[130]

Employees of Legislative Bodies

Individuals employed in the legislative branch of state or local government and who are not subject to the civil service laws of their employing agencies are not covered by the FLSA.[131] However, this exclusion does not apply to employees of state or local legislative libraries or to employees of school boards, other than elected officials and their appointees.[132]

Prisoners

The FLSA does not apply to a prison inmate if, while serving a prison sentence, he is required to work by or does work for the prison within the confines of the institution on prison farms, road gangs, or other areas directly associated with the incarceration program.[133] Where inmates are contracted out by an institution to a private company or individual, an employer-employee relationship may be created between the company or individual and the prisoners,[134] regardless

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[126]29 U.S.C. § 203(e)(2)(C).
[127]29 U.S.C. § 203(e)(2)(C)(i).
[128]29 C.F.R. § 553.11(c).
[129]29 C.F.R. § 553.11(b).
[130]29 C.F.R. § 553.11(d).
[131]29 U.S.C. § 203(e)(2)(C).
[132]29 C.F.R. § 553.12(b).
[133]*Harkin v. State Use Industries*, 990 F.2d 131 (4th Cir. 1993); *Alexander v. Sara, Inc.*, 721 F.2d 149 (5th Cir. 1983).
[134]*Watson v. Graves*, 909 F.2d 1549 (5th Cir. 1990).

of whether the work is performed within the confines of the institution or elsewhere.[135] The FLSA applies where a prisoner's work for a private employer in the local or national economy would tend to undermine the FLSA wage scale.[136]

Joint Employment

In some situations, an employee can be considered to be working for two or more employers at the same time. When such a "joint employment" relationship exists, the hours worked and compensation received by the employee from each employer must be totaled to determine compliance with the FLSA's minimum wage and overtime requirements.[137] A joint employment relationship generally will be considered to exist under one of the following conditions:

- Where there is an arrangement between the employers to share the employee's services; *or*
- Where one employer is acting directly or indirectly in the interest of the other employer; *or*
- Where the employers share the control of the employee because one employer controls, is controlled by, or shares common control with the other employer.[138]

The 1985 Amendments to the FLSA create three exceptions to the joint employment rule that apply to municipal employees. These exceptions pertain to the following:

- Occasional or sporadic employment;
- Special detail work for public safety employees; and
- Work performed for more than one jurisdiction under a mutual aid agreement.

Occasional and Sporadic Employment

Generally, the hours worked by an employee for the employing jurisdiction in addition to his regular hours must be added to the employee's regular hours in determining overtime compensation. An exception to this rule applies to state or local government employees who, solely at their option, work occasionally or sporadically on a part-time basis for the same public agency in a different capacity from their regular employment. In such instances, the hours worked in the different jobs do not have to be combined for purposes of determining overtime liability under the FLSA.[139]

An activity may be occasional or sporadic even if it is recurring. For example, taking tickets or providing security for special events such as concerts and sports events may be considered

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[135] *Wage and Hour Field Operations Handbook* § 10b29(b).
[136] *Danneslgold v. Hamsrath*, 82 F.3d 37 (2nd Cir. 1996).
[137] 29 C.F.R. § 791.2(a).
[138] 29 C.F.R. § 791.2(b).
[139] 29 C.F.R. § 553.30(a).

occasional or sporadic even though the event recurs seasonally. Conversely, additional work performed *regularly* for the same agency is not considered intermittent or irregular employment and therefore, the hours worked must not be combined in computing any overtime compensation due. To illustrate, the Labor Department uses the example of a parks department clerk who also regularly works additional hours on a part-time basis every week at a public park food and beverage sales center operated by the agency.[140]

To qualify for this exemption, the employee's decision to work in a different capacity must be made freely and without coercion by the employer. The employer may *suggest* that the employee undertake another kind of work when the need for assistance arises, but the employee must be free to refuse to perform the work without penalty or justification.[141]
An employee is considered to be working in a different capacity if the job does not fall within the same general occupational category as the employee's regular job. The duties and factors contained in the definitions of the Dictionary of Occupational Titles are considered in determining whether the different capacity exception applies.[142]

Special Details

Another exception to the joint employment rule provided by the 1985 Amendment applies to a fire protection or law enforcement employee's hours spent working on a special detail for a separate or independent employer in fire protection, law enforcement, or related activities. For purposes of this exception, security personnel in correctional institutions are considered to be law enforcement employees. The hours worked on such a special detail do not have to be counted by the employing jurisdiction in figuring overtime compensation if the special detail is worked solely at the employee's option. This exception will not be destroyed even if the primary employer requires the second employer to hire its employees for special details, facilitates the hiring of its employees, or affects the conditions of employment of the special detail.[143]

Mutual Aid Agreements

Finally, the 1985 Amendments allow state and local government employees to volunteer to perform services for other state or local government agencies, even if the primary employer has a mutual aid agreement with the agency for which the volunteer work is performed.[144] For example, where Town A and Town B have entered into a mutual aid agreement related to fire protection, a firefighter employed by Town A who also is a volunteer firefighter for Town B will not have his hours of volunteer service for Town B counted as part of his hours of employment with Town A. The mere fact that the service volunteered to Town B may, in some instances, involve work in Town A's geographic jurisdiction does not require the volunteer's hours to be counted as hours of employment with Town A.[145]

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[140]29 C.F.R. § 553.30(b)(3).
[141]29 C.F.R. § 553.30(2).
[142]29 C.F.R. § 553.30(c).
[143]29 U.S.C. § 207(p)(1).
[144]29 U.S.C. § 203(e)(4)(B).
[145]29 C.F.R.. § 553.105.

Exemptions

Overview

The FLSA contains certain exemptions which make its standards inapplicable to particular groups of employees. Generally, these exemptions can be classified into three categories: (1) those that completely suspend both the minimum wage and overtime provisions; (2) those that suspend only the overtime provisions; and (3) those that provide partial overtime exemptions limited to specific times of the year.

Courts have held that all exemptions from FLSA coverage must be strictly construed. Therefore, a municipality must show that an employee's activities fall squarely within the scope of a particular exemption before taking the benefit of the exemption.

Generally, FLSA exemptions are figured on a workweek basis. A workweek is defined as seven (7) consecutive 24 hour periods.[146] An employee can be considered exempt only if he meets the requirements of one (1) or more exemptions during an entire workweek.

It is possible for an employee to qualify for two or more exemptions in the same workweek. However, all of the requirements of each exemption must be satisfied and the employer can take advantage only of the *least restrictive* of the exemptions.

Exemptions Applicable to Municipalities

The FLSA contains numerous exemptions, but the exemptions most likely to be used by municipalities are the exemptions for the following individuals:

- Executive, administrative and professional employees,
- Amusement or recreational establishment employees,
- Employees who could be subject to § 204 of the Motor Carrier Act,
- Hospital employees, and
- Police and fire personnel.

Executive, Administrative, and Professional Employees

Executive, administrative and professional employees are exempt from the *minimum wage and overtime provisions* of the FLSA.[147] An employee meets one of these "white-collar" exemptions by meeting both parts of a two-part test established by the Labor Department. The first part of the test is the "salary" test, where an employee must earn a salary of at least $455 per week

[146] 29 C.F.R. § 778.105.
[147] 29 U.S.C. § 213(a)(1).

($913 per week effective December 1, 2016).[148] The other part is the duties test. To meet this test, an executive employee must meet the following standards:

- The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise,
- The employee must customarily and regularly direct the work of at least two (2) or more other full-time employees,
- The employee must have the authority to hire, fire, promote, or make effective recommendations of such actions.

An employee who makes a salary of $455 or more per week ($913 per week effective December 1, 2016)[149] and meets the following requirements can be exempt as an *administrative employee* if:

- The employee's primary duty is performing office or non-manual work directly related to management or general business operations,
- The employee's primary duty includes the exercise of discretion and independent judgment,

An employee who makes a salary of at least $455 per week ($913 per week effective December 1, 2016)[150] qualifies for the *professional exemption* if:

- The employee's primary duty requires knowledge of an advanced type in a field of science or learning customarily required by a prolonged course of specialized intellectual instruction or
- That requires invention, imagination, originality, or talent in a recognized field of creative or artistic endeavor.

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[148] At the time of the most recent revision to this Manual, a United States District Court in Texas struck down the new salary level and barred the enforcement of the new level against certain employers. The Department of Labor has appealed the ruling the United States Court of Appeals for the Fifth Circuit, but it is unclear whether the new salary level will survive.
[149] *See* n. 148.
[150] *See* n. 148.

Amusement or Recreational Establishment Employees

The FLSA provides a *minimum wage and overtime pay exemption* for any employee employed by an amusement or recreational establishment if:

- The facility does not operate for more than seven (7) months in any calendar year, *or*
- During the preceding calendar year, the facility's average receipts for any six (6) months of the year were not more than 33⅓ percent of its average receipts for the other six (6) months of the year.[151]

This exemption has been held to apply to "establishments" such as golf courses,[152] swimming pools,[153] summer camps,[154] and parks.[155]

The term "establishment" means a distinct physical place of business.[156] Consequently, two or more physically separated portions of a business located on the same premises, and even under the same roof, may constitute more than one establishment.[157] In such circumstances, each unit must be evaluated to determine if its employees meet this exemption.

Interstate Motor Carrier Exemption

The FLSA provides an exemption from the *overtime pay requirements* of the Act for employees subject to the provisions of the Motor Carrier Act.[158] The following three (3) requirements must be met to claim the benefit of this exemption:

- Interstate commerce must be involved,
- The employer must be an operator subject to regulation by the Motor Carrier Act, *and*
- The employee's activities must directly affect the safety of operation of motor vehicles.[159]

What constitutes transportation in interstate commerce sufficient to bring an employee within this exemption is determined by the definition of interstate commerce contained in the Motor Carrier Act. This definition is not identical to the less restrictive definition used in the FLSA. The Supreme Court has held that goods procured outside the state and brought to a warehouse, when the ultimate destination was the customer's place of business, retained their character as

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[151]29 U.S.C. § 213(a)(3).
[152]Wage-Hour Opinion Letter No. 600 (May 25, 1967).
[153]Wage-Hour Opinion Letter No. 307 (Feb. 14, 1975); Wage-Hour Opinion Letter No. 288 (Sept. 10, 1974).
[154]Wage-Hour Opinion Letter No. 903 (June 10, 1968).
[155]29 U.S.C. § 553.32(e).
[156]29 C.F.R. § 779.303.
[157]29 C.F.R. § 779.305.
[158]29 U.S.C. § 213(b)(1)(§ 204 of the Motor Carrier Act was recodified at 49 U.S.C. § 3102).
[159]29 C.F.R. § 782.2(a).

goods in interstate commerce.[160] Thus, employees who pick up such goods at a warehouse for delivery to the final destination may be exempt. Furthermore, the United States Supreme Court has held that the exemption may apply even though less than four percent (4%) of the employee's duties relate to interstate commerce.[161]

Types of employees whose activities have been held to directly affect the safety of operation of motor vehicles include drivers, driver's helpers, loaders, and mechanics.[162] Employees who have been held not to meet this definition include stenographers, clerks, foremen, warehousemen, superintendents, salesmen, and employees acting in an executive capacity.[163]

Hospital Employees

The FLSA recognizes the special needs of hospitals by allowing a hospital and its employees to utilize a fourteen-day period as the basis for overtime computation. This provision allows a hospital to enter into an arrangement with any of its employees, prior to performance of work, to establish a workweek of fourteen consecutive days instead of the regular workweek of seven consecutive days.[164]

A hospital employee who agrees to be paid on the basis of a fourteen day workweek must be paid overtime at not less than one and one-half times his regular rate (1) for any hours worked in excess of eight a day in the fourteen-day period, *and* (2) for any hours exceeding a total of eighty (80) in the fourteen-day period. Payments due for daily overtime may be credited against overtime due for hours over eighty (80) in the fourteen-day period.[165]

Police and Fire Protection Personnel

The FLSA provides two special exemptions for employees engaged in fire protection and law enforcement activities. For purposes of these exemptions, an employee engaged in fire protection activities is defined as any employee who meets the following criteria:

- Is employed by an organized fire department or fire protection district;
- To the extent required by state statute or local ordinance, has been trained and has legal authority and responsibility to engage in the prevention, control, or extinguishment of a fire of any type, *and*
- Performs activities which are required for, and directly concerned with, the prevention, control, or extinguishment of fires.[166]

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[160] *Walling v. Jacksonville Paper Co*., 317 U.S. 564 (1943).
[161] *Morris v. McComb*, 332 U.S. 422 (1947).
[162] 29 C.F.R. §§ 553.32(f), 782.3-.6.
[163] 29 C.F.R. § 782.2(f).
[164] 29 C.F.R. § 207(j).
[165] Wage-Hour Opinion Letter No. 537 (Dec. 2, 1966).
[166] 29 C.F.R. § 553.210(a).

An employee who meets these criteria is considered to be engaged in fire protection activities even if considered a trainee or probationary employee.

Among the fire department employees generally regarded as engaged in fire protection activities are firefighters, engineers, hose or ladder operators, fire specialists, fire inspectors, lieutenants, captains, fire marshals, battalion chiefs, deputy chiefs, chiefs, and rescue and ambulance service personnel who form an integral part of the public agency's fire protection activities. Also included in this definition are employees who work for forest conservation agencies or other public agencies charged with forest fire spotting or fighting responsibilities.[167] Civilian employees of a fire department such as dispatchers, alarm operators, maintenance workers, cooks, and clerks are not considered to be engaged in fire protection activities.[168]
The FLSA definition of an "employee engaged in law enforcement activities" refers to an employee who meets the following criteria:

- 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,

- Has the power of arrest, *and*

- Is presently undergoing, has undergone, or will undergo on-the-job training and/or a law enforcement course of instruction and study.[169]

Employees who meet this criteria are considered to be engaged in law enforcement activities even if considered to be a trainee or probationary employee.

Employees typically engaged in law enforcement activities include city police, sheriffs, deputy sheriffs, court marshals and deputy marshals, constables and deputy constables, and security personnel in correctional institutions.[170] City jails and precinct house lock-ups are generally considered to fall within the definition of a correctional institution.[171] Employees of correctional institutions who qualify as security personnel are those who have responsibility for controlling and maintaining custody of inmates whether their duties are performed inside or outside the institution.

Elected law enforcement officials who are not subject to the civil service laws of the particular jurisdiction are not considered to be engaged in law enforcement activities for purposes of these exemptions.[172] Other employees who normally do not meet the test of employees engaged in law enforcement activities include building inspectors, health inspectors, animal control personnel,

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[167]29 C.F.R. § 553.210(a)(b).
[168]29 C.F.R. § 553.210(c).
[169]29 C.F.R. § 553.211(a).
[170]29 C.F.R. § 533.211(c), (f).
[171]29 C.F.R. § 553.211(f).
[172]29 C.F.R. § 553.211(d).

civilian traffic employees, and building guards whose primary duty is to protect the lives and property of persons within the limited area of the building.[173]

An employee who spends twenty percent (20%) or more of his time performing non-exempt work will not be considered to be engaged in fire protection or law enforcement activities.[174] However, this limitation is not affected by law enforcement or fire protection employees who undertake employment for the same employer on an occasional or sporadic and part-time basis in a different capacity from their regular employment.[175] Employees who engage in both fire protection and law enforcement activities are entitled to the applicable 7(k) standard[176] which applies to the activity in which the employee spends a majority of work time during the work period.[177]

Trainees, who attend a bona fide fire or police training facility, when required by the employing agency, are considered to be engaged in fire protection or law enforcement activities if they meet the applicable test set out above.[178]

Rescue and ambulance of state and local governments are considered firefighters or law enforcement officers when they "form an integral part" of the police or fire agency's law enforcement or fire protection activities.[179] Those rescue and ambulance personnel that are not law enforcement or fire protection agencies may nonetheless be considered subject to the partial or complete overtime exemption when their service is "substantially related" to law enforcement or fire fighting.[180] The "substantial relationship" is demonstrated where the rescue or ambulance personnel have (1) been trained in the rescue of fire, crime, and accident victims; or firefighters and law enforcement officers injured in the performance of their duties; and (2) are regularly dispatched to fires, crime scenes, riots, natural disasters, and accidents.[181]

Exemption for Public Agencies with Fewer Than Five Employees

The FLSA provides a *complete overtime pay exemption* for any employee of a public agency engaged in fire protection of law enforcement activities, if the public agency employs less than five (5) employees.[182] Law enforcement and fire protection are considered separately for purposes of determining whether there are five (5) employees. Therefore, if a public agency employs less than five (5) employees in fire protection activities but five (5) or more employees in law enforcement activities, the agency may claim the exemption for the fire protection

[173]29 C.F.R. § 553.211(e).
[174]29 C.F.R. § 553.212(a).
[175]29 C.F.R. § 553.212(b).
[176]See discussion of the § 7(k) exemption below.
[177]29 C.F.R. § 553.213(a), (b).
[178]29 C.F.R. § 553.214.
[179] 29 C.F.R. §§ 553.210(a), 553.211(b).
[180] 29 C.F.R. §§ 553.215(a)
[181] 29 C.F.R. §§ 553.215
[182]29 U.S.C. § 213(b)(20).

employees but not for the law enforcement employees.[183] Furthermore, the public agency is only required to count employees who are engaged in fire protection or law enforcement activities and not the agency's civilian employees such as clerical workers.

This exemption applies on a workweek basis. Consequently, the exemption may apply in certain workweeks, but not in others.[184]

§ 7(k) Partial Overtime Exemption for Fire Protection and Law Enforcement Employees

Generally, the FLSA requires employees to be paid one and one-half (1½) times their regular rate of pay for all hours worked over forty (40) in a workweek. § 7(k) of the Act provides an exception to this general rule by allowing work periods of seven (7) to twenty-eight (28) days for purposes of computing overtime compensation due employees engaged in fire protection or law enforcement activities.[185]

Under § 7(k), overtime compensation is due an employee engaged in fire protection activities only for those hours in excess of 212 in a twenty-eight (28) day period, or any proportionate number of hours worked in a fewer number of days.[186] Overtime compensation is due an employee engaged in law enforcement activities only for hours worked in excess of 171 in a twenty-eight (28) day period or for a proportionate number of hours worked in a fewer number of days.[187] The Labor Department's table of work periods and maximum hours found in 29 C.F.R. § 553.230 are reprinted below:

[183] 29 C.F.R. § 553.1(d).
[184] 29 C.F.R. § 553.200(c).
[185] 29 U.S.C. § 207.(k).
[186] 29 C.F.R. § 553.230(c).
[187] 29 C.F.R. § 553.230(b).

Work period (days)	Maximum hours standards	
	Fire Protection	*Law Protection*
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
11	83	67
10	76	61
9	68	55
8	61	49
7	53	43

Hours Worked

Overview

A basic determination required for compliance with the FLSA is ascertainment of the hours worked (or compensable time) by an employee during a workweek. Court decisions construing the term "hours worked" make it clear that this term includes not only the time spent by an employee when he is engaged in performing the principal duties of the job but also time spent on incidental activities which are part of the employee's principal duties. Also compensable is time spent by an employee on activities not integrated with his principal activities if the time is:

- Spent for the employer's benefit,
- Controlled by the employer,
- "Suffered or permitted" by the employer, *or*
- In an activity requested by the employer.[188]

An employee is "suffered or permitted" to work if the employer knows or had reason to believe the employee is performing work.[189] This definition also applies to work performed away from the employer's premises or job site.[190] The rules for determining whether time spent in particular situations are "hours worked" are discussed below.

Determining Hours Worked

Waiting Time

Time spent by an employee waiting before starting work because the employee arrived at work earlier than required is not considered "hours worked."[191] All hours spent by employees waiting while on duty must be counted as hours worked even though the employees are allowed to leave their job site.[192] Waiting time spent by an employee after being relieved from duty is not considered to be hours worked if:

- The employee is completely relieved from duty and is allowed to leave his job,
- The employee is told that he is relieved until a definite, specified time, and
- The relief period is long enough for the employee to use the time as he sees fit.[193]

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[188]29 C.F.R. §§ 785.6, .7.
[189]29 C.F.R. § 785.11.
[190]29 C.F.R. § 785.12.
[191]29 C.F.R. §§ 790.6(b), 790.7(b), (h).
[192]29 C.F.R. § 785.15.
[193]29 C.F.R. § 785.16.

On-Call Time

An employee who is required to remain on-call on the employer's premises or so close to the employer's premises that the employee cannot use the time effectively for his purposes is considered to be working while "on-call." An employee who is not required to remain on the employer's premises but is required to leave word at his home or with municipal officials where he may be reached is not working while on call.[194] Furthermore, requiring an employee to wear a paging device while on call does not interfere with the employee's freedom so as to make his time compensable.[195] However, all time spent by an employee called to perform work is considered to be compensable time.[196]

Rest and Meal Periods

The FLSA does not require employees to be given rest and meal periods.[197] However, if a rest period of less than twenty (20) minutes' duration is given, the time spent during the rest period is considered to be compensable time.[198] A rest period of more than twenty (20) minutes will not be considered compensable if:

- The employee is free to leave the job site,
- The rest period is long enough to allow the employee freedom to do as he pleases, *and*
- There is no attempt to evade the FLSA.[199]

Meal periods of thirty (30) minutes or longer are not compensable if the employee is completely relieved of all duties.[200] While an employee must be free to leave his work station, the employee can be confined to the plant premises without having to be compensated.[201]

Although the above rules apply to law enforcement personnel, special rules apply to fire protection employees paid according to the special 7(k) exemption.[202] Where the public agency chooses to use the § 7(k) exemption for firefighters, meal time cannot be excluded from hours worked if the firefighter works a shift of 24 hours duration or less.[203] Meal time can be excluded from compensable hours for fire protection personnel who work shifts of more than 24 hours so long as the regular tests for deducting meal time are met.

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[194]29 C.F.R. § 785.17.
[195]Wage-Hour Opinion Letter No. 995 (May 28, 1969).
[196]Wage-Hour Opinion Letter No. 777 (March 18, 1968).
[197]Wage-Hour Opinion Letter No. 936 (January 16, 1969); Wage-Hour Opinion Letter (Oct. 22, 1941).
[198]29 C.F.R. § 785.18.
[199]Wage-Hour Opinion Letter Aug. 23, 1944).
[200]29 C.F.R. § 785.19.
[201]29 C.F.R. § 785.19(b).
[202]29 C.F.R. § 553.223(b), (c).
[203]29 C.F.R. § 553.223(c).

Sleeping Time

There are two general FLSA policies regarding the compensability of sleeping time. Sleeping time is considered to be compensable working time for employees who work shifts of less than 24 hours.[204] Time spent sleeping is not considered compensable time for employees whose shifts last 24 hours or longer if:

- An express or implied agreement excluding sleep time exists,
- Adequate sleeping facilities are furnished, *and*
- At least five (5) hours of sleep is possible during the scheduled sleeping periods.[205]

Interruptions to perform duties are considered hours worked and the entire sleeping period must be counted as hours worked if there are interruptions to the extent that the employee cannot get a reasonable night's sleep.[206]

The general rules regarding sleeping time also apply to law enforcement and fire protection personnel with one exception. The sleeping time of law enforcement and fire protection personnel who are paid according to the § 7(k) exemption can be deducted *only if* the employees work shifts of *more* than 24 hours.[207]

Lectures, Meetings, and Training Programs

Time spent attending lectures, meetings, and training programs is not counted as hours worked if:

- Attendance is outside of the employee's regular working hours,
- Attendance is voluntary,
- The activity is not directly related to the employee's job, *and*
- The employee does not perform any productive work during the program.[208]

Attendance is not voluntary if the employee is led to believe that his employment or working conditions will be adversely affected by non-attendance.[209] The activity is considered to be "directly related to the employee's job" and therefore compensable, if it is designed to make the employee handle his job more effectively as distinguished from training the employee for another job. Conversely, a course meant to prepare the employee for advancement by teaching him new skills is not considered directly related to the employee's job even though the course incidentally improves his skill in doing his regular work.[210]

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[204]29 C.F.R. § 785.21.
[205]29 C.F.R. § 785.22.
[206]29 C.F.R. § 785.22(b).
[207]29 C. F.R. § 553.222(b).
[208]29 C.F.R. § 785.27.
[209]29 C.F.R. § 785.28.
[210]29 C.F.R. § 785.29.

Travel Time

The FLSA does not count as compensable time the time spent traveling between home and work before or after regular working hours.[211] Time spent by an employee traveling from job site to job site during his work day is compensable time.[212]

An employee who is sent out of town for a one day assignment is not entitled to compensation for the time he spends in traveling between his home and the local railroad, bus terminal, or airport. However, he must be paid for all other travel time except the time spent in eating.[213]
An employee must be paid for all time, except meal periods, spent traveling overnight on business during his normal working hours whether on regular work days or non-working days.[214]
The employee is not required to be paid for travel time outside of his normal working hours, except for any time actually spent performing duties.[215]

Medical Examinations

Time spent by an employee waiting for and receiving medical attention on the premises or at the direction of the employer during the employee's normal working hours on days when he is working constitutes hours worked.[216]

Substitution of Work

The FLSA allows individuals employed in any occupation by the same public agency to agree to substitute for one another during scheduled work hours in performance of work in the same capacity. When employees trade hours, each employee must be credited as if he had worked his normal work schedule for that shift if the following conditions are met:

- The employees decided on their own to trade shifts,
- The trade was approved beforehand by the public agency, *and*
- The decision to substitute was made freely and without coercion.[217]

A public agency that employs individuals who substitute or trade time is not required to keep records of the hours of the substitute work.[218]

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[211]29 C.F.R. § 785.35.
[212]29 C.F.R. § 785.38.
[213]29 C.F.R. § 785.37.
[214]29 C.F.R. § 785.39
[215]29 C.F.R. §§ 785.39, .41.
[216]29 C. F.R. § 785.43.
[217]29 U.S.C. § 207(p)(3).
[218]29 U.S.C. § 211(c).

Minimum Wage

As of July 24, 2009, the FLSA requires that all covered, non-exempt employees must be paid a minimum hourly wage of at least $7.25 per hour for each "hour worked."[219] There is no prohibition against any payroll deduction that does not reduce the employee's average hourly pay to less than the minimum wage.[220] However, the following deductions are allowed even though they reduce the employee's average hourly pay to *less* than the minimum wage:

- Deductions for the reasonable cost of board, lodging, and other facilities;
- Amounts deducted for taxes;
- Payments to third persons pursuant to a court order; *and*
- Payments to an employee's assignee.[221]

The reasonable costs of fair value of food, lodging, and other facilities which are customarily furnished to employees can be taken as a credit toward meeting the minimum wage.[222] Reasonable cost of fair value does not include a profit to the employer.[223] The cost of furnishing facilities that are primarily for the benefit or convenience of the employer cannot be claimed as a credit toward the minimum wage.[224]

Deductible taxes include all federal, state, and local taxes, levies, and assessments including social security and state unemployment insurance taxes.[225] Payments to third persons that can be deducted include payments to a creditor of the employee under garnishment, wage attachment, or bankruptcy proceeding.[226] Finally, the Act allows deductions from wages for a sum voluntarily assigned by an employee to a creditor, donee, or other third party if neither the employer, directly or indirectly, derives any benefit from the transaction.[227] Among the sums deemed to be paid to the employee although assigned to third persons include payments for insurance premiums and voluntary contributions to churches and charitable, fraternal, athletic, and social organizations from which the employer receives no direct benefit.[228]

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[219] 29 U.S.C. § 206(a)(1).
[220] 29 C.F.R. § 531.36(a).
[221] 29 C.F.R. §§ 531.29, 531.38, and 531.40.
[222] 29 U.S.C. § 203(m).
[223] 29 C.F.R. § 531.33(b).
[224] 29 C.F.R. § 531.32(c).
[225] 29 C.F.R. § 531.38.
[226] 29 C.F.R. § 531.39.
[227] 29 C.F.R. § 531.40(a).
[228] 29 C.F.R. § 531.40(c).

Overtime Pay

Overview

The FLSA generally requires employers to pay all covered, non-exempt employees one and one half (1½) times their regular rate of pay for all hours worked over 40 in a workweek.[229] An employee's "regular rate" is equal to his total pay for the workweek divided by the number of hours actually worked by the employee during that week.[230] A workweek is a fixed and regularly recurring period of 168 hours, or seven (7) consecutive 24-hour periods. The beginning of a workweek may be changed if the change is intended to be permanent.[231]

The FLSA does not require that an employee be paid on a weekly basis. The employer may pay the employee at other regular intervals, such as daily, weekly, bi-weekly, or monthly, as long as the compensation earned by an employee in a particular workweek is paid on the regular pay day for the period in which the workweek ends.[232]

Exclusions from Regular Rate

The regular rate includes all remuneration for employment paid to or on behalf of an employee, except specifically designated payments. These payments include:

- Certain bonuses,
- Gifts,
- Reimbursement for expenses,
- Payment for idle hours, *and*
- On-call pay.

Bonuses

Bonuses must be analyzed carefully to determine if they must be included in an employee's total compensation. Bonuses that must be included will increase the employee's regular rate and his total compensation during workweeks in which overtime hours are worked.

Bonuses may be excluded from an employee's regular rate if: (1) both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer, (2) these decisions are made at or near the end of the period for which the bonus is being given, and (3) the bonus is not given pursuant to any contract, agreement, or promise causing the employee

[229] 29 U.S.C. § 207(a).
[230] 29 C.F.R. § 778.109.
[231] 29 C.F.R. § 778.105.
[232] 29 C.F.R. §§ 778.104, 106.

to expect a regular bonus.[233] Thus, discretionary bonuses, such as Christmas bonuses, are not included in the regular rate.[234] However, non-discretionary bonuses must be totaled with other earnings to determine the employee's regular rate on which overtime pay must be computed. Examples of includable bonuses are attendance bonuses, production bonuses, bonuses for quality and accuracy of work, efficiency bonuses, and length of service bonuses.[235]

Gifts

The FLSA also excludes the value of gifts from an employee's remuneration used to figure his regular rate.[236] A payment that is measured by hours worked, production, or efficiency or that is so substantial that employees consider it part of their wages is not considered a gift. Furthermore, a payment made pursuant to a contract is not a gift.[237]

A gift remains excludable even though it is paid with such regularity that employees are led to expect its continuance. Also excludable are bonuses that vary for different employees on the basis of salary, hourly rate, and length of service.[238]

Expenses

Expenses the employee incurs in furtherance of his employer's interests are excludable from the employee's regular rate.[239] This exclusion is limited to reimbursements that reasonably approximate the expenses incurred.[240] Thus, any part of a reimbursement that exceeds the employee's actual expenses must be included in the regular rate.[241]

Payment for Idle Hours

Payments which are made for occasional periods when an employee is not at work due to vacation, holiday, illness, failure of the employer to provide sufficient work, or other similar circumstances, are not considered to be compensation for the employee's hours of employment. Therefore, such payments may be excluded from the regular rate of pay but may not be credited toward overtime compensation due under the Act.[242]

The term "failure of the employer to provide sufficient work" refers to occasional, sporadically recurring situations when the employee would normally be working if it were not for factors such as machinery breakdown, failure of expected supplies to arrive, weather conditions

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[233] 29 U.S.C. § 207(e)(3).
[234] 29 C.F.R. § 778.211(b).
[235] 29 C.F.R. § 778.211(c).
[236] 29 U.S.C. § 207(e)(1).
[237] 29 C.F.R. § 778.212(b).
[238] 29 C.F.R. § 778.212(c).
[239] 29 U.S.C. § 207(e)(2).
[240] 29 C.F.R. § 778.217(a).
[241] 29 C.F.R. § 778.217(c).
[242] 29 U.S.C. § 207(e)(2).

affecting the ability of the employee to perform the work, and other unpredictable obstacles beyond the control of the employer.[243] Other similar causes include absence due to jury duty, attending a funeral of a family member, and inability to reach the work place because of weather conditions.[244]

Sometimes employees who are entitled to holiday or vacation pay forego the time off and perform work for the employer on the holiday or during the vacation period. If the employee receives holiday or vacation pay, and also receives pay at his customary rate for the hours worked on the holiday or vacation day, the sum allocable to holiday or vacation pay is excludable from the regular rate.[245]

Show-Up and On-Call Pay

"Show-up pay" can be paid to employees who report to work and find no work or less than a minimum amount of work available. The portion of the show-up pay that represents compensation at the applicable rate for the straight-time or overtime hours actually worked can be credited as straight-time or overtime compensation. The amount of show-up pay covering time not worked can be excluded from the computation of the employee's regular rate but cannot be credited toward the overtime compensation due the employee.[246]

On-call pay is given to an employee as compensation for those hours that the employee agrees to respond if called upon by the employer to perform work. On-call pay must always be included in the computation of the employee's regular rate.[247]

Reducing Overtime Liability

The FLSA provides several special plans for reducing overtime liability. Because of the complexity of many of these plans, however, only two of the plans generally will be of practical use to municipalities. The first of these plans involves the use of compensatory time off and the second is referred to as the "coefficient plan."

Compensatory Time Off

The 1985 Amendments to the FLSA allow municipalities to use compensatory time off in lieu of cash overtime compensation required by the Act.[248] An "employer is free to require an employee to take time off of work, and an employee is also free to use the money it would have paid in wages to cash out accrued compensation time."[249] Compensatory time may be given as a substitute for overtime pay if given:

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[243] 29 C.F.R. § 778.218(c).
[244] 29 C.F.R. § 778.218(d).
[245] 29 C.F.R. § 778.219(a).
[246] 29 C.F.R. § 778.220(a).
[247] 29 C.F.R. § 778.223.
[248] 29 U.S.C. § 207(o).
[249] *Christensen v. Harris County*, 529 U.S. 576, 585 (2000).

- Pursuant to any agreement, such as a collective bargaining agreement between the public agency and representatives of its employees; *or*
- Pursuant to an agreement arrived at between the employer and employee *before* performance of the work; *or*
- To employees hired prior to April 15, 1986, and provided pursuant to a regular practice in effect on that date.

The Amendments also provide certain limitations on the amount of compensatory time that can be given. First, compensatory time must be given at the rate of one and one half (1½) hours for each hour of employment for which overtime compensation would otherwise be required. Furthermore, the total amount of compensatory time that an employee can accrue is limited. Seasonal employees or employees whose work includes activities in public safety or emergency response can accrue a maximum of 480 hours of compensatory time. All other employees can accrue no more than 240 hours of compensatory time.

Any employee who has reached these compensatory time limits must be paid overtime compensation for additional overtime hours of work at the rate of one and one half (1½) times the employee's regular rate of pay. An employee who has accrued compensatory time at the time of termination of employment must be paid for the unused compensatory time at a rate of compensation not less than the greater of:

- The average regular rate received by the employee during the last three (3) years of the employee's employment; *or*
- The final regular rate received by the employee.

Finally, an employee must be allowed to use his compensatory time off within a reasonable time after making a request to do so if use of the compensatory time does not "unduly disrupt" the operations of the municipality.

It is important to understand that compensatory time off is not synonymous with an exemption from coverage but only provides municipalities with some relief. It is still critical for a municipality to reduce liability for compensatory time off as illustrated by the following example.

Assume that a municipality has twenty firefighters working shifts of 24 hours on and 48 hours off. In a 28-day period, each firefighter will work an average of 9⅓ shifts or 224 hours. Unless the firefighters are on a special plan, they will be entitled to overtime after 40 hours in each 7-day period. For simplicity, assume that overtime will be due after 160 hours in a 28-day period. Thus, each firefighter will work 64 overtime hours in each 28-day period and will accrue 96 hours of compensatory time (1½ times 64 hours) in each 28-day period. In less than five months, each firefighter will accrue the maximum of 480 hours of compensatory time which can be accumulated under the Act. The employee then will have to be compensated at one and one-half (1½) times his regular rate for all additional overtime hours and thus will be entitled to *480 hours times* his regular hourly rate of pay upon termination of employment unless he is allowed to take some or all of this time off.

This example shows how quickly employees can accumulate a tremendous amount of compensatory time that, when taken as time off, can be extremely inconvenient. In addition, accumulated compensatory time must be viewed as a liability because of the requirement that terminated employees must be paid for all accumulated compensatory time. Consequently, it is imperative for a municipality to keep compensatory time to a minimum.

Coefficient Plan

The FLSA allows the payment of a fixed weekly wage to an employee with the understanding that the salary is to compensate him for all hours worked during any particular workweek. Since the agreement specifies no definite number of weekly working hours, there can be no fixed regular rate. The rate varies from week to week depending upon the number of hours worked and is figured by dividing the fixed weekly wage by the total hours worked during the week. Thus, the regular rate decreases as the number of hours worked increases.

An employee on the coefficient plan is entitled only to one half (½) of his regular rate for hours worked in excess of 40 in a workweek because his weekly wages include straight time for all overtime hours. Such a system is permissible as long as there is a clear mutual understanding between the parties.[250]

The coefficient plan is illustrated by the following example. Assume that a municipality agrees to pay an employee a fixed salary of $200 per week for all hours worked. If the employee works 40 hours in a workweek, his regular rate of pay is $5.00 per hour ($200.00 divided by 40 hours). However, if the employee works 50 hours in a workweek, his regular rate is $4.00 per hour ($200.00 divided by 50 hours). Since the employee has worked 10 hours of overtime (50 hours minus 40 hours), he is entitled to overtime compensation for those hours at one and one-half (1½) times his regular rate. However, he has already received payment for those hours at his regular rate of $4.00 per hour, and therefore is entitled only to an additional half time or $2.00 per hour for ten hours. Thus, the employee will be entitled to $20 in overtime pay and a total of $220 in the workweek.

Without such a plan, the employee in the above example who received a salary of $200 per week and worked 50 hours in a week will have a regular rate of $5.00 per hour ($200 divided by 40 hours). The employee will be entitled to one and one-half (1½) times this regular rate for his 10 overtime hours for a total of $75.00 of overtime compensation. This will raise the employee's total compensation for the week to $275 or $55 more than the employee on the coefficient plan.

Child Labor

The FLSA restricts, and in some cases prohibits, the employment of persons under 18 years of age in certain occupations and limits their working hours. Once a person reaches the age of 18 years, the FLSA does not restrict his employment.[251]

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[250] 29 C.F.R. § 778.114.
[251] 29 U.S.C. § 203 (1).

The FLSA does not restrict the number of hours that 16 and 17 year old employees can work and allows such employees to work during school hours. Outside of agriculture, however, a person must be at least 18 years of age before he can be employed in certain occupations deemed to be hazardous by the Secretary of Labor. Included in these hazardous occupations are motor-vehicle drivers and driver's helpers on any public road or highway. The prohibition does not apply to 16 and 17 year old employees who operate automobiles or trucks not exceeding 6,000 pounds gross vehicle weight if:

- Driving is restricted to daylight hours;
- Operation of the vehicle is only occasional and incidental to the employment;
- The employee holds a driver's license that is valid for the job he performs;
- The employee has completed a state-approved driver education program;
- The vehicle is equipped with a seat belt or similar device for the driver and each helper; *and*
- The employer has instructed each employee less than 28 years of age that the seat belts or other devices that are provided must be used.[252]

The exception outlined above does not apply if the vehicle driver's duties include towing of vehicles.

Among occupations that 14 and 15 year old employees cannot perform include:

- Manufacturing operations;
- Occupations requiring the performance of any duties in a workroom or workplaces where goods are manufactured;
- Occupations involving the operation or tending of hoisting apparatuses or any power-driven machinery other than office machines;
- The operation of motor vehicles or service as helpers on such vehicles; *and*
- Occupations other than office and sales work connected with warehousing and storage.[253]

[252] 29 C.F.R. § 570.52(b)(1).
[253] 29 C.F.R. § 570.119.

Finally, the FLSA places the following additional restrictions on the employment of 14 and 15 year old employees:

- May be employed only outside of school hours;
- May be employed for no more than three (3) hours on any school day and eight (8) hours on any non-school day;
- May work no more than eighteen (18) hours in a school week and forty (40) hours in a non-school week; *and*
- Must perform all work between 7:00 a. m. and 7:00 p.m. except that work may be performed until 9:00 p.m. during the period from June 1 through Labor Day.[254]

Posting and Record Keeping

Municipalities subject to the FLSA must post the Labor Department's notice of minimum wage and overtime requirements. This must be posted in all places normally used for posting information for employees.[255]

Municipalities subject to the FLSA also are required to keep records of their employees concerning their wages, hours, and other conditions of employment as the Wage-Hour Administrator prescribes. The Administrator's regulations specify no particular form for keeping records but require that such records show the following data for each employee:

1. Name and identifying number or symbol;
2. Home address;
3. Date of birth if under 19;
4. Occupation in which employed;
5. Time of day and day of the week in which the employee's workweek begins;
6. Regular hourly rate of pay for weeks when overtime is worked, basis on which wages are paid, and amount and nature of each payment not included in the regular rate;
7. Hours worked each work day and total hours worked each workweek;
8. Total daily or weekly straight-time earnings or wages;
9. Total weekly overtime compensation;
10. Total additions to or deductions from wages paid each pay period;

[254] 29 C.F.R. § 570.119; 29 C.F.R. § 570.35.
[255] 29 C.F.R. § 516.4.

11. Total wages paid each pay period; *and*

12. Date of payment and the pay period covered by payment.[256]

All records should be preserved for two to three (2-3) years.[257]

Only the information required in numbers 1 through 4 above and the place of employment must be kept for employees exempt from both the minimum wage and overtime pay requirements of the Act.[258] Records containing the information listed above, except the information in numbers 6 through 9, must be kept for employees who are exempt from only the overtime pay requirements of the Act. However, these records must contain the basis on which wages are paid.[259]

The records that must be kept for hospital employees compensated for overtime work on the basis of a 14-day work period[260] include all information in paragraphs 1 through 4, 6, and 10 through 12 above. In addition, the following records must be kept:

- Time of day and day of week on which the employee's work period begins;
- Hours worked each work day and total hours worked each 14-day work period;
- Total straight-time wages paid for hours worked during the 14-day period; *and*
- Total overtime compensation paid for hours worked in excess of eight (8) in a work day and eighty (80) in a work period.[261]

In addition, employers paying hospital employees under a 14-day plan must maintain a copy of the agreement between the employer and employee allowing the use of the 14-day period for overtime computation. If such a document does not exist, it is sufficient to keep a memorandum summarizing the terms of the agreement and showing the date and length of the agreement.[262]

Enforcement

The primary responsibility for enforcing compliance with the FLSA rests with the Wage and Hour Division of the Department of Labor which is headed by the Wage-Hour Administrator. The Administrator or his designated representative has the power to investigate wages, hours, and other conditions of employment of covered employees, and review the employer's records to determine whether there has been a violation.[263] The Administrator may issue subpoenas for the production of records and enforce the subpoenas in a federal district court.[264] The

[256]29 C.F.R. § 516.2.
[257]29 C.F.R. §§ 516.5, 6.
[258]29 C.F.R. § 516.11.
[259]29 C.F.R. § 516.12.
[260]See discussion under "Hospital Employees" above.
[261]29 C.F.R. § 516.23(a).
[262]29 C.F.R. § 23(b).
[263]29 U.S.C. § 211(a).
[264]29 U.S.C. § 209.

Administrator's powers are limited only to the extent that he acts arbitrarily or in excess of his statutory authority. *Oklahoma Press Publishing Co. v. Walling*, 327 U.S. 186 (1946).

The Administrator or his designated representative can make routine compliance investigations or make investigations upon the complaint of an employee to determine if violations are being committed. If an investigation discloses violations and the employer does not voluntarily come into compliance, the Administrator may: (1) seek an injunction to restrain the employer from violating the law; (2) bring suit to recover the back minimum wages and overtime pay owed to the employee plus an equal additional amount as liquidated damages; or (3) do both (1) and (2) above. Criminal actions may be brought by the Department of Justice against willful violators of the Act.[265]

Employees may also file suit themselves to recover back wages due under either the minimum wage or overtime provisions plus an additional equal amount as liquidated damages. A prevailing employee may also request a reasonable attorney's fee as part of the cost.

The Administrator or an employee may sue in any state or federal court of competent jurisdiction in order to enforce FLSA rights. While the Administrator may sue on behalf of all aggrieved employees, an employee cannot represent other allegedly aggrieved individuals in an FLSA action unless they file a written consent to "opt-in" the litigation.[266] An action under the FLSA must be initiated within two (2) years of the date of a non-willful violation or three (3) years from the date of a willful violation.[267] The term "willful" is broadly defined and includes all circumstances in which the employer knew or suspected that its action might violate the FLSA.[268] Courts have the discretion to deny or reduce the amount of liquidated damages in a suit where the employer proves that he acted in good faith and with reasonable grounds for believing that no violation was being committed.[269]

The Administrator is authorized to supervise the payment of unpaid minimum wages or unpaid overtime compensation due any employee. Payment of the amount determined by the Administrator to be due and agreement by an employee to accept such payment, upon payment in full, constitutes a waiver of any right the employee may have to recover such back pay and any liquidated damages.

An employer who is found to be in violation of the FLSA in an injunction action by the Secretary of Labor must pay the back wages due employees as directed by the Court and is enjoined from future unlawful conduct.[270] If the employer violates the FLSA in the future, the Secretary may ask that the employer be adjudged in contempt of court, including criminal contempt if the violation was willful.

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[265]29 U.S.C. § 216(a).
[266]29. U.S.C. § 216(b).
[267]29 U.S.C. § 255.
[268]29 U.S.C. § 255(a); *Coleman v. Jiffy June Farms, Inc*., 458 F.2d 1139 (5th Cir. 1972).
[269]29 U.S.C. § 260.
[270]29 U.S.C. § 217.

An employer who is found to be in violation of the FLSA in either an Administrator's back pay suit or an employee wage suit may be required to pay back pay accruing up to three (3) years prior to the filing of the lawsuit plus an equal amount as liquidated damages. In an employee's suit, the employer may also be required to pay the employee's attorney's fees.[271]

The Department of Justice may file criminal actions which could lead to fines of up to $10,000, or in the case of a second offender, to imprisonment up to six (6) months. Such actions may be filed whenever the violations are considered willful, *i.e.* deliberate, voluntary, and intentional, as distinguished from violations committed through inadvertence, accidents, or ordinary negligence. *Nabob Oil Co. v. U.S.*, 190 F.2d 478 (10th Cir. 1951), *cert. den.* 342 U.S. 876 (1951).

Equal Pay Act

Coverage

The Equal Pay Act applies to all municipalities. Although the Equal Pay Act was an amendment to the Fair Labor Standards Act, the FLSA minimum wage and overtime exemptions are not generally applicable to equal pay cases.

Prohibited Conduct

The Equal Pay Act prohibits discrimination on the basis of sex in the wages paid for jobs which require equal skill, effort, and responsibility and which are performed under similar working conditions.[272] Jobs do not need to be identical to be covered by the Equal Pay Act but only substantially equal.[273]

Skills include such factors as experience, training, education, and ability.[274] Similarity of working conditions is determined by comparing job surroundings and hazards. Shift differentials are irrelevant. "Surroundings" encompass the type, intensity, and frequency of a worker's exposure to elements such as toxic chemicals. "Hazards" include the type and frequency of physical hazards regularly encountered and the severity of injury that they can cause.[275]

A municipality is permitted to pay workers of one sex at a rate different from workers of the other sex if the differential results from a seniority system, a merit system, a system based on quantity or quality of production, or any other system that is not based on sex.[276] Cases necessarily involve detailed factual comparisons of different jobs. Courts tend to focus on

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[271] 29 U.S.C. § 216(b).
[272] 29 U.S.C. § 206 (d)(1).
[273] *Brennan v. City Stores, Inc.*, 479 F.2d 235, 238 (5th Cir. 1973); *Cf. United States v. Milwaukee*, 441 F. Supp. 1371 (D.C. Wis. 1977) (municipality violated Equal Pay Act in paying male and female jailers differently where male and females received same training and had same performance requirements).
[274] 29 C.F.R. § 1620.15.
[275] *Corning Glass v. Brennan*, 417 U.S. 188 (1974).
[276] 29 U.S.C. § 206(d)(1).

distinctions and comparisons cited by the litigants on a case-by-case basis, rather than upon consistent principles of "substantial equality." This method has resulted in conflicting decisions concerning the same job groups in different cases.[277]

Procedure

An action under the Equal Pay Act must be initiated within two (2) years of the date of a non-willful violation or three (3) years from the date of a willful violation. The term "willful" for purposes of the limitations period is broadly defined and includes all instances in which the employer knew or showed reckless disregard as to whether his or its conduct was prohibited under the Act.[278]

An investigation under the Act can be initiated by the EEOC either on its own initiative or after a charge has been filed by an individual.[279] The EEOC can initiate an investigation based on EEOC lists which show the industries or occupations having a high incidence of noncompliance, or on information submitted to the EEOC or obtained during the course of the EEOC investigation of an individual's Equal Pay Act complaint.[280] Investigations can include interviews of employer representatives, past and present employees and applicants, as well as interviews of outside parties.[281]

The EEOC will issue a letter of determination if it finds the municipality has violated the ACT and the municipality refuses to enter into a settlement agreement.[282] If the municipality enters into a settlement agreement, it will be liable for back pay to all affected employees and will have to raise the wage rates of the lower-paid sex to the level of the higher paid sex.[283] The EEOC or the aggrieved person may also file suit against the municipality, but a suit by the EEOC extinguishes the aggrieved person's right to sue.[284]

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[277]Compare *Hodgson v. Brookhaven Gen. Hospital*, 470 F.2d 729 (5th Cir. 1972); *Hodgson v. Golden Isles Nursing Home, Inc.*, 468 F.2d 1256 (5th Cir. 1972); *Hodgson v. Brookhaven Gen. Hospital*, 436 F.2d 719 (5th Cir. 1970).
[278]29 U.S.C. § 255(a); *McLaughlin v. Richland Shoe Co.*, 486 U.S. 128 (1988); *Reich v. Bay, Inc., BBI, Inc.*, 23 F.3d 110 (5th Cir. 1994).
[279]EEOC Compliance Manual § 2.1, 8.1 and 22.8; 29 U.S.C. §211(a); 29 C.F.R. §1620.30.
[280]EEOC Compliance Manual § 22.3(b)
[281]EEOC Compliance Manual § 23.2.
[282]EEOC Compliance Manual § 40.1.
[283]EEOC Compliance Manual § 60.5(c)(2).
[284]29 U.S.C. § 216 (b).

An individual can file an Equal Pay Act charge with the EEOC or can file suit against the municipality without filing a charge. If an EEOC charge is filed, the EEOC will interview the charging party to determine if there is reasonable cause to believe there have been a violation and whether other violations may exist.[285] Ordinarily, a fact finding conference will not be conducted by the EEOC. The EEOC can close its investigation whenever it determines that continued processing is inappropriate and the charging party can file suit against the employer at any time without receiving a "right to sue" letter.[286]

Liability Exposure

A municipality found to be in violation of the Equal Pay Action may be required to pay all affected employees back pay accruing to a date of up to two (2) years prior to the filing of the charge and may be ordered to pay the plaintiff's attorneys fees.[287] The municipality also will be required to raise the wage rate of all affected employee to that of the higher paid sex. Wage rates cannot be equalized by reducing the rate of the higher paid sex.

Uniformed Services Employment and Reemployment Rights Act of 1994

Coverage and Prohibited Conduct

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) which went into effect December 12, 1994, is intended to assure non-career military service members that they can return to their jobs held prior to entering military service without losing benefits or seniority.[288]

In order to qualify for reemployment rights, a non-career military service member must meet five (5) conditions: (1) the employee must hold a civilian job; (2) the employee must give notice (written or verbal) to the employer that he will be leaving the job for military training or service; (3) the employee must not exceed a cumulative five-year limit of military service with that particular employer;[289] (4) the employee must have been released from the service under honorable conditions; and (5) the employee must report back to the civilian job in a timely manner or make a timely application for reemployment.

The time to report back to work or apply for reemployment after completed military training or service is based on the time spent on military duty. For service of less than 31 days, the employee must return at the beginning of the next regularly scheduled work period on the first full day after release from service, taking into account safe travel home plus an eight-hour rest

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[285]EEOC Compliance Manual § 2.4.
[286]EEOC Compliance Manual § 1.8(c) and § 2.4(g)(3).
[287]29 U.S.C. § 216(b); U.S.C.§ 255(a).
[288]38 U.S.C. § 4311.
[289]This five-year limit is a cumulative length of time that an individual may be absent for military duty and retain reemployment rights. Military service performed before the employee began working for a particular employer is irrelevant for reemployment rights purposes. The cumulative five-year limit does not apply to most periodic and special Reserve National Guard training and most National Guard service during time of state or national emergency, initial enlistments lasting more than five years and involuntary active duty extensions and recalls.

period.[290] For service of more than 30 days, but less than 181 days, the employee must submit an application for reemployment within 14 days of release from service or, if submitting such application within such period is impossible or unreasonable through no fault of the person, the next first full calendar day when submission of such application becomes possible.[291] For service of more than 180 days, an application for reemployment must be submitted within 90 days after completing the period of service.[292]

The position to which an individual is entitled to be reemployed is also dependent upon the employee's time spent on military duty. For service of less than 91 days, the individual is entitled to be reemployed in the position the individual would have held if the individual's employment had not been interrupted by military service, if the person is qualified to perform the duties of that position. If, after reasonable efforts by the employer to qualify the person, the person is not qualified to perform the duties of the position he would have held but for the interruption for military service, the person is entitled to be reemployed in the position the individual held on the date of the commencement of military service.[293]

For service of more than 90 days, an individual is entitled to be reemployed in the position the individual would have held if the individual's employment had not been interrupted by military service *or* to an equivalent position with like seniority, status, and pay, if the person is qualified to perform the duties of the particular position. If, after reasonable efforts by the employer to qualify the person, the individual is not qualified to perform the duties of the position he would have held but for the interruption by military service, the individual is entitled to be reemployed in the position the individual held on the date of the commencement of the service of the military service or another position of like seniority, status, and pay if the person is qualified to perform those duties.[294]

If a person has become disabled during their military service, and consequently is not qualified to hold the position the individual would have been entitled to if the individual's employment had not been interrupted by military service, the disabled individual is entitled to be reemployed in any other position which is equivalent in seniority, status, and pay, if the individual is qualified to perform or could become qualified to perform, with reasonable efforts by the employer, the duties of the alternate position.[295]

Another important component of USERRA is its prohibition on employment discrimination against military personnel based on their past, current, or future military obligations (38 U.S.C. § 4311). This discrimination ban prevents employers from denying initial employment, re-employment, retention in employment, promotion, or any benefit of employment based on an individual's membership, application for membership, performance of service, or application for service or obligation (*Ibid.*). Employers will have discriminated against an employee based on

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[290] 38 U.S.C. § 4312(e)(1)(A).
[291] 38 U.S.C. § 4312(e)(1)(C).
[292] 38 U.S.C. § 4312(e)(1)(D).
[293] 38 U.S.C. § 4313(a)(1).
[294] 38 U.S.C. § 4313(a)(2).
[295] 38 U.S.C. § 4313(a)(3).

their military service or obligation to serve if the employer used that employee's membership in the armed services as a motivating factor in its action to deny initial employment, reemployment, retention, or other benefits of employment. The employer may, however, avoid liability for discriminating under this section if it can prove that it would have taken the same action against this employee irrespective of his membership or application for membership in the armed services.

A returning veteran also is entitled to the seniority and other rights and benefits determined by seniority that the person had on the date of the commencement of service plus the additional seniority and rights and benefits that such person would have attained if the person had remained continuously employed.[296] A reemployed veteran is also protected from discharge without cause for a specified period of time based on length of service. For length of service of more than 30 days but less than 180 days, a reemployed veteran is protected for a period of 180 days after the date of reemployment. For length of service more than 180 days, a reemployed veteran is protected from discharge without cause for one year after the date of reemployment.[297] In addition, employers may not require an individual to use vacation, annual, or similar leave during any period of military service.[298]

Employees, or their dependents, with coverage under an employer's health plan are entitled to elect to continue coverage under the plan upon the commencement of military leave. The maximum period of coverage under such an election shall be the lesser of: (1) the 24-month period beginning on the date on which the person's absence begins or (2) on the day after the date on which the person fails to apply for or return to a position of employment.[299] An employee who elects to continue coverage under the health plan, except those employees whose time of leave is less than 31 days, may be required to pay a maximum of 102% of the full premium under the original plan. In addition, upon reemployment, veterans may not be subject to exclusions or waiting periods that would not otherwise have been imposed under the plan.[300]

Employers are also required to continue to contribute to any pension benefit plan offered by the employer during the employee's military leave.[301]

Mississippi law also grants municipal officers and employees the right to a leave of absence in order to participate in the reserves of the United States Armed Forces. If the leave does not exceed 15 days, the leave shall be without loss of pay, time, annual leave, or efficiency rating. If the leave exceeds 15 days, it shall be without loss of seniority, annual leave, or efficiency rating. The employee is protected from discharge, without cause for one year.[302]

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[296] 38 U.S.C. § 4316(a).
[297] 38 U.S.C. § 4316(c).
[298] 38 U.S.C. § 4316(d).
[299] 38 U.S.C. § 4318(a)(1).
[300] 38 U.S.C. § 4317(b)(2). This limitation does not apply to the coverage of any illness or injury determined by the Secretary of Veterans Affairs to have been incurred in, or aggravated during performance of service in the uniformed services.
[301] 38 U.S.C. § 4318(b).
[302] *Code*, § 33-1-21(a).

Procedure and Liability

Any veteran who believes that his reemployment rights have been denied may file a written complaint with the Department of Labor. If, after an investigation, the Department finds that the individual's reemployment rights have been violated, the Department will informally attempt to resolve the complaint by making reasonable efforts to ensure that the individual's reemployment rights are honored. If reasonable efforts by the Department are unsuccessful, the Department may issue a notice of the complainant's entitlement to proceed in District Court. In addition to the requirement already imposed on an employer under USERRA, the court may also require the employer to compensate the aggrieved individual for any loss of wages or benefits suffered.[303] The court may also issue temporary or permanent injunctions, temporary restraining orders, and contempt orders. The court may also award the prevailing party reasonable attorney fees, expert witness fees, and other litigation expenses.[304]

The Rehabilitation Act of 1973 and *Mississippi Code Ann*. § 43-6-15

Coverage

§ 503 of the Rehabilitation Act of 1973 applies to municipalities which have federal contracts or subcontracts exceeding $10,000,[305] while § 504 applies to municipalities that are recipients of federal grants and federally assisted programs.[306] The obligations and enforcement procedures applied under § 503 are different from those applied under § 504. Mississippi law also includes a provision applicable to disabled individuals employed in state services, in the service of political subdivisions of the state, in public schools, or in any other employment supported in whole or in part by public funds.[307]

Prohibited Conduct

Under § 504, qualified individuals with disabilities cannot be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance or under any activity or any executive agency.[308] Municipalities performing federal contracts or subcontracts exceeding $10,000 are required by § 503 to take affirmative action to employ and advance in employment qualified individuals with disabilities.[309]

An "individual with a disability" is defined as any person who: (1) has a physical or mental impairment which substantially limits a major life activity; (2) has a record of such impairment; or (3) is regarded as having such impairment.[310]

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[303] *Wallace v. Hardees's, Inc. of Oxford*, 800 F. Supp 806 (M. D. Ala. 1994).
[304] 38 U.S.C. § 43
[305] 29 U.S.C. § 793(a).
[306] 29 U.S.C. § 794.
[307] *Code*, § 43-6-15.
[308] 29 U.S.C. § 794.
[309] 29 U.S.C. § 793(a).
[310] 29 U.S.C. § 705(9)(B); *see also* 42 U.S.C. § 12102.

An "individual with a disability" is also defined to exclude an individual who is currently engaging in the illegal use of drugs.[311] However, individuals who have successfully completed a supervised drug rehabilitation program or are participating in one and who are no longer engaging in the illegal use of drugs are protected.[312] Alcoholics whose use of alcohol prevent them from performing their duties or threaten the property and safety of others are also not considered to be disabled for purposes of the Act.[313]

The term "individual with a disability" further excludes an individual who has a currently contagious disease or infection which would constitute a direct threat to the health or safety of the individuals or others.[314]

Like the ADA, the Act also excludes homosexuality, transsexualism, bi-sexuality, transvestism, pedophilia, exhibitionism, voyeurism, compulsive gambling, kleptomania, and pyromania as well.[315]

Courts construing the 1973 law have identified the following conditions as "disabilities": blindness, impaired hearing, multiple sclerosis, diabetes, epilepsy, heart disease, dyslexia, hypertension, hepatitis-B, lack of index finger on right hand, Huntington's Chorea, post traumatic stress disorder, Crohn's disease, alcohol and drug abuse recovery, achondroplastic dwarfish, tuberculosis, AIDS, manic depression, congenital back problems, and unusual sensitivity to smoke.

In addition, *Code*, § 43-6-15 provides that no person may be refused public employment "by reason of his being blind, visually handicapped, deaf or otherwise physically handicapped, unless such disability shall materially affect the performance of the work required by the job for which such person applies."[316] Injunctive relief and back pay are both remedies that a discriminated employee may seek under the statute.

Procedure and Potential Liability

The Office of Federal Contract Compliance Programs (OFCCP) may conduct compliance reviews to determine if the contractor maintains non-discriminatory hiring and employment practices and is taking affirmative action to ensure that applicants are employed and that employees are placed, trained, upgraded, promoted, and otherwise treated in accordance with the terms of this act.[317]

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[311] 29 U.S.C. § 706(8)(C)(I).
[312] 29 U.S.C. § 706(8)(C)(ii).
[313] 29 U.S.C. § 706(8)(D).
[314] 29 U.S.C. § 706(8)(D).
[315] 29 U.S.C. § 706(8)(E) and (F).
[316] *Code*, § 43-6-15.
[317] 41 C.F.R. 60-741.60.

A qualified individual with a disability who believes that a municipality has failed to comply with § 503 of the Rehabilitation Act may file a written complaint with the OFCCP within 300 days of the date of the alleged violation.[318] If after a prompt investigation, a material violation is discovered, the parties may be required to conciliate the matter. Where conciliation is not practical, the Department of Labor may begin enforcement proceedings against the contractor to enjoin the violations, to seek appropriate relief, and to impose appropriate sanctions. Appropriate sanctions include the following: withholding government progress payments, canceling or terminating the government contract, or the barring the contractor from future government contracts.[319]

A qualified individual with a disability who believes that a municipality has violated the provisions of § 504 of the Rehabilitation Act, may file a complaint in accordance with the procedures set forth in Title VI of the Civil Rights Act of 1964 and may avail himself of those remedies.[320]

In any action or proceeding brought under § 503 or 504 of the Federal Rehabilitation Act, the court may award attorney fees to the prevailing party.

Consumer Credit Protection Act and the Bankruptcy Act Amendments of 1984

Coverage

The Consumer Credit Protection Act[321] applies to all employees. The Bankruptcy Act Amendments of 1984[322] creates duties specifically for "governmental units." The purpose of both laws is to protect the employment status of certain financially-pressed employees.

Prohibited Conduct

The Consumer Credit Protection Act provides that "no employer may discharge any employee by reason of the fact that his earnings have been subjected to garnishment for any one indebtedness."[323] The Bankruptcy Act amendments of 1984 further provides, with respect to every "governmental unit," that the employing government agency may not

> deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act, or another person with whom such bankrupt or debtor has been associated, solely because such bankrupt or debtor is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of the case under

[318] 41 C.F.R. § 60-741.61(b).
[319] 41 C.F.R. § 60-741.65 and 41 C.F.R. § 60-741.66.
[320] 29 U.S.C. § 794a(a)(2).
[321] 15 U.S.C. § 1671 *et seq*.
[322] 11 U.S.C. § 525 (a) and (b).
[323] 15 U.S.C. § 1671 *et seq*.

> this title or during the case, but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act.[324]

Liability Exposure

Willful violations of the Consumer Credit Protection Act are punishable by fines of not more than $1,000.00, imprisonment for not more than one (1) year, or both.[325] This statute has been construed as an exclusive, criminal remedy and does not authorize a discharged private employee to institute a civil suit against his former employer.[326]

Under the Bankruptcy Code, a court has the discretion to fashion the appropriate remedy for a violation of § 525, including injunctive relief, reinstatement of the employee, and in some cases monetary damages.[327]

<u>The Immigration Reform and Control Act</u>

Prohibited Conduct

In 1986, Congress passed a law which makes it illegal to hire, to recruit, or refer for a fee any person known to be an unauthorized alien.[328] The law provides for the legalization of eligible aliens and prohibits discrimination against a U. S. citizen or permanent resident alien, refugee, asylee, or newly legalized alien who has filed a Notice of Intent to become a U. S. citizen. It is furthermore unlawful under the Act for a municipality to continue employment of an unauthorized alien after the municipality becomes aware of the unauthorized status.[329]

An "unauthorized alien" is an alien who is not at the time of employment either an alien lawfully admitted for permanent residence or authorized to be employed as such.[330]

Procedure

The Act requires a municipality to verify all applicants for employment within three (3) days of hire. If an employee is to be employed for only three (3) days or less, the documentation must be presented on the first day of employment. Verification includes the establishment of *both* the individual's employment authorization and identity. One of the following documents is sufficient to establish both criteria:

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[324] 11 U.S.C. §525(a).
[325] 15 U.S.C. §1674 (b).
[326] *Smith v. Cotten Brothers Banking Company, Inc*., 609 F.2d. 738 (5th Cir.), *cert denied* 449 U.S. 821 (1980).
[327] *In re Hopkins*, 81 B.R. 491 (W.D. Ark. 1987).
[328] 8 U.S.C. § 1324a(1).
[329] 8 U.S.C. § 1324a(2).
[330] 8 U.S.C. § 1324a(h)(3).

- United States passport (unexpired);
- Alien registration receipt card or Permanent Resident Card, INS Form I-551;
- Unexpired foreign passport if the passport has the appropriate unexpired employment authorization stamp (I-551);
- An unexpired employment authorization document issued by the Immigration and Naturalization Service which contains a photograph, Form I-766
- In the case of a nonimmigrant alien authorized to work for a specific employer incident to status, a foreign passport with Form I-94 or I-94A bearing the same name as the passport an containing an endorsement of the alien's nonimmigrant status, as long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitation identified on the Form;
- A passport from the Federaed States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with the Form 1-94 or I-94A indicating nonimmigrant admission under the Compact of Free Associations Between the United States and the FSM or RMI;
- In the case of an individual lawfully enlisted for military service in the Armed Forces under 10 U.S.C. 504, a military identification card issued to such individual may be accepted only by the Armed Forces.

If the applicant does not have one of the above mentioned documents, he can show employment authorization and identity by a combination of other documents. An applicant can use one of the following documents to show that he is *authorized* for employment:

- Social Security card, other than one specifying on its face that it does not authorize United States employment;
- A certificate of birth abroad issued by the Department of State, Form FS-545;
- A certificate of birth abroad issued by the Department of State, Form DS-1350;
- An original or certified copy of a birth certificate issued by a state, county, municipal authority, or outlying possession of the United States bearing an official seal;
- Native American travel document;
- United States citizen identification card, INS Form I-197;

- Identification card for use of resident citizen in the United States, INS Form I-179; and

- An unexpired employment authorization document issued by the Department of Homeland Security[331]

An applicant who is 16 years of age and older can produce one of the following documents to prove *identity*:

- A state issued driver's license or state-issued identification card containing a photograph or identifying information such as name, date of birth, sex, height, color of eyes, and address;

- School identification card with a photograph;

- Voter's registration card;

- United States military card or draft record;

- Identification card issued by federal, state, or local government agencies or entities containing a photograph or identifying information such as name, date of birth, sex, height, color of eyes, and address;

- Military dependent's identification card;

- Native American tribal documents;

- United States Coast Guard Merchant Mariner card; and

- Driver's license issued by a Canadian government authority.[332]

If an applicant under the age of 18 is unable to produce one of the above documents, then one of the following documents is acceptable to establish *identity* only:

- School record or report card;

- Clinic, doctor, or hospital record;

- Day care or nursery school record.

After the employer has established employment authorization and identity, the employer must sign an affidavit that he has reviewed these documents and that the documents reasonably appear to be genuine. The applicant must also sign an affidavit that he is a citizen or national of the United States, an alien lawfully admitted for permanent residence, or an alien who is authorized

[331] 8 C.F.R. § 274a.2(c).
[332] 8 C.F.R. § 274a.2(b)(v)(B)(1).

by the Act or the Attorney General to be hired, recruited or referred for employment.[333] The municipality may fulfill these obligations by preparing an I-9 Form issued by the Immigration and Naturalization Service.

Penalties

The Act establishes penalties for first, second, third employer offenses and "pattern or practice violations, ranging from $250.00 to $10,000.00 for each alien involved to six (6) months imprisonment and/or a $3,000.00 fine.[334]

Consolidated Omnibus Budget Reconciliation Act

Coverage

Congress enacted the Consolidated Omnibus Budget Reconciliation Act, better known as COBRA, in 1986.[335] COBRA covers all employers who employed 20 or more employees on a typical business day during the preceding calendar year. COBRA applies to all health plans after July 1, 1986.[336]

Requirements

COBRA requires employers to extend health care coverage to a qualified beneficiary who would otherwise lose coverage under the plan as a result of a qualifying event. A qualified beneficiary includes any individual who, on the day before a qualifying event, is considered as (1) a covered employee, (2) the spouse of a covered employee, or (3) the dependent child of the covered employee.[337]

A qualifying event is considered one of the following:

- Death of a covered employee;
- Termination other than for gross misconduct[338] or reduction in hours;
- Divorce or legal separation of the covered employee from the employee's spouse;
- The employee becoming entitled to Medicare benefits; or
- A child ceases to be dependent.

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[333] 8 U.S.C. § 1324a(b)(2).
[334] 8 U.S.C. § 1324a(e)(4)(A); (f)(1).
[335] 29 U.S.C. §1161-1168.
[336] 29 U.S.C. §1161(b).
[337] 29 U.S.C. §1167(3).
[338] Termination of employment includes voluntary termination.

If the qualifying event was termination of employment or reduction of hours, the maximum period of COBRA continuation coverage is 18 months. If another qualifying event occurs within the 18-month period, the employer must extend coverage for up to 36 months.[339] In the event of the death of the employee, divorce, or legal separation, continuation coverage is available for a maximum period of 36 months to the spouse and children of the covered employee.

Employees and covered dependents who have obtained a determination from the Social Security Administration that a disability existed as of the date of the qualifying event are entitled to coverage for an additional 11 months for a total of 29 months of continuation coverage.[340]

The period of extended coverage will cease on the date any of the following events occur:

- The employer ceases to provide any group health plan to any employee;
- Coverage ceases under the plan by reason of a failure to make a timely payment of any premium required under the plan;
- The qualified beneficiary is covered by another group health plan (as an employee or otherwise) unless the new group health plan fails to cover pre-existing conditions;
- The qualified beneficiary or employee becomes entitled to Medicare benefits; or
- The beneficiary remarries and becomes covered under a group health plan by reason of being the spouse of a covered beneficiary.

Extended Coverage Under the USERRA

Extended coverage is required under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). An employee who leaves service to perform military service must receive the same employer subsidy for the first month. Thereafter, the employer may charge up to 100% of the premium. The primary differences in USERRA and COBRA coverage are the lengths of coverage (24 months for USERRA), and that only the departing service member, not his or her dependents, has a right to continuation coverage.

The ARRA also provides for an extension of the normal COBRA continuation coverage in two scenarios. First, if a covered employee's qualifying event is termination of employment or reduction in hours and, at such time, he or she possesses a vested pension benefit (all or a portion of which is payable by the Pension Benefit Guaranty Corporation), then COBRA coverage is extended to the later of (i) the death of the covered employee, or (ii) for the spouse and dependent children, 24 months after the covered employee's date of death. This provision, however, does not require any COBRA continuation coverage period to extend beyond December 31, 2010. Second, if a covered employee's qualifying event is termination of employment or a reduction in hours and the employee is eligible for the health insurance tax

[339] 29 U.S.C. §1162(2)(A)(ii).
[340] 29 U.S.C. §1162(2)(A).

credit under the Trade Act of 1974 as of the date COBRA coverage would otherwise end, the COBRA coverage period cannot end before the end of the later of (i) 18 months after the qualifying event (or 36 months if another qualifying event occurs), or (ii) the date on which the covered employee is no longer eligible for the health insurance tax credit. This provision also will not require any COBRA continuation coverage period to extend beyond December 31, 2010.

Procedure

An employer can charge up to 102% of the applicable premium for the extended health care coverage.[341] An employer can charge up to 150% of the applicable premium for disabled employees who opt for the 29-month coverage.[342] An employee or beneficiary may elect, however, to make this a monthly, quarterly, or semi-annual payment rather than a lump sum payment.[343] Should the qualified beneficiary miss a monthly payment, the employee has a 30-day grace period in which to pay before the coverage terminates or longer if the group health plan permits.[344] The applicable premium is the cost of the plan for similarly situated beneficiaries, with respect to whom a qualifying event has not occurred, meaning that cost is determined by days of coverage. The applicable premium is computed without regard to whether the cost is paid by the employer or the employee.[345]

The employer must notify the plan administrator within 30 days of the following qualifying events:

- Death of a covered employee;
- Termination;
- Reduction in hours resulting in loss of coverage; or
- Entitlement to Medicare benefits.

For all other qualifying events, the employee or beneficiary must notify the plan administrator within 60 days of the occurrence, so that the Plan Administrator may generate a COBRA notice.[346]

The plan administrator is responsible for notifying all qualified beneficiaries within 14 days after the occurrence of a qualifying event of the beneficiary's entitlement to extended coverage. Notification to an individual who was a qualified beneficiary as the spouse of the covered employee will be treated as notification to all other qualified beneficiaries residing with the spouse at the time notification is made.[347]

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[341] 29 U.S.C. §1162(3)(A).
[342] 29 U.S.C. §1162(3).
[343] 29 U.S.C. §1162(3)(B).
[344] 29 U.S.C. §1162(2)(C).
[345] 29 U.S.C. §1164.
[346] 29 U.S.C. §1166(a).
[347] 29 U.S.C. §1166(c).

An employee has 60 days from the date on which coverage terminates due to the occurrence of a qualifying event to elect to continue health care coverage. A qualified beneficiary has 60 days from the date he receives notice from the plan administrator in which to elect to continue his health care coverage.[348] If a spouse of a covered employee elects continued coverage, his election, unless specifically stated otherwise, is sufficient to elect continued coverage for the children of the spouse and the covered employee.

Liability Exposure

Should the employer not provide the option of extended health care coverage under the health plan, the employer will not be allowed to deduct all the ordinary and necessary expenses of group health plans on its income tax returns.[349] The Act also provides for a minimum fine of $15,000.00 where the employer's conduct is more culpable. In no event shall the fine for the employer exceed $500,000.00.

Patient Protection and Affordable Care Act

As a result of the Patient Protection and Affordable Care Act, large employers are required to make an offer of affordable, minimum value coverage to their full-time employees or pay a penalty tax. A large employer employs 50 or more full-time employees or full-time equivalents. A full-time employee for this purpose is one who works 130 or more hours per month. To determine the number of full-time equivalents, the employer counts the hours worked in a month for the part-time employees and divides that number by 120. The result is the number of full-time equivalents.

Once an employer has determined that it is a large employer, it must make an offer of affordable, minimum value coverage to its full-time employees. For this purpose, full-time equivalents are irrelevant. A full-time employee is one who works 130 or more hours per month or 30 or more hours per week. An employee whose hours change during the course of the year between full and part-time is called a variable hour employee. Employers may offer variable hour employees coverage on a month-to-month basis or may use lookback and stability periods. The employer may also elect to treat the variable hour employee as full-time for the entire year. A lookback period is a period between three months and one year during which an employer records the hours an employee has worked, been entitled to pay, including pay for vacation, holidays, illness or disability, jury duty, military duty, or a leave of absence of up to 160 continuous hours. The lookback period cannot end more than 90 days before start of coverage period. If the employer has been credited with at least 1,560 hours, the employee will be treated as a full-time employee during the stability period, regardless of actual hours. A stability period is a period from six to twelve months, but never less than the lookback period, during which an employee is offered coverage.

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[348] 29 U.S.C. §1165(1).
[349] 26 U.S.C. §162.

Minimum Value

In order to qualify as an offer of coverage, the plan must meet the minimum value standard. Most fully-insured plans will meet this standard, but employers should request a letter from their insurers acknowledging that the policy meets the minimum value requirements.

For self-insured plans, particularly grandfathered self-insured plans, obtaining a certification from an actuary is the best practice. The plan must meet the 60% threshold set by the PPACA.

Affordability

The second threshold for avoiding the tax is affordability. An employer may change no more than 9.69% (for 2017) if an employee's household income for the cost of self-only coverage. Since employers are unlikely to know an employee's household income, three safe harbors are available. The safe harbors permit a finding of "affordability" if the cost to the employee does not exceed 9.69% of either:

(1) Federal poverty level for a single person.
(2) Box 1 of employee's W-2 for year of coverage
(3) Rate of pay (130 x employee's hourly rate)

An employer may not pick and choose its safe harbor on an employee-by-employee basis, although different safe harbors may be used for certain classes of employees (geographical and salaried versus hourly, among others).

The Tax

There are two methods of taxation if an employer does not offer affordable, minimum value coverage. First, if an offer is not made, or is made to less than 95% of employer's full-time work force, the tax is calculated as follows: (number of full-time employees minus 30) x $2,160 or as indexed in the current year. If the offer is made and it is not affordable, the tax is calculated as follows: the lesser of (number of full-time employees minus 30) x $2,160 or as indexed in the current year) or (number of employees receiving a subsidy) x $3,240 or as indexed in the current year.

<u>Executive Order No. 11246</u>

Coverage and Requirements

Executive Order No. 11246 creates affirmative action duties for municipalities who have major federal contracts and subcontracts.[350] Those municipalities having federal contracts totaling less than $10,000.00 in any twelve-month period are generally exempt,[351] but those that have 50 or

[350]Certain federally assisted programs and businesses are also covered. *See* 41 C.F.R. §60-1.1.
[351]41 C.F.R. § 60-1.5. Such contractors will have affirmative action duties with respect to certain veterans and disabled persons.

more employees and contracts for $50,000.00 or more in any twelve-month period must develop written affirmative action programs for hiring and promoting minorities and females.[352]

In preparing a written affirmative action program, an employer must divide its workforce into "job groups" and must identify those in which minorities or females are "underutilized" in relation to the number of suitable candidates "available." This detailed process results in setting numerical "goals" and "timetables" for hiring and promoting minorities and females into jobs in which they are "under-utilized."[353]

Covered contractors and subcontractors must also include an equal employment opportunity clause in their federal contracts. This clause lasts as long as the contract and requires that the contractor (1) not to discriminate on the basis of race, color, religion, sex, or national origin against any employee or applicant; (2) state in all solicitations for employees that applicants will be considered without regard to race, color, religion, sex, sexual orientation, gender identity or national origin; (3) notify the employees' union about its affirmative action obligations; and (4) include the equal employment opportunity clause in all subcontracts or purchase orders.[354]

Procedure

The Office of Federal Contract Compliance Programs (OFCCP) enforces obligations through random compliance reviews and investigations of individual complaints. If the complaint is filed within 180 days of the alleged discriminatory act, it is usually referred to the EEOC, but if the OFCCP investigates and finds a violation, it will attempt first to resolve the matter informally, and then begin administrative enforcement proceedings to force compliance. The OFCCP may also refer the complaint to the Department of Justice which may bring a lawsuit to enforce the contract's provisions.[355]

The OFCCP begins each compliance review with a notice to the contractor requesting information, including the current affirmative action plan. All information must be submitted within thirty (30) days for a "desk audit." Failure to submit a plan or supporting data may be considered a major violation. When the OFCCP finds a violation of affirmative action obligations, it asks the contractor to show why it should not begin formal compliance proceedings. If, in the next thirty (30) days, the contractor fails to "show cause" for the failure to comply, the OFCCP may begin administrative enforcement proceedings against the contractor as

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[352]41 C.F.R. §60-2.1.

[353]The future of affirmative action programs is uncertain as the courts have begun to question whether such programs are violative of the Equal Protection clause. *See Adarand Constructors, Inc,. v. Pena*, U.S. S.Ct. 200A (1995) (all federal affirmative action programs show a compelling government interest to survive equal protection challenges) *Hopwood v. Texas*, 78 F.3d 932 (5th Cir.), *cert denied*, 116 S.Ct. 2581 (1996) (non-remedial racial preferences in college admissions violates the equal protection guarantee of the Fourteenth Amendment); and *Taxman v. Board of Education*, 91 F.3d 1547 (3d. Cir. 1996) (non-remedial affirmative action plans do not pass constitutional muster).

[354]Executive Order No. 11246, 42 U.S.C. § 2000e, app., at 19; 41 C.F.R. §60-1.4.

[355]41 C.F.R. §60-1-.26.

defendant.[356] After an appropriate time for discovery and negotiations, a hearing may be held before an administrative law judge.[357] The administrative law judge will propose findings and conclusions for the Secretary of Labor's issuance of a final administrative order.[358]

Liability

The Secretary of Labor may publish the name of a non-complying contractor and may cancel, terminate or suspend the contractor's contract in whole or in part. The contractor may also be debarred or, if he has provided false information to any contracting agency or the Secretary of Labor, subjected to criminal prosecution. Finally, a non-complying contractor whose violation of the Order is treated as a violation of Title VII may be liable for all remedies available through Title VII.[359]

42 U.S.C. § 1981

Coverage

§ 1981 was originally enacted as § 1 of the Civil Rights Act of 1866, pursuant to the congressional power provided by the Thirteenth Amendment to eradicate slavery. The statute covers all municipalities.[360]

Prohibited Conduct

42 U.S.C. § 1981 forbids racial discrimination only in the "making and enforcing" of contracts. Unlike Title VII, it does not impose liability for conduct by the municipality after any contractual relation has been established, such as actions for breach of contract or imposition of discriminatory working conditions.[361] Although the focus of § 1981 is on racial discrimination, the statute has been applied to discrimination on the basis of alienage and national origin.[362] The statute has also been construed to encompass claims of retaliation.[363]

A plaintiff must establish purposeful discrimination to succeed under 42 U.S.C. § 1981.[364] Thus, unlike Title VII of the Civil Rights Act of 1974, actions for disparate impact[365] cannot be

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[356]41 C.F.R. §60-1.28 and 41 C.F.R. §60-30.5.
[357]41 C.F.R. §60-30.14.
[358]41 C.F.R. §60-30.27 and 41 C.F.R. §60-30.30.
[359]Executive Order No. 11246, 42 U.S.C. § 2000(e) app. at 21-22. *See also* discussion of Title VII *supra*.
[360]*Jones v. Alfred H. Mayer Company*, 392 U.S. 409 (1968).
[361]*Patterson v. McLean Credit Union*, 109 S. Ct. 2363 (1989).
[362]*Saint Francis College v. Al-Khazraji*, 481 U.S. 604 (9187); *Guerra v. Manchester Terminal Corp.*, 498 F.2d 641 (5th Cir.), *rehg. denied*, 503 F.2d 567 (5th Cir. 1974).
[363] *CBOCS West, Inc. v. Humphries*, 553 U.S. 442 (2008).
[364]*Grigsby v. North Mississippi Medical Center, Inc.*, 586 F.2d 457, 460-61 (5th Cir. 1978); *Williams v. DeKalb County*, 582 F.2d 2 (5th Cir. 1978).
[365]*See* discussion of disparate impact and disparate treatment under Title VII.

brought under § 1981.[366] When § 1981 is used as a parallel basis for relief with Title VII against disparate treatment in employment, the elements of proof required of the plaintiff are identical to those required under Title VII.[367]

Procedure

The federal district courts have jurisdiction over suits based on 42 U.S.C. § 1981.[368] Generally, the applicable statute of limitations in § 1981 actions has been construed to be Mississippi's one-year limitations period governing unwritten contracts of employment,[369] or failure to employ,[370] but Mississippi's "catch-all" statute of limitations has also been applied.[371]

Liability Exposure

A prevailing plaintiff in a § 1981 action is entitled both to equitable and/or legal relief, including compensatory damages,[372] against the municipality. Punitive damages may not be awarded against a municipality.[373] If a party seeks legal relief such as compensatory damages, he is entitled to a jury trial with respect to the legal issues. He is not entitled to a jury trial with respect to any equitable relief requested.

Available equitable relief includes back pay and reinstatement.[374] Unlike Title VII, a back pay award under § 1981 is not limited to two (2) years. A successful plaintiff is also entitled to an award of costs, including attorneys' fees.[375] Exposure is substantially increased if the plaintiff sues in a class action on behalf of himself and all others who have suffered similar discrimination.

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[366]*Washington v. Davis*, 426 U.S. 229, 238-39 (1976).
[367]*Whiting v. Jackson State University*, 616 F.2d 116, 121 (5th Cir.), *rehg. denied*, 622 F.2d 1043 (5th Cir. 1980).
[368]28 U.S.C. §§ 1331 and 1343.
[369]*Code*, § 15-1-29; *see White v. United Parcel Service*, 692 F.2d 1 (5th Cir. 1982). In *Owens v. Okure*, 109 S. Ct. 573 (1989), the United States Supreme Court held that the residual statute of limitations applies to § 1983 actions. At least one district court has found this reasoning to apply to § 1981 cases. *See Kozam v. Emerson Elec. Co.*, 711 F. Supp. 313 (N.D. Miss. 1989). The Fifth Circuit has not yet determined the issue.
[370]*Code*, § 15-1-35.
[371]*Code*, § 15-1-49; *Truvillion v. King's Daughters* Hospital 614 F.2d 520 (5th Cir. 1980), *rehg denied*, 618 F.2d 781 (5th Cir. 1980).
[372]*Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454 (1975).
[373]*Newport v. Fact Concerts, Inc.*, 453 U.S. 247 (1981).
[374]*See* Liability Exposure § under Title VII.
[375]42 U.S.C. § 1988.

42 U.S.C. § 1983

Coverage

§ 1983 was originally enacted as § 1 of the Civil Rights Act of 1871, also known as the Ku Klux Klan Act.[376] § 1983 only applies to persons acting "under color of" state law.[377] Generally speaking, § 1983 applies to all acts of municipalities unless the municipality's involvement through licensing, regulation, expenditure of public funds, location in publicly owned facilities, the nature of the functions exercised, public image, or some other combination of these factors demonstrates municipal involvement in private areas.[378]

Under the statutory language, a municipality is a "person" which can be sued directly under § 1983 for monetary, declaratory or injunctive relief where "the action that is alleged to be unconstitutional implements or executes a policy, statement, ordinance, regulation or decision officially adopted and promulgated by that body's officers."[379] Public policy also includes custom and usage.[380] The Fifth Circuit has defined official policy as follows:

- A policy statement, ordinance, regulation, or decision that is officially adopted and promulgated by the municipality's lawmaking officers or by an official who has policy-making authority; or

- A persistent, widespread practice of city officials or employees, which, although not authorized by officially adopted policy, is so common and well, settled as to constitute a custom that fairly represents municipal policy. In such a case, it must be shown that the municipality either knew or should have known of the custom.[381]

Prohibited Conduct

§ 1983 is a remedial statute providing a cause of action for deprivation of any rights secured by the *United States Constitution* and laws.[382] § 1983, therefore, protects only a deprivation of a

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[376]Act of April 20, 1871, Ch. 22 § 1, 17 Stat. 13.
[377]*Blum v. Yaretsky*, 457 U.S. 991 (1982); *Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961); *Mizell v. North Broward Hosp. Dist.*, 427 F.2d 468 (5th Cir. 1970). For examples of cases in which state action was found, *see*, *Augustine v. Doe*, 740 F.2d 322 (5th Cir. 1984) (police brutality; *Layne v. Sampley*, 627 F.2d. 12 (6th Cir. 1980) (police brutality by off-duty police officers). For examples of cases in which state action was not found, *see*, *Rendell-Baker v. Kohn*, 457 U.S. 830 (1982) (private non-profit school was not acting under color of state law even though it performed a public function); *Bonsignore v. New York*, 683 F.2d 635 (2nd Cir. 1982) (off-duty shooting by police officer who shot his wife).
[378]*Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961); *Mizell v. North Broward Hosp. Dist.*, 427 F.2d 468 (5th Cir. 1970).
[379]*Monell v. Dept. of Social Services,* 436 U.S. 658 (1978).
[380]*City of St. Louis v. Praprotnik*, 485 U.S. 112 (1988).
[381]*Bennett v. City of Slidell*, 728 F.2d 762, 765 (5th Cir. 1984).
[382]*Sugarman v. Dougall*, 413 U.S. 634 (1973); *In re Griffiths*, 413 U.S. 717 (1973).

federal right and is the vehicle by which suits for violations of these rights are brought.[383] Thus, suits for violations of the First,[384] Fourth,[385] and Fourteenth Amendments[386] are brought as § 1983 actions. However, the Supreme Court has not been clear as to what rights arising under federal statutes are protected by § 1983. In determining whether a statutory right is protected by § 1983, courts will consider whether the relevant statutes:

- demonstrates congressional intent not to foreclose § 1983 remedies; and
- creates "rights, privileges, or immunities."[387]

Procedure

The federal district courts have jurisdiction suits based on § 1983 without regard to the amount in controversy.[388] No federal administrative remedies are available. A plaintiff is not required to exhaust any state or local administrative remedies that may exist before filing a § 1983 action.[389]

The United States Supreme Court has determined that the statute of limitations most appropriate for § 1983 claims is Mississippi's residual limitations period provided by *Code*, §15-1-49.[390]

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[383]*Gomez v. Toledo*, 446 U.S. 635, 640 (1980).
[384]See section below for a discussion of the First Amendment.
[385]See section below for a discussion of the Fourth Amendment.
[386]See section below for a discussion of the Fourteenth Amendment.
[387]*Middlesex County Sewerage Authority v. National Sea Clammers Assn.*, 453 U.S. 1 (1981).

For examples of cases in which the court found rights created by federal statutes to be protected by § 1983, *see*, *Victorian v. Miller*, 813 F.2d 718 (5th Cir. 1987) (Food Stamp Act, 7 U.S. C. § 2011); *Keaukaha-Panewa Community v. Hawaiian Homes Comm*., 739 F.2d 1467 (9th Cir. 1984) (The Hawaiian Admission Act, 73 Stat. 4 (1959); *Lynch v. Dukakis*, 719 F.2d 504, 512 (1st Cir. 1983) (AFDC program, 42 U.S.C. § 601 *et seq.*; *Crawford v. Janklow*, 710 F.2d 1321 (8th Cir. 1983) (The Low Income Home Energy Assistance Act, 42 U.S.C. § 8624 (b); *Holly v. Housing Authority of New Orleans*, 684 U.S.C. § 1437(c)(3); *Members of the Bridgeport v. Bridgeport*, 564 F. Supp. 2, 6 (D.C. Conn. 1982) (Model Cities Act, 42 U.S.C. § 3301 *et seq.*). *Consortium of Community Based Organizations v. Donovan*, 530 F. Supp. 520 (E.D. Ca. 1982), (CETA, 29 U.S.C. § 801 *et seq.*).

For examples of cases in which the court found rights created by federal statutes were not protected by § 1983, *See*, *Day v. Wayne County Bd. of Auditors*, 749 F.2d 1199 (6th Cir. 1984) (Title VII, 42 U.S.C. § 2000e); *McGuinness v. U.S. Postal Service*, 744 F.2d 1318, 1322 (7th Cir. 1984) (Rehabilitation Act of 1973, 29 U.S.C. § 794; *Allegheny Co. Sanitary Authority v. U.S.E.P.A.*, 29 U.S.C. § 794; *Allegheny Co. Sanitary Authority v. U.S.E.P.A.*, 732 F.2d 1167 (3rd Cir. 1984) (Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*); *Dept. of Educ., State of Hawaii v. Katherine D.*, 727 F.2d 809, 820 (9th Cir. 1983) (Education of All Handicapped Children Act, 20 U.S.C. § 1401 *et seq.*).
[388]28 U.S.C. § 1343; 28 U.S.C. § 1331.
[389]*Patsy v. Florida Board of Regents*, 457 U.S. 496 (1982).
[390]*Owens v. Okure*, 109 S. Ct. 573 (1989).

Therefore, a § 1983 suit must be brought within six (6) years of the date the plaintiff knew or should have known of the alleged wrongful act forming the basis of the suit.

Liability Exposure

A prevailing plaintiff in a § 1983 action may be entitled to an award of compensatory damages against the municipality and its officials both in their official and individual capacities.[391] Generally, punitive damages may be awarded in appropriate circumstances against public officials,[392] but punitive damages may not be awarded against a municipality.[393]

Municipal officials are entitled to assert a qualified immunity in defense of their actions.[394] Officials performing discretionary functions are shielded from liability for civil damages "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person should have known."[395] Officials are not expected to anticipate subsequent legal developments, but if the law is clearly established, an official's immunity defense ordinarily should fail, since a competent municipal official is expected to know the law governing his conduct.[396] The official has the burden of pleading and proving qualified immunity.[397] The municipality is not entitled to any form of immunity, even where its officials have successfully asserted their qualified immunity.[398]

All parties have a right to a jury trial on the issue of liability for compensatory and punitive damages.[399] Parties are not entitled to a jury trial with respect to equitable relief such as reinstatement and back pay.[400] A prevailing plaintiff is entitled to an award of costs, including attorneys' fees.[401] Liability is increased if the plaintiff sues on behalf of himself and all others who have suffered a similar deprivation of rights.

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[391] *Carey v. Piphus*, 435 U.S. 247 (1978).
[392] *Id.*
[393] *Newport v. Fact Concerts, Inc.*, 453 U.S. 247 (1981).
[394] *Wood v. Strickland*, 420 U.S. 308 (1975).
[395] *Harlow v. Fitzgerald*, 457 U.S. 800 (1982).
[396] *Id*.
[397] *Gomez v. Toledo*, 446 U.S. 635 (1980); *but see Hander v. San Jacinto Junior College*, 519 F.2d 273 (5th Cir. 1975).
[398] *Owen v. City of Independence*, 445 U.S. 622 (1980).
[399] *Curtis v. Loether*, 415 U.S. 189 (1974).
[400] *Harkless v. Sweeney Ind. School Dist.*, 427 F.2d 319 (5th Cir. 1970), *cert den*. 400 U.S. 991 (1971).
[401] 42 U.S.C. § 1988.

First Amendment

Coverage

The First Amendment to the *United States Constitution* was proposed to the legislatures of the states by the First Congress on September 25, 1789 and ratified on December 15, 1791. Although the First Amendment proscribes federal action, it is applicable to the states and their political subdivisions through the Fourteenth Amendment.[402] Thus, it applies to all municipalities.

Prohibited Conduct

The First Amendment to the *United States Constitution* provides the following:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The First Amendment restricts the municipality's endorsement or disapproval of religion,[403] its ability to discharge an employee for political affiliations,[404] its ability to discharge an employee for exercising freedom of speech,[405] and its regulation of citizens' rights to use a public forum when expressing their views.[406]

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[402] *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976).

[403] *Lynch v. Donnelly*, 465 U.S. 668 (1984) (use of nativity scene did not violate the First Amendment when the municipality had a secular purpose); *McCreary v. Stone*, 739 F.2d 716 (2nd Cir. 1984), *aff'd*, 471 U.S. 83 (1985) (per curiam) (municipality's neutral accommodation of nativity scene did not violate First Amendment); *Anderson v. Salt Lake City, Utah*, 475 F.2d 29 (10th Cir.), *cert. denied*, 414 U.S. 879 (1973) (erection of monolith on which Ten Commandments were inscribed did not violate First Amendment where it was shown that purpose was secular).

[404] *Branti v. Finkel*,. 445 U.S. 507 (1980) (First Amendment protects a public employee from being discharged solely because of his political beliefs); *Elrod v. Burns*, 427 U.S. 347 (1976) (same).

[405] *Connick v. Myers*, 461 U.S. 138 (1983); *Davis v. West Comm. Hospital*, 755 F.2d 455 (5th Cir. 1985); *Jones v. Dodson*, 727 F.2d 1329 (4th Cir. 1984).

[406] *Heffron v. Intl. Soc. for Krishna Consc.*, 452 U.S. 640 (1981) (upholding requirements that the distribution of literature be at an assigned place); *Consolidated Edison Co. v. Public Serv. Comm.*, 447 U.S. 520 (1980) (invalidating a public service commission's order barring utilities from including inserts discussing controversial public policy issues in billing envelopes); *Shuttlesworth v. Birmingham*, 394 U.S. 147 (1969) (invalidating a licensing requirement for parades because the ordinance did not have narrow, objective and definitive standards to guide the licensing authority).

Procedure

First Amendment rights may be enforced through a suit under 42 U.S.C. § 1983.[407] In cases challenging an ordinance or the failure of a municipality to grant a license, the courts will balance the interest of the person in asserting his constitutional rights against the interest of the municipality in preventing riots, disorder, interference with traffic upon the public streets, or immediate threats to public safety, peace, or order.[408]

In the employment context, courts will balance the interest of the employees in asserting their constitutional rights against the interest of the municipality in promoting the efficiency of public services that it provides. Ordinarily, the court applies a three-part test. First, it must determine whether such activity or speech is constitutionally protected.[409] In determining whether the activity is protected, the court will balance the interest of the employee as a citizen exercising First Amendment rights and the interest of the services rendered. Second, the court must determine whether the activity in question constituted a "motivating factor" for the employee's termination.[410] Third, if the speech or activity is constitutionally protected, the court must ascertain whether the employee would have been fired even in the absence of such speech or activity.[411]

An employee's First Amendment rights include both public[412] and private[413] criticism of his employer. It encompasses freedom of association, including the employee's right to join and participate in a labor organization.[414] It also covers employee and third party rights to solicit orally and distribute literature on municipal premises.[415]

Liability Exposure

A prevailing plaintiff can recover for actual damages caused, including special damages in the form of out-of-pocket losses and general damages such as emotional distress.[416] In the area of employment, a plaintiff prevailing on a First Amendment claim may be entitled to an award of compensatory damages against the municipality and its officials, both in their official and individual capacities.[417] Such a plaintiff may also be entitled to back pay and reinstatement.

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[407]See section above for a discussion of § 1983.
[408]*Cantwell v. Connecticut*, 310 U.S. 296 (1940).
[409]*Mt. Healthy City School Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 287 (1977).
[410]*Id*.
[411]*Carey v. Piphus*, 435 U.S. 247 (1978).
[412]*Pickering v. Bd. of Educ.*, 391 U.S. 563 (1968).
[413]*Givhan v. Western Line Consolidated School Dist*., 439 U.S. 410 (1979).
[414]*Vicksburg Fire Assn., Local 1680 Intl. Assn. of Firefighters, AFL-CIO v. City of Vicksburg*, 761 F.2d 1036 (5th Cir. 1985); *American Federation of State, County and Municipal Employees v. Woodard*, 406 F.2d 137 (8th Cir. 1969).
[415]*Dallas Assn. of Community Organizations for Reform Now v. Dallas County Hosp. Dist.*, 670 F.2d 629 (5th Cir. 1982).
[416]*Williams v. Bd. of Regents*, 629 F.2d 993, 1005 (5th Cir. 1980); *Dellums v. Powell*, 566 F.2d 167 (D.C. Cir. 1977); *Donovan v. Reinbold*, 433 F.2d 738 (9th Cir. 1970).
[417]*Carey v. Piphus*, 435 U.S. 247 (1978).

Punitive damages may be awarded in appropriate circumstances against municipal officials,[418] but punitive damages may not be awarded against the municipality.[419]

Fourth Amendment

Coverage

The Fourth Amendment was proposed to the legislatures of the States by the First Congress on September 25, 1789, and was ratified on December 15, 1791. Although the Fourth Amendment prohibits federal action, it is applicable to the states and their political subdivisions through the Fourteenth Amendment. Thus, it applies to all municipalities.

Prohibited Conduct

The Fourth Amendment to the *United States Constitution* provides the following:

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated and no Warrant shall issue, but upon probable cause, supported by oath or Affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The applicability of the Fourth Amendment's protection is determined by whether a public employee had a reasonable, subjective expectation of privacy in the area or activity "searched."[420]

A regulation placing employees on notice of the employers' right to search their lockers or desks renders the Fourth Amendment inapplicable.[421] In the absence of notice, courts have recognized that employees have a reasonable expectation of privacy in their lockers,[422] offices[423] or their body.[424] Once the employee shows that he had a reasonable expectation of privacy in the place

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[418] *Id*.

[419] *Newport v. Fact Concerts, Inc.*, 453 U.S. 247 (1981).

[420] *O'Connor v. Ortega*, 480 U.S. 709 (1987); *United States v. Sanders*, 568 F.2d 1175 (5th Cir. 1978) (per curiam); *United States v. Bunkers*, 521 F.2d 1217, 1219 (9th Cir.), *cert. denied*, 423 U.S. 989 (1975).

[421] *United States v. Speights*, 557 F.2d 362, 365 (3rd Cir. 1977).

[422] *Gillard v. Schmidt,* 579 F.2d 825 (3rd Cir. 1978) (holding search of employee's desk and locker violated Fourth Amendment); *United States v. Speights*, 557 F.2d 362 (3rd Cir. 1977) (holding public employer's search of employee's locker violated Fourth Amendment).

[423] *Ortega v. O'Connor*, 764 F.2d 703 (9th Cir. 1985) (holding that search of employee's office violated Fourth Amendment), *revd. on other grounds*, 480 U.S. 709 (1987).

[424] *Compare Capua v. City of Plainfield*, 643 F. Supp. 1507 (D.N.J. 1986) (September 30, 1986) (urinalysis testing violated Fourth Amendment rights absent a reasonable, individualized suspicion that an employee was using drugs) *and Turner v. Fraternal Order of Police*, 500 F.2d 1005 (D.C. Ct. App. 1985) (urinalysis testing of police officers did not violate Fourth Amendment) *with Allen v. City of Marietta*, 601 F. Supp. 482 (N.D. Ga. 1985) (holding that

searched or the object seized, courts will balance the employee's interests with the needs of the employer.[425]

Thus, if a municipality can show a need to search a locker for drugs or to take urine for a drug analysis that overrides the employee's reasonable expectation of privacy, it will not violate the Fourth Amendment.[426] Courts have held that a city's need to prevent its bus drivers from driving while under the influence of drugs or alcohol may override the driver's expectation of privacy,[427] and a city's need to protect the public from policemen under the influence may override the policeman's expectation of privacy.[428] Even in situations where the employer's interest would override the employee's interest, courts still do not favor random testing or searches.[429] Therefore, before the municipality undertakes a search or test, it should have reasonable suspicion to suspect that the employee is abusing drugs or alcohol.

There are also a number of particular rules and regulations applying to drug and alcohol testing of municipal employees, the *Constitution* allows testing when there is individualized suspicion of drug use. Further, the Supreme Court has determined that mandatory testing *without* individualized suspicion is constitutionally permissible for employee involved in the interdiction of illegal drugs; law enforcement personnel who carry firearms; certain employees working on gas and hazardous liquid pipelines;[430] and employees who operate commercial motor vehicles in interstate or intrastate commerce and are subject to the commercial driver's license requirements.[431]

Depending on the nature of the municipal employee's work, specific federal regulations may require pre-employment drug-testing and testing following any on-the-job accident. Random testing may also be required. There are also federally mandated reporting and record-keeping requirements for drug and alcohol testing.

State law requires that at least 30 days prior to implementation of any drug or alcohol testing program, a written policy be furnished to affected employees.[432] The policy must identify the circumstances under which testing can be required, describe the actions that can be taken against an employee for a positive test, and contain a statement advising the employee of laws concerning confidentiality and procedures for confidentially reporting the use of prescription or

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urinalysis testing did not violate Fourth Amendment since they were not conducted as part of a criminal investigation).

[425]*Camara v. Municipal Court*, 387 U.S. 523 (1967).

[426]*Skinner v. Ry. Labor Executives' Assn.*, 489 U.S. 602, 109 S. Ct. 1402, 103 L.Ed.2d 639 (1989); *Natl. Treasury Employees Union v. Von Raah*, 489 U.S. 656, 109 S. Ct. 1384, 103 L.Ed.2d 685 (1989); *Natl. Federation of Federal Employees v. Cheney U, 884 F.2d 603 (D.C. Cir. 1989)*.

[427]*New York City Transit Authority v. Beazer*, 440 U.S. 568 (1979); *Div. 241 Amalgamated Transit Union (AFL-CIO) v. Suscy*, 538 F.2d 1264 (7th Cir. 1976).

[428]*Turner v. Fraternal Order of Police*, 500 A.2d 1005 (D.C. Ct. App. 1985).

[429]*Capua v. City of Plainfield*, 643 F. Supp. 1507 (D.N.J. 1986).

[430]49 C.F.R. Part 199

[431]49 C.F.R. Part 383.

[432]*Code*, §§ 71-7-1, et seq.

nonprescription medications prior to testing. The law contains as exception for employers who have any employees subject to federal regulations governing the administration of drug and alcohol tests.

It is important to remember that all pre-employment and random drug and alcohol testing is subject to the restrictions of the *United States Constitution* as discussed above.

Procedure

Fourth Amendment rights may be enforced through a § 1983 action.[433]

Liability Exposure

Violation of a public employee's Fourth Amendment rights give rise to liability by the municipality and its officials under 42 U.S.C. § 1983.[434]

<u>Fourteenth Amendment</u>

Coverage

The Fourteenth Amendment to the *United States Constitution* was proposed to the legislatures of the States on June 13, 1866, and became a part of the *Constitution* in 1868. The Fourteenth Amendment's restrictions apply to all municipalities.[435]

Prohibited Conduct

The Fourteenth Amendment to the *United States Constitution* provides in part the following:

> *§ 1* . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

The due process provisions of the Fourteenth Amendment, standing alone and without incorporation of other aspects of the Bill of Rights, has both procedural and substantive aspects. Before due process rights are implicated, a constitutionally-protected life, liberty, or property interest must be identified.[436] Once this interest is identified, procedural due process concerns are raised. These involve the kinds of notice and hearing required to permit a municipality to deprive an employee of such an interest. Substantive due process issues concern whether the actions of the municipality in taking away certain life, liberty, or property interests were permissible.

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[433]See section above for a discussion of § 1983.
[434]See section above for a discussion of § 1983.
[435]*Virginia v. Rieves*, 100 U.S. 313 (1879).
[436]*See*, *e.g.*, *Paul v. Davis*, 424 U.S. 693 (1976), in which the Supreme Court held that an interest solely in reputation is not protected by the due process clause.

The Fourteenth Amendment gives rise to four distinct types of legal rights: (1) equal protection of law; (2) liberty; (3) property; and (4) life. The Fourteenth Amendment's equal protection clause has been used to invalidate segregation of public school systems,[437] ordinances that regulate interracial marriages;[438] requirements that a political candidate's race appear on the ballot,[439] and laws that impose alimony obligations on husbands and not wives.[440] School districts have begun a trend toward neighborhood schools for elementary school children. These plans have withstood Fourteenth Amendment scrutiny in limited circumstances.[441] In an employment context, the equal protection provision prohibits a municipality from discriminating against employees or applicants for employment on the basis of their race or other forms of individual discrimination.[442]

The Fourteen Amendment also forbids a municipality from depriving a person of his "liberty" without due process of law. A person's "liberty" is infringed when a municipality does something to damage his good name, honor, or integrity;[443] however, a person's interest in his reputation alone is not recognized as a constitutionally-protected liberty interest.[444] For example, a municipality could not post a notice naming persons to whom the sale of liquor is forbidden because of their prior excessive drinking without first giving those persons notice and an opportunity to be heard.[445] The posting of the notice would impose a "stigma" on the person, so his liberty interest would be implicated.

Public employees may enjoy a "liberty" interest in their employment. If an employer makes a charge against an employee relating to discipline "that might seriously damage [the employee's] standing and associations in his community" or that is of such a nature as to impose "a stigma or other disability that foreclosed his freedom to take advantage of other employment opportunities," the employee has a right to a due process hearing.[446] However, in order for a liberty interest to arise, (1) the charges must be made public, and (2) the employee must dispute them.[447] The hearing must afford the employee an opportunity to refute the charge and clear his name.[448]

The due process provisions of the Fourteenth Amendment also apply to the taking of a person's "property" without due process of law. If an employee has a legitimate claim of entitlement to

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[437]*Brown v. Bd. of Educ. of Topeka, Shawnee County, Kan.*, 347 U.S. 483 (1954).
[438]*Loving v. Virginia*, 388 U.S. 1 (1967).
[439]*Anderson v. Martin*, 375 U.S. 399 (1964).
[440]*Orr v. Orr*, 440 U.S. 268 (1979).
[441]*See Riddick v. School Bd. of City of Norfolk*, 784 F.2d 521, 535 (4th Cir. 1986); *Edwards v. Greenville Mun. School Dist.*, Civil Action No. 70-8-LS (N.D. Miss. 1986).
[442]*Washington v. Davis*, 426 U.S. 229 (1976).
[443]*Wisconsin v. Constantineau*, 400 U.S. 433 (1970).
[444]*Paul v. Davis*, 424 U.S. 693 (1976).
[445]*Wisconsin v. Constantineau*, 400 U.S. 433 (1970).
[446]*The Bd. of Regents of State College v. Roth*, 408 U.S. 564, 573 (1972).
[447]*Codd v. Velger*, 429 U.S. 624 (1977); *Rosenstain v. City of Dallas*, 876 F.2d 392 (5th Cir. 1989).
[448]408 U.S. at 573, n.12.

public employment under state law, he enjoys a "property interest" in his job.[449] If state law does not provide an employee with a "claim of entitlement" to his job, the prevailing rule in Mississippi is that employees are terminable at will, so that an employee may be discharged for good cause, bad cause or no cause at all.[450] However, if state law restricts termination to "for cause" reasons or if certain employees are otherwise "tenured" or have "civil service protection," these public employees enjoy a property interest.[451]

A public employer can inadvertently create a protected property interest in employment through statements in its employee handbook, an employment contract, or other "mutually explicit understandings that support a claim of entitlement."[452] An employment handbook must be read in its entirety "to glean the expectations of the parties."[453] If the employer's statements create a reasonable expectation of continued employment, a court may find these employees enjoy a property interest in their employment.[454]

Before an employee may be deprived of any property interest in employment, the employee is entitled to a "meaningful" hearing concerning any disciplinary action the employer desires to take.[455] An employee who has a constitutionally protected interest in his employment must be given a hearing prior to discharge.[456] A full evidentiary hearing with transcript, attorneys, and witnesses may be required.[457] However, the Supreme Court has noted that "the existence of post-termination procedures is relevant to the necessary scope of pre-termination procedures."[458] Immediate termination of public employees enjoying property rights should be limited to "extraordinary situations" where the individual's continued employment would have a direct adverse impact upon public operations.[459]

Procedure

Fourteenth Amendment rights may be enforced through a 42 U.S.C. § 983 action.[460]

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[449]*Roth*, 408 U.S. at 577.
[450]*White v. Mississippi Oil & Gas Board*, 650 F.2d 540 (5th Cir. 1981); *Green v. Amerada-Hess Corp.*, 612 F.2d 212 (5th Cir.), *cert. denied*, 449 U.S. 953 (1980); *Kelly v. Mississippi Valley Gas Company*, 397 So.2d 874 (Miss. 1981).
[451]*Sartin v. City of Columbus Utilities Commission*, 421 F. Supp. 393, 396 (N.D. Miss. 1976); *aff'd mem*. 573 F.2d 84 (5th Cir. 1978).
[452]*Biship v. Wood*, 426 U.S. 341, 344 N.6 (1976); *Conley v. Board of Trustees of Grenada Cty. Hosp.*, 707 F.2d 175 (5th Cir.), *rehg denied*, 716 F.2d 901 (1983).
[453]*United Steelworkers v. University of Alabama*, 599 F.2d 56, 60 (5th Cir. 1979).
[454]*Glenn v. Newman*, 614 F.2d 467, 471 (5th Cir. 1980).
[455]*Winkler v. County of DeKalb*, 648 F.2d 411, 414 (5th Cir. 1981).
[456]*Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (1985).
[457]*Ferguson v. Thompson*, 430 F.2d 852, 856 (5th Cir. 1970).
[458]*Loudermill*, 470 U.S. at 547, n.12.
[459]*Thurston v. Dekle*, 531 F.2d 1264, 1273 (5th Cir. 1976), *judgment vacated on other grounds*, 437 U.S. 901 (1978).
[460]See section above for a discussion of § 1983.

Liability Exposure

The liability of a municipality and its officials for violation of a person's Fourteenth Amendment rights is the same as in other actions brought under 42 U.S.C. § 1983.[461]

MISSISSIPPI STATUTES

Mississippi Unemployment Compensation Law

Procedure

A claim for unemployment benefits is initiated by an employee who files a written form stating the reason for separation. The employer is then notified of the claim and given an opportunity to respond.[462] An employer should respond with his reason for terminating the claimant because all successful claims are charged against the employer's unemployment compensation tax rate.

After the claim is filed and the employer responds, the claim is referred to a claims examiner for an initial determination of the merits of the claim.[463] Either party may appeal the decision of the claims examiner within fourteen (14) after notification of the decision.[464] Appeals from the claims examiner are heard by an Appeal Tribunal.[465] Both parties are allowed to have an attorney present at this hearing. In addition, both parties are allowed to subpoena and present witnesses at the hearing.

Either party may appeal the Tribunal's decision within fourteen (14) days of notification of the decision.[466] Appeal is taken to the Board of Review, which can make a decision based on the existing record, remand to the Appeal Tribunal for further investigation, or have the parties appear and argue their cases.[467] The decision of the Board of Review is final ten (10) days after the parties are notified of the decision.[468] The losing party then has ten (10) additional days to appeal to the circuit court where the losing party resides. Appeals from the circuit court go to the Mississippi Supreme Court.[469]

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[461]See section above for a discussion of § 1983.
[462]*Code*, § 71-5-515.
[463] *Code*, § 71-5-517.
[464]*Code*, § 71-5-519.
[465]*Ibid*..
[466]*Ibid*.
[467]*Code*, § 71-5-525.
[468]*Code*, § 71-5-529.
[469]*Code*, § 71-5-531.

Employer Contributions

Municipalities are required either to maintain a revolving fund,[470] make contributions to the unemployment fund,[471] or reimburse the state's unemployment fund.[472] If it elects to keep a revolving fund, the municipality must maintain this fund at no less than two percent (2%) of the covered wages paid during the next preceding year.[473] If it elects to make contributions, the contributions must equal two percent (2%) of wages paid by it during each calendar quarter.[474]

If the municipality becomes delinquent in payments, notice will be given to the municipality and the Mississippi Employment Security Commission shall issue a certification of delinquency to the Department of Finance and Administration, the State Tax Commission, the Department of Environmental Quality and the Department of Insurance, or any of them. Such agencies will then issue a warrant for the amount of delinquency payable to the Mississippi Employment Security Commission and draw upon any funds in the State Treasury which may be available to the municipality.[475]

Disqualification for Benefits

An employee is disqualified for benefits if he leaves work voluntarily without good cause.[476] The burden is on the employee to show that the required conditions have been met entitling him to benefits.[477]

An employee is also disqualified for benefits if discharged for misconduct connected with his work.[478] However, "[m]ere inefficiency, unsatisfactory conduct, failure in good performance as a result of inability or incapacity, or inadvertence and ordinary negligence in isolated incidents, and good faith errors in judgment or discretion are not considered 'misconduct' within the meaning of the statute."[479]

Benefits will also be denied if a claimant is unemployed due to a work stoppage which exists because of a labor dispute. However, if the work stoppage was caused by an unjustified lockout

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[470]A revolving fund is established by depositing monthly for twenty-four (24) months an amount equal to one-twelfth (1/12) of one percent (1%) of the first $6,000.00 paid to each employee during the next preceding year plus an amount each month equal to one-third (⅓) of any reimbursement paid to the Department of Employment Security for the next preceding quarter. *Code*, § 71-5-359(3). Or, a municipality may establish a revolving fund by depositing or obtaining a bond for 2% of the covered wages in the preceding year.
[471]*Code*, § 71-5-359(9).
[472]*Code*, § 71-5-359(4), (5).
[473]*Code*, § 71-5-359(5).
[474]*Code*, § 71-5-359(5).
[475]*Code*, § 71-5-359(6).
[476]*Code*, § 71-5-513(A)(1)(a).
[477]*Code*, § 71-5-513(A)(1)(c); *see also Sunbelt Ford-Mercury, Inc. v. Mississippi Employment Security Commission*, 552 So.2d 117, 120 (Miss. 1989).
[478]*Code*, § 71-5-513(A)(1)(b).
[479]*Mississippi Employment Security Commission v. Harris*, 672 So.2d 739, 742 (Miss. 1996).

or the claimant is not participating in or directly interested in the labor dispute which caused the work stoppage, and the claimant does not belong to a grade or class of workers of which, immediately before the commencement of stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or directly interested in the dispute, unemployment benefits will be granted.[480]

Mississippi's Child Support and Wage Garnishment Laws

Coverage

Federal and state law work in tandem to control employers' obligations with respect to child support. The two primary areas of concern are notification and collection. All municipalities, regardless of the number of persons they employ, must comply with the applicable laws.

Requirements and Prohibited Conduct

According to both federal law and the Mississippi Code, all employers are required to report basic information about newly-hired personnel to the Mississippi Department of Human Services. This legislation was enacted in 1996 under the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA). New Hire information collected from employers is matched with State and National data to help collect child support through income withholding.
Municipalities also must begin withholding employee wages within seven days of receipt of a withholding order, unless the Federal Consumer Credit Protection Act (CCPA) precludes it. For all income withholdings, the maximum amount that can be withheld is based on the CCPA. The Federal withholding limit is based on the disposable earnings of the employee. The Federal CCPA limit is 50 percent of the disposable earnings if the employee lives with and supports a second family and 60 percent if the employee does not support a second family. This limit increases to 55 percent and 65 percent respectively if the employee owes arrears that are 12 weeks or more past due.

Procedure

With respect to new hire notification, all employers are required to report information on newly-hired personnel within 15 days of the hire to the Mississippi Department of Human Services. With respect to income withholding, all withholding payments must be sent to the Central Receipting and Disbursement Unit (CRDU) of the Mississippi Department of Human Services. Each payment remitted must include the noncustodial parent's name, social security number, amount withheld and employer name.

Penalties

Should an employer fail to report the new hire information, a penalty of $25.00 per incident, or up to $500.00 for collusion between the employer and worker, shall be assessed to the employer

[480] *Code*, § 71-5-513(A)(4).

for not reporting as directed by law. Should the municipality fail to withhold the payments; the court can order the municipality to make the payment out of the municipal treasury.

Workers' Compensation

Coverage

In 1942, the Mississippi Legislature enacted the Mississippi Workmen's (Workers') Compensation Law which applies to all employers employing more than five (5) persons on any particular workday.[481] As of October 1, 1990, municipalities were required to participate in the program.[482]

Requirements

An employee sustaining an injury or occupational disease arising out of and during the course of his employment is entitled to compensation without regard to fault as to the cause of the injury or occupational disease.[483] The amount of disability compensation to which the employee is entitled is determined by a chart outlined in *Code*, § 71-3-17. The amount of compensation to which a dependant is entitled due to death of an employee is determined by a chart outlined in *Code*, § 71-3-25. The total amount of compensation paid cannot exceed $212,678.73 exclusive of medical payments.[484]

Procedure

The employee must notify the employer within thirty (30) days of the occurrence of the injury.[485] Failure to give notice will not, however, bar the employee from recovering if the employee can show that the employer had knowledge of the injury and the employer was not prejudiced by the lack of notice.[486] Regardless of notice, if no compensation is paid and no application for benefits made within two years, the right to compensation is barred.[487] The first installment is due on the fourteenth (14th) day following notice, and each subsequent installment shall be made semi-monthly.[488]

Should the employee not receive payment or should the employer dispute the right to compensation, either may file a petition to controvert with the Commission.[489] The Commission can determine all questions relating to the payment of claims for compensation. It may also

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[481] *Code*, § 71-3-5.
[482] *Ibid*.
[483] *Code*, § 71-3-7.
[484] *Code*, § 71-3-13.
[485] *Code*, § 71-3-35(1).
[486] *Ibid*.
[487] *Ibid*.
[488] *Code*, § 71-3-37.
[489] *Ibid*.

conduct an investigation and a hearing.[490] The losing party may appeal to the Mississippi Supreme Court within thirty (30) days of the Commission's determination.[491]

Liability

Any municipality that fails to make payments under the Worker's Compensation Law is subject to a criminal fine of not more than $1,000.00 and municipal officials may be subject to imprisonment of not more than one (1) year, or both.[492] The municipality may also be subject to a civil penalty as determined by the Commission not to exceed $10,000.00.[493]

Anti-Strike Law

Procedure

After the teachers' strike in 1985, the Mississippi Legislature passed two statutes which prohibit teachers[494] and public employees[495] from striking. Municipal employees are subject to these provisions if they are paid in whole or in part by state funds.[496]

Prohibited Conduct

The Anti-Strike Law makes it illegal for one (1) or more certified teachers or a teacher organization to "promote, encourage, or participate in any strike against a public school district, the State of Mississippi or any agency thereof." Thus, teachers and/or public employees are prohibited from:

- All concerted failures to report to work;
- Willful absences from work;
- Stoppages of work;
- Deliberate slowing down of work;

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[490] *Code*, § 71-3-47.
[491] *Code*, § 71-3-51.
[492] *Code*, § 71-3-83.
[493] *Ibid*.
[494] *Code*, § 37-9-75.
[495] *Code*, § 25-1-105. This statute declares that all provisions of § 37-9-75 are applicable to public employees in the State of Mississippi.
[496] *Ibid*.

- Withholding the full faithful and proper performance of their duties for the purposes of inducing, influencing, or coercing a change in working conditions, compensation, rights, privileges, or obligations; and

- Promoting, encouraging, or participating in an illegal strike.[497]

The statute also makes it unlawful for a school board or any person exercising authority to "close or curtail the operations of the public school, or to change or alter in any manner the schedule of operations of said school in order to circumvent the full force and effect" of the statute.[498] In addition to this prohibition, school officials and/or city officials are required to:

- Continue school operations as long as practicable during a strike and ascertain and certify the names of striking teachers to the Attorney General;

- File suit to enjoin illegal strikes in which teachers, groups of teachers, or teacher organizations become involved within an official's district; and

- Seek a temporary injunction prior to the actual commencement of a strike when there is a "clear, real and present danger" that such a strike is about to commence.[499]

The statute is silent as to whether local officials have the right to enter into collective bargaining with local unions and ultimately to enter into collective bargaining agreements. Thus, it appears that home rule[500] would allow local governmental entities to negotiate with a public employee union.

Procedure

Teachers or public employees who are suspected of violating this statute are entitled to a hearing in Chancery Court.[501] Suits under this § should be filed in the Chancery Court of the First Judicial District of Hinds County or in the county where the illegal strike takes place and the striking teachers can be found.[502]

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[497]*Code*, § 37-9-75(1)(3).
[498]*Code*, § 37-9-75(4).
[499]*Code*, § 37-9-75(4)(6).
[500]*See Code*, § 21-17-5 (Supp. 1996) which gives municipalities the authority to do anything that is not inconsistent with the *Mississippi Constitution* or any status or law in the State of Mississippi.
[501]*Code*, § 37-9-75(5).
[502]*Code*, § 37-9-75(6) and *Code*, § 11-5-1.

Penalties

A teacher or public employee found to have promoted, encouraged, or participated in an illegal strike will be barred from public employment by any district in Mississippi.[503] Teacher organizations that violate the statute are subject to a fine of up to $20,000.00 for each day the violation continues.[504] Officers, agents or representatives of teacher organizations may also be personally liable for any damages to a school district caused by the organization's illegal actions.[505]

Wrongful Discharge

Coverage

Generally, Mississippi has followed the doctrine that an employment arrangement for an indefinite term involving only services and compensation is terminable at the will of either party, at any time, for any reason, good or bad, or for no reason at all.[506] However, the Mississippi Supreme Court modified the "at-will" employment doctrine in 1993 by identifying limited circumstances for which an "at-will" employee could not be terminated without potential employer liability: (1) the employee refuses to participate in a criminally illegal act; or (2) the employee reports illegal criminal acts of his employer to anyone else.[507]

Prohibited Conduct

In *McArn*, the Mississippi Supreme Court stated that there should be public policy exceptions to the employment-at-will doctrine for employees who refuse to participate in a criminally illegal act or who reports illegal acts of his employer. In this case, the employee sued his employer for wrongful discharge alleging he was terminated for refusing to commit deceptive, fraudulent or illegal actions against the clients of the pest control business, or for reporting same.

The Mississippi Supreme Court has taken *McArn* one step further finding that an employer's conduct in discharging an employee in retaliation for refusing to participate in an illegal act or for reporting illegal criminal acts of the employer, is an independent tort giving rise to punitive damages.[508]

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[503]*Code*, § 37-9-75(8).
[504]*Code*, § 37-9-75(7).
[505]*Ibid*.
[506]*Kelly v. Mississippi Valley Gas Co.*, 397 So.2d 874 (Miss. 1981).
[507]*McArn v. Allied Bruce-Terminix Co., Inc.*, 626 So.2d 603 (Miss. 1993).
[508]*Willard v. Paracelsus Health Care Corp.*, 681 So.2d 539 (Miss. 1996).

Some other states recognize the implied contract doctrine as an exception to the at-will doctrine. Under the implied contract exception, the employer, through a company representative,[509] personnel manual,[510] or other policy statement,[511] creates an implied-contract which prevents the employee from being discharged except for just cause.

The Mississippi Supreme Court has held that a college faculty handbook was a part of the teachers' employment contracts and therefore, the college was bound by the terms of the handbook.[512] However, this case is not considered a true exception to the at-will doctrine because the Court's holding was predicated on the college's use and dissemination of the handbook to all teachers and the fact that the teachers' contracts bound them to follow the handbook rules.[513] Similarly, in another case, the Mississippi Supreme Court held that an employer had contracted with its employee through statements contained in its employee handbook even though the handbook included language disclaiming an express or implied contract of employment, and the handbook was not distributed to the employee until five months after she began her employment.[514]

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[509]*Green v. City of Hamilton, Housing Authority*, 937 F.2d 1561 (11th Cir. 1991); *Murphree v. Alabama Farm Bureau Ins. Co.*, 449 So.2d 1218 (Ala. 1984).

[510]*See*, *e.g.*, *Green v. City of Hamilton, Housing Authority*, 937 F.2d 1561 (11th Cir. 1991); *Wagenseller v. Scottsdale Memorial Hospital*, 147 Ariz. 370, 710 P.2d 1025 (1985).

[511]*See e.g.*, *Rulon-Miller v. International Business Machines Corp.*, 162 Cal.App.3d 241, 208 Cal.Rptr. 524 (1984).

[512]*Robinson v. Board of Trustees of East Central Jr. College*, 477 So.2d 1352 (Miss. 1985); *see also Bobbitt v. The Orchard, Ltd.*, 603 So.2d 356 (Miss. 1992) (holding that employee manual distributed to all employees became a part of implied employment contract); *but see Watkins v. United Parcel Service, Inc.*, 797 F.Supp. 1349 (S.D. Miss. 1992) (holding that employer's policy book did not create express or implied written contract of employment where the policies listed within the manual were couched in terms of ideals and goals).

[513]*Ibid*. At 1352-53.

[514]*Southwest Mississippi Regional Medical Center v. Lawrence*, 684 So.2d 1257 (Miss. 1996).

A public employer's handbook also has been held to create a property interest[515] in continued employment thereby destroying an at-will employment relationship.[516] In this case, a county hospital was empowered by the Legislature to adopt whatever rules it deemed necessary to operate the hospital. Pursuant to this authority, the hospital adopted a detailed handbook which stated that employees could be terminated for 36 specifically listed violations. The court held that this provision, when read in the context of other handbook provisions, guaranteed that employees would not be terminated absent violation of one of these specific reasons. This was held to be analogous to a "just cause" standard which created a property interest in continued employment.[517]

Procedure

An action for wrongful discharge may be filed in the Circuit Court of the county in which the discharge occurred.[518] An action for breach of a contractual obligation under an employee handbook may be filed either in the Chancery Court or the Circuit Court in which the discharge occurred.[519] The employee may also bring suit in federal district court under 42 U.S.C. § 1983 should the municipality deprive him of a property right under an employment contract without due process of law.[520]

Liability

A municipality that is found to have wrongfully discharged an employee may be held liable for actual damages such as back pay, accrued pension, or pain and suffering.[521] The municipality may also be required to reinstate the employee. Punitive damages may be awarded in appropriate circumstances against the public officials[522] but not against a municipality.[523] A municipality that is found to have deprived an employee of a property interest without due process of law is subject to liability under 42 U.S.C. § 1983.[524]

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[515]*See* section above for more discussion of "property interests."
[516]*Conley v. Board of Trustees of Grenada County Hospital*, 707 F.2d 175 (5th Cir.), *reh'g. denied*, 716 F.2d 901 (1983).
[517]*Ibid*. At 180-81; *But see Johnson v. Southwest Regional Medical Center*, 878 F.2d 856 (5th Cir. 1989) (holding that public hospital's employee handbook did not create property interest in continued employment under Alabama law where handbook clearly stated that nothing in it was to be considered a guarantee of continued benefits of employment and that employment was terminable for any reason).
[518]*Code*, § 9-7-81.
[519]*Code,* § 9-5-81.
[520]*See* section above for more discussion of § 1983.
[521]*Compare*, *Priest v. Rotary*, 40 FEP Cases 208 (N.D. Cal. 1986) (applying California law).
[522]*Carey v. Piphus*, 435 U.S. 247 (1978).
[523]*Newport v. Fact Concerts, Inc.*, 453 U.S. 247 (1981); *Davis v. West Community Hospital*, 755 F.2d 455 (5th Cir. 1985).
[524]*See* discussion of 42 U.S.C. § 1983, above.

CHAPTER FOURTEEN

RECORDS MANAGEMENT

Tim Barnard and Krista Sorenson

INTRODUCTION

Municipal governments generate numerous records in the process of carrying out their functions. The duties of municipal clerks[1] 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?"

In 1996 the Mississippi Legislature answered this question when it created an office within the Mississippi Department of Archives & History (MDAH) to advise and assist local governments in managing their records. The Local Government Records Office (LGRO) was given the following duties:[2]

- Provide and coordinate education and training on records management issues.
- Prepare records control schedules for adoption or amendment.
- Establish records management standards.
- Establish standards for records storage areas for records of enduring or archival value.

The Legislature also created the Local Government Records Committee[3] to review and approve records control schedules for local government offices. These schedules allow local governments to dispose of a variety of records, while protecting other records not otherwise covered by statute.[4]

Of course, there is more to records management than legally disposing of records. An ongoing records management program makes it easier to find records, frees up storage space, reduces costs, increases efficiency, reduces liability, and helps identify and preserve essential records.

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[1] *Mississippi Code Annotated, 1972,* §21-15-19.
[2] *MCA,* §39-5-9.
[3] *MCA,* §25-60-1. Seventeen members represent state regulatory agencies, local government associations and research organizations.
[4] Approved Records Retention Schedules for counties, municipalities, school districts, libraries, and airports may be found on the MDAH Web site: http://www.mdah.ms.gov/new/government-2/records-management/local-government-records/record-retention-schedules/

BASICS OF RECORDS MANAGEMENT

Records management has been defined as "a systematic approach to the creation, use, maintenance, storage and ultimate disposition of records throughout the information life cycle."[5] "Ultimate disposition" may mean either destruction or permanent archiving of a record. Records management answers "*what, why, who, how, where, and how long*" to keep 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."[6]

Records can be in any format. Whether it is paper, electronic, film, or some other media, it is the information content, not the format, that determines if an object is a record.

For example, text messages and emails from personal devices that pertain to official business *are* public records and must be maintained according to retention schedules.[7] Convenience copies, published matter from other sources, and personal or bulk e-mail are usually *not* your records, and can be disposed of once their purpose have been served.

Why do records matter? Records protect life, property, and rights. They also provide essential information needed for a local government to restore order and resume operations after a disaster.[8]

Who should learn about records management? Anyone whose duties include handling records at any point in their life cycle.

The municipality should designate and train one person as records manager to oversee retention and storage of all municipal records. This person will:

- Keep track of records stored outside the main offices;
- Provide guidance to other offices on records management;
- Help establish policies and procedures on records management and storage;
- Coordinate records disposal;
- Act as the primary contact between the municipality and LGRO on records management issues.

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[5] based on ISO 15489:2001.
[6] *MCA,* §25-59-3(b).
[7] Mississippi Ethics Commission, Opinion No. R-13-023.
[8] Council of State Archivists (CoSA), *Why Records Matter* (bookmark).

While the municipal clerk or a subordinate may be the obvious choice, also consider training the building/facilities manager in records management, as this person is often given the task of maintaining records storage areas.

In addition, each office should designate one "records liaison" familiar with that particular office's records. The records liaison will work with the municipality's records manager regarding the retention and storage of that office's 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? Maintaining records depends on several factors—how many people will be using them, how often, and how long the records need to be available. 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. Before an office decides to scan paper records, consider the above accessibility factors, along with initial costs and hardware/software costs associated with the migration of long-term records.[9]

Regardless of format, all records should be kept in an organized fashion. Paper-based records kept in filing cabinets can be arranged alphabetically, numerically (including chronologically), or by subject, depending on which arrangement best fits the records' characteristics and how they are accessed. Try to choose lateral file cabinets over the older pull-out drawer style for better ergonomics. Develop a taxonomy, a standardized list, and file naming structure to make identifying records easier. While this taxonomy should apply to both paper and electronic records, here are a few additional tips for naming electronic files:

- Describe the file sufficiently by topic, version, and date for others to easily identify it;
- Don't use spaces in the title; instead use dashes, underscores, or capital letters to separate the words;
- Don't use certain punctuation marks that are used in computer commands: **^ . < > / \ | : ' ` ? *** (your computer may not let you use these).

Where should records be kept? This depends on where they are in the information life cycle. Records currently in use should be readily available in the office, in the cloud, 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, thumb drive, or external 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.[10] If a record exists only in electronic format, there should be at least one backup copy in another location; if it is scheduled for long-term retention, it is wise to maintain an additional backup copy on a separate external

[9] http://www.mdah.ms.gov/new/government-2/records-management/standards-guidance/ "Public Records Reformatting Policy" and related linked documents.
[10] *MCA,* §25-59-25(2).

hard drive or microfilm. When managing your backed-up electronic records, try to follow the 3-2-1 rule: 3 copies, 2 media types, 1 stored off-site.

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 website under "Records Management: Standards & Guidance."[11]

How long should a record be kept? This is determined by a records retention schedule. Records control schedules, commonly known as records retention schedules, are approved by the Local Government Records Committee. The retention period is determined by consideration of the administrative, fiscal, legal, regulatory, and historic value of the record series. Once approved, the schedules have the full force of law.

Schedules provide 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.[12] The disposal of records dated 1940 or earlier must be approved by MDAH or the Local Government Records Committee.[13] Records involved in audit, investigation, or litigation *should not* be disposed of until at least 12 months after the action is settled.[14] Confidential records or those containing "personally identifiable information" such as social security numbers should be disposed in a secure manner, such as by shredding or incineration. Contact LGRO 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 governing body should authorize their disposal through action recorded in its official minutes.[15] These can be listed simply as "all [name of 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.

Here is a summary of the records disposal process:

- Check retention schedules to determine which records are eligible;
- Prepare an inventory of eligible records;
- Get permission (preferably in writing) from appropriate department head;

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[11] http://www.mdah.ms.gov/new/government-2/records-management/standards-guidance/ "Off-Site Storage of Local Government Records" and "Standards for Local Government Archives."

[12] *MCA,* §25-59-23. Records covered by a retention schedule that have met their retention period do not need further permission from MDAH.

[13] Local Government Committee rules; see cover page of retention schedules for details. A disposal authorization form for unscheduled records is available on the MDAH website: http://www.mdah.ms.gov/new/government-2/records-management/local-government-records/disposal-of-records/.

[14] See *MCA,* §9-5-171(2).

[15] *MCA,* §9-5-171(1) requires this for counties. While there is no corresponding section for municipalities, it is good records management practice to document such actions.

- Make sure there is no reason, legal or administrative, to hold records;
- Submit to City Council/Board of Aldermen or MDAH for approval;
- Arrange for disposal (shred or incinerate when advisable).

IMPLEMENTING A RECORDS MANAGEMENT PROGRAM

Beyond incorporating records management practices into your everyday job responsibilities, consider working with the City Council or Board of Aldermen to establish a records management program for the municipality.

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,[16] $1.00 may be added to that fee for records management. The municipality keeps half of the money collected 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. The other half goes to MDAH to operate the Local Government Records Office and to fund a future records-related grant program.

- The records management officer conducts an inventory of all the records in the municipality, by either 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.

- Retention schedules are then applied to each record series in order to determine which records in each series are eligible for disposal. Eligible records can be disposed of with Council/Board approval. Other inactive records may be moved to secondary storage locations within city hall, in other government buildings, or to a proper off-site storage location.[17] The general rule-of-thumb for an initial "purge" is that one-third of the records can be disposed of, 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.

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[16] Common sources include various building and zoning permits, cemetery deeds, temporary event applications (e.g., garage sales and parades), bus and taxi operators' licenses, and wage garnishment fees.
[17] See "Off-Site Storage of Local Government Records," *ibid.*

- 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,[18] a policy for imaging paper records, policies for managing electronic records and e-mail,[19] procedures for records storage (which should include the use of standard letter/legal records storage boxes and should employ the taxonomy—standardized file names—described above), and procedures for records disposal.

- 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 annually holds workshops on records management topics, some of which are included in municipal clerks' certification training (See Appendix II). A 90-minute interactive course, "Introduction to Records and Information Management," developed by the Council of State Archivists (CoSA), is also available on the LGRO Web page under Training for Local Government.[20]

- The municipality incorporates essential records into its disaster recovery or Continuity of Operations (COOP) Plan.[21] To learn more about this process you can view the two-course online series on Intergovernmental Preparedness for Essential Records developed by CoSA[22] and attend the annual emergency preparedness workshop offered by LGRO.[23] 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.

CONCLUSION

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 the office by phone at 601-576-6894 or by email at locgov@mdah.ms.gov.

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[18] *MCA,* §25-61-5(1)(a).
[19] Guidelines for managing email are available on MDAH Web site under "Records Management for Local Government Officials: Standards: Email" http://mdah.state.ms.us/recman/email.php.
[20] http://www.mdah.ms.gov/new/government-2/records-management/training-for-local-government/
[21] See *MCA,* §21-15-35 for authority.
[22] https://www.statearchivists.org/programs/emergency-preparedness/
[23] http://www.mdah.ms.gov/new/government-2/records-management/training-for-local-government/

CHAPTER FIFTEEN

THE ELECTORAL PROCESS

Kim Turner

INTRODUCTION

The electoral process affords citizens the opportunity to play a part in the makings of our government. A system of rules and procedures are in place to ensure all elections are fair, honest, and lawful. In order for citizens to be confident in the electoral process, it is important those responsible for the conduct of elections ensure candidates are given a fair chance to be elected and qualified voters are able to participate in fair and honest elections.

The purpose of this chapter is to provide municipal clerks, municipal party executive committee members, and municipal election commissioners a concise summary of the election process with emphasis on the duties of these respective municipal election officials. More detailed information is available in the *Municipal Election Handbook* published by and available from the Office of the Secretary of State.

LEGAL AUTHORITY

State Law

The Mississippi Election Code is codified in law in Chapter 15, Title 23 of the *Mississippi Code Annotated*. In Mississippi, it is well established the statutory provisions governing county, state, and federal elections are applicable to municipal elections if there is no specific municipal statute.

Federal Law

All states are subject to several different federal laws which affect various aspects of elections, such as registration and voting.

The Voting Rights Act of 1965, considered to be the most effective piece of civil rights legislation enacted in our country, contains numerous provisions that regulate the administration of elections so as to enforce the voting rights guaranteed by the Fourteenth and Fifteenth Amendments of the United States Constitution. This Act previously required pre-clearance be granted by the Department of Justice prior to the implementation of any change affecting the voting laws or voting practices in the state of Mississippi; however, by virtue of the United States Supreme Court's decision in *Shelby County v. Holder, 570 U. S.* ___ (2013), pre-clearance is no longer a necessary prerequisite to the implementation of a change which affects Mississippi's voting laws or practices. A city therefor may schedule a special election, change or alter precinct lines and/or move a polling place without preclearance from the Department of Justice.

The National Voter Registration Act of 1993, also known as the Motor Voter Act, requires voter registration to be offered to any eligible person who applies for or renews a driver's license or applies for public assistance, and prohibits county election officials from removing registered voters from the voter rolls unless certain criteria are met.

The Uniformed and Overseas Citizens Absentee Voting Act and the Military and Overseas Voter Empowerment Act, often collectively referred to as "UOCAVA," requires all states to allow the following groups of U. S. citizens special provisions in voter registration and absentee voting:

- Members of the United States Armed Forces, their spouses and dependents,
- Members of the Merchant Marines or American Red Cross, their spouses and dependents,
- Disabled war veterans who are patients in any hospital, their spouses and dependents.
- Civilians attached to any branch of the Armed Forces, the Merchant Marines, or the American Red Cross and serving outside the United States, their spouses and dependents,
- Any trained or certified emergency response provider who is deployed on Election Day during any state of emergency declared by the President of the United States or any Governor of any U.S. State, their spouses and dependents,
- Persons temporarily residing outside the territorial limits of the United States and the District of Columbia, their spouses and/or dependents, and
- Any student at the United States Naval Academy, Coast Guard Academy, Marine Academy, Air Force Academy or Military Academy, their spouses and dependents.

VOTER REGISTRATION

All residents of a municipality who are at least eighteen (18) years of age, have not been convicted of a disenfranchising crime, and have not been judicially declared *non compos mentis* (not of sound mind) may register to vote.[1]

The municipal clerk is the registrar for the municipality and deputy registrar for the county in which the municipality is located. 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 a mail-in registration application. Upon receipt of a registration application, the municipal clerk must date-stamp the application if completed in-person in the municipal clerk's office or mark the application with the post-mark date of the envelope if mailed to the municipal clerk's office. Registration applications received by the Municipal Clerk's Office, date-stamped or marked with the post-mark date, are thereafter immediately forwarded by mail, email or fax to the county Circuit Clerk's Office. The county Circuit Clerk's Office is responsible for completing information or action on the municipal registration application, if necessary, entering the registration applicant into the Statewide Elections Management System and mailing the applicant a voter registration card.[2]

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[1] *Section 23-15-11, Miss. Code Ann.; MS* Const. Art. 12, § 241.
[2] *Section 23-15-35, Miss. Code Ann.*

PRIMARY ELECTIONS

Municipalities are not required to conduct primary elections. It is the choice of each political party whether to conduct a primary election to determine its party's nominees to compete for municipal elected office in the municipal general election.

Municipal primary elections are conducted by municipal party executive committees. A municipal party executive committee has as many members as there are elected officers of the municipality. For example, a Democratic Municipal Executive Committee would have six (6) members in a city which has an elected mayor and five (5) aldermen.

Members of a municipal party executive committee are elected in the municipal primary election and serve a term of four (4) years. Candidates for municipal party executive committee are required to file a Qualifying Statement of Intent, but not pay a qualifying fee, to the Municipal Clerk by the qualifying deadline for all municipal elected offices. Vacancies on a municipal party executive committee are filled by appointment by the remaining committee members.

If a political party chooses to conduct a municipal primary election, it must have a municipal party executive committee lawfully established no later than the qualifying deadline. If members of a municipal party executive committee were elected in a primary election previous to the last municipal general election, that committee will conduct the next primary election. If no municipal party executive committee was previously elected, the party must establish a temporary committee no later than thirty (30) days prior to the qualifying deadline. The procedure for establishing a temporary municipal executive committee is set forth in *Sections 23-15-313 and 23-15-315, Miss. Code Ann*. If a municipal executive committee was not previously elected or temporarily established, the county executive committee may act as the municipal executive committee.[3]

A Municipal Primary Election is held on the first Tuesday in April preceding the Municipal General Election and, in the event a Second (Runoff) Primary Election is necessary, such Second (Runoff) Primary Election is held on the fourth Tuesday in April preceding the Municipal General Election.[4]

GENERAL ELECTIONS

A Municipal General Election is held in all municipalities, except some special or private charter municipalities, on the first Tuesday after the first Monday of June, 2005, and every four (4) years thereafter.[5] Municipal General Elections are conducted by municipal election commissioners. Municipal election commissioners are appointed by the municipal governing authority and serve the same four (4) year term as all municipal officers, i.e., July 1 through June 30.

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[3] *Section 23-15-313, Miss. Code Ann.*
[4] *Section 23-15-171, Miss. Code Ann. (Amended, 2017)*
[5] *Section 23-15-173, Miss. Code Ann.*

In municipalities having less than twenty-thousand (20,000) residents based upon the last federal decennial census, the municipal governing authority must appoint three (3) election commissioners. In municipalities having twenty-thousand (20,000) or more but fewer than one hundred thousand (100,000) residents based upon the last federal decennial census, the municipal governing authority must appoint five (5) election commissioners. In municipalities having one hundred thousand (100,000) residents or more based upon the last federal decennial census, the municipal governing authority must appoint seven (7) election commissioners.[6]

Effective July 1, 2017, the municipal governing authority may adopt an ordinance pursuant to which the municipality may enter into an agreement with the county election commission of the county in which the municipality is located to conduct all municipal elections, including municipal primary elections, but only if the municipal executive committee(s) previously has entered into a contract with the Municipal Clerk and/or the Municipal Election Commission.[7]

SPECIAL ELECTIONS

Municipal special elections to fill vacancies in municipal elected office and local option elections, such as beer and alcohol referenda[8], are also conducted by municipal election commissioners. As stated above, however, the municipal governing authorities may adopt an ordinance by which to enter into an agreement with the municipality's county so the county's election commission may conduct all municipal elections, including municipal special and local option elections.[9]

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 remaining municipal governing authorities. The Municipal Clerk certifies the appointment to the Secretary of State and the appointee is commissioned by the Governor.[10]

A vacancy in an elective municipal office, the unexpired term of which exceeds six (6) months, must be filled by a special election. Not later than ten (10) business days after the occurrence of the vacancy, the remaining municipal governing authority, at its next regular meeting or at a specially called meeting, enter an Order on the official minutes declaring the vacancy and setting the date of the special election. The special election must be held not less than thirty (30) days nor more than forty-five (45) days after the date on which the order is adopted. [11]

Notice of the special election is published in a newspaper published in the municipality, or if there is no newspaper published in the municipality, a newspaper having a general circulation within the municipality, for three (3) consecutive weeks preceding the date of the election, with the first notice published at least thirty (30) days before the date of the special election. Notice is

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[6] *Section 23-15-221, Miss. Code Ann.*
[7] *Sections 23-15-221(2), 23-15-239, Miss. Code Ann. (Amended, 2017).*
[8] *Sections 67-3-9, 67-1-14, Miss. Code Ann.*
[9] *Section 23-15-221(2), Miss. Code Ann. (Amended, 2017).*
[10] *Section 23-15-857, Miss. Code Ann.*
[11] *Section 23-15-857, Miss. Code Ann. (Amended, 2017).*

also posted in three (3) public places in the municipality, one being city hall, at least twenty-one (21) days prior to the date of the special election.[12]

Each candidate qualifies as an independent candidate by the filing of a Statement of Intent and Qualifying Petition with the Municipal Clerk's Office by 5:00 p.m. no later than twenty (20) days before the date of the special election. If the twentieth days to quality falls on a Sunday or legal holiday, the qualifying deadline is extended until the first business day immediately following the Sunday or the legal holiday. In a municipality (or ward) having a population of one thousand (1,000) or more residents, the qualifying petition must be signed by at least fifty (50) qualified municipal voters. In a municipality or ward having a population of less than one thousand (1,000) residents, the qualifying petition must be signed by at least fifteen (15) qualified municipal voters.[13] It is the obligation of the Municipal Clerk to certify the number of signatures of registered voters of the municipality or of the ward, if the candidate is seeking a municipal office elected by ward, who have signed the candidate's qualifying petition.

If only one (1) person qualifies as a candidate, the remaining municipal governing authority shall dispense with the special election and appoint that one (1) candidate fill the vacancy for the remainder of the term in lieu of holding the special election. If no person qualifies as a candidate, the remaining municipal governing authority shall dispense with the special election and fill the vacancy by appointment.[14]

Should the special election be held, the candidate receiving a majority of the votes cast shall be elected. If no candidate receives a majority vote, the two (2) candidates receiving the highest number of votes shall have their names placed on the ballot for a runoff election to be held two (2) weeks after the special election, and whoever receives the most votes cast in the runoff election shall be elected.[15]

The Election Commission and/or Municipal Clerk must provide the Secretary of State a copy of the order calling the Special Election, a copy of the board meeting minutes, and the official recapitulation form signed by a majority of the election commission (the total vote count by ward).

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[12] *Ibid.*
[13] *Ibid.*
[14] *Ibid.*
[15] *Ibid.*

CANDIDATE QUALIFYING PROCEDURE

Primary Elections

Any qualified elector (registered voter) and resident of a municipality may qualify as a candidate for a political party's nomination for a municipal office by filing a Statement of Intent expressing his/her intent to be a candidate for nomination to a particular office and paying a ten dollar ($10.00) qualifying fee. The statement of intent and filing fee is filed with the Municipal Clerk's Office on or before the statutory qualifying deadline. The Municipal Clerk is required to promptly turn the statement of intent and qualifying fee over to the appropriate municipal party executive committee.[16] For accounting purposes, it is suggested the qualifying fee be paid by check made out to the appropriate municipal party executive committee. If a political party does not have a lawfully established municipal executive committee, the political party cannot conduct a primary election. Therefore, a municipal clerk must not accept any candidate qualifying papers, i.e., statements of intent or filing fees, unless the municipal clerk has actual knowledge a municipal party executive committee is in place and knows the name and contact information of at least one member thereof.[17]

General Elections

Any qualified elector (registered voter) and resident of a municipality may qualify as an independent candidate for a municipal office by filing a Statement of Intent and Qualifying Petition signed by the appropriate number of municipal registered voters who, by signing the qualifying petition, are requesting the name of the candidate be placed on the general election ballot. The statement of intent and qualifying petition is filed with the Municipal Clerk's Office on or before the statutory qualifying deadline.[18]

It is the obligation of the Municipal Clerk to certify the number of signatures of registered voters of the municipality or the ward, if the candidate is seeking a municipal office elected by ward or district, who has signed the candidate's qualifying petition. In a municipality (or ward) having a population of one thousand (1,000) or more residents, the qualifying petition must be signed by at least fifty (50) municipal registered voters. In a municipality or ward having a population of less than one thousand (1,000) residents, the qualifying petition must be signed by at least fifteen (15) municipal registered voters.

Campaign Finance Disclosure Reports

Candidates for municipal office must file all required Campaign Finance Disclosure Reports with the Municipal Clerk in accordance with the applicable reporting schedule. Municipal candidates and political committees receiving contributions or making expenditures in support of or opposition to municipal candidates are encouraged to review Mississippi law regarding campaign finance disclosure reporting requirements, Miss. Code Ann. § 23-15-801, *et seq.*

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[16] *Section 23-15-309, Miss. Code Ann.*
[17] *AG Op., Municipal Clerk, Town of Isola (April 22, 2013).*
[18] *Section 23-15-361, Miss. Code Ann.*

RULING ON CANDIDATE QUALIFICATIONS

Party Candidates in Primary Elections

After the qualifying deadline, at least a quorum (majority) of the members of the Municipal Executive Committee must meet and review the qualifications of all candidates who timely filed a Statement of Intent and paid the required filing fee to the Municipal Clerk's Office. In the case of each candidate, the Municipal Executive Committee must make the following determinations:

A. The candidate is a qualified, registered voter and resident of the municipality and of the ward if the office sought is elected from a ward,

B. The candidate meets all other qualifications to hold the office he/she is seeking or presents absolute proof he/she will, subject to no contingencies, meet all qualifications on or before the date of the election at which he/she could be elected to office, and

C. The candidate has not been convicted of a felony in a Mississippi state court, or on or after December 8, 1992, has not been convicted of a felony in a federal court or of a crime in the court of another state which is a felony under the laws of this state, excluding a conviction of manslaughter or any violation of the Internal Revenue Code or other tax law violations, unless such offense also involved misuse or abuse of his/her office or money coming into his/her hands by virtue of his/her office.[19]

If the Executive Committee determines a candidate is not a resident and qualified voter, does not meet all qualifications to hold the office sought, or has been convicted of a disqualifying crime as described above and not pardoned, the committee shall notify the candidate in writing he/she was not qualified by the Executive Committee and is entitled to appear before the Executive Committee at which he/she may present documentation or such other evidence as may contradict the Committee's determination. Written notice is mailed to the disqualified candidate at least three (3) business days before the hearing to the address provided by the candidate on his/her qualifying papers. The Committee should also make additional efforts to contact the candidate by telephone, email or fax if the candidate provided this information on his/her qualifying papers. If the candidate fails to appear at the scheduled hearing or to prove he/she meets all qualifications to hold the office subject to no contingencies, then the name of the candidate is not placed on the primary election ballot.[20]

All qualified candidates' names are printed on the primary election ballot. If there is only one qualified candidate for a particular office (such as the office of mayor or alderman), the Municipal Executive Committee must omit that candidate's name and the entire race from the primary election ballot and declare the unopposed candidate the party's nominee. If there is only one qualified candidate for each office on the primary election ballot, meaning no candidate is

[19] *Section 23-15-309(4), Miss. Code Ann.*
[20] *Section 23-15-309(4), Miss. Code Ann. (Amended, 2017).*

opposed, the primary election for all offices is dispensed and the Municipal Executive Committee declares each unopposed candidate the party's nominee.[21]

Party Nominees and Independent Candidates in General Elections

The Municipal Election Commission is responsible for determining the qualifications of all party nominees (i.e., the winning candidates in a Primary Election and those unopposed party candidates named as nominees by the political party) and independent candidates in the same manner as the Executive Committee determines the qualifications of primary election candidates as set forth above. The Municipal Election Commissioners 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 candidate.[22]

All qualified candidates' names are placed on the ballot, including those candidates who may be unopposed. However, if after the qualifying deadline and the holding of any party primary election, there is only one (1) person duly qualified to be a candidate for each office on the general election ballot, the election for all offices on the ballot is dispensed and the Municipal Election Commission declares each candidate elected without opposition if the Municipal Election Commission determines the candidates meet all the qualifications to hold the offices sought and if the candidates have filed all required campaign finance disclosure reports.[23]

PRINTING THE BALLOT

1. *Party Primary Elections*

   A. Order of Candidates' Names: Each Executive Committee is responsible for proofing and printing the ballot for Primary Elections. The ballots must contain the names of all duly qualified candidates in alphabetical order by last name; except, however, if there is only one candidate qualified for a particular office, that unopposed candidate's name and the office sought must be omitted and not printed on the Primary Election ballot. The Municipal Executive Committee declares the unopposed candidate(s) as the party's nominee for that particular office.[24]

   B. Write-In Provisions for Primary Elections: On ballots for Primary Elections, there must be one (1) blank space under the title of each office. In the event of the death of any candidate whose name should have been printed on the ballot, the name of a candidate substituted in the place of the deceased candidate may be written in the blank space by the voter.[25]

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[21] *Section 23-15-309, Miss. Code Ann.*
[22] *Powe v. Forrest County Election Commission*, 249 Miss. 757, 163 So. 2d 656 (Miss. 1964).
[23] *Section 23-15-361, Miss. Code Ann.*
[24] *Sections 23-15-309 and 333, Miss. Code Ann.*
[25] *Section 23-15-333, Miss. Code Ann.*

C. Minimum Number of Official Ballots: When using precinct scanners (optical mark reading ("OMR") equipment) in a Primary Election, not less than 125% of the highest number of votes cast in a comparable primary election shall be printed by each political party for each primary election.[26]

2. *General and Special Elections*

A. Order of Candidate's Names: Each Municipal Election Commission is required to designate one (1) commissioner to be responsible for causing the printing of the ballots for General and Special Elections.[27] The order in which the titles of various offices shall be printed, the arrangement of the names of the candidates, and the size, print, and quality of paper of the official ballot is left to the discretion of the commissioner designated to have the ballots printed.[28]

B. Write-In Provisions for General and Special Elections: On ballots for General and Special Elections, there must be one (1) blank space under the title of each office. In the event of the death, resignation, withdrawal, or removal of any candidate whose name should have been printed on the official ballot, the name of the candidate duly substituted in the place of such candidate may be written in the blank by the voter.[29]

C. Minimum Number of Official Ballots: When using precinct scanners (optical mark reading ("OMR") equipment) in a General or Special Election, ballots in an amount not less than 60% of the number of eligible registered municipal voters shall be printed.[30]

The officials in charge of the 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. Nicknames may appear on a ballot before or after the candidate's name, if requested by the candidate and if the officials in charge of the election determine the nickname is necessary to identify the candidate to the voters. However, professional titles, such as "Dr." or "Reverend," should not appear on the ballot.

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[26] *Section 23-15-513(2), Miss. Code Ann. (Amended, 2017).*
[27] *Section 23-15-361, Miss. Code Ann.*
[28] *Section 23-15-367, Miss. Code Ann.*
[29] *Section 23-15-365, Miss. Code Ann.*
[30] *Section 23-15-513(3), Miss. Code Ann. (Amended, 2017).*

ABSENTEE VOTING

Summary Requirements

Mississippi law sets forth the following requirements for absentee voting:

1. Absentee ballot applications must be provided by the Municipal Clerk to an eligible voter who makes an oral or written request to vote by an absentee ballot, and absentee ballot applications must be available at least sixty (60) days prior to each election.

2. It is illegal to hand deliver absentee ballots in Mississippi. Unless an absentee ballot is voted in the Municipal Clerk's office, it must be mailed by the Municipal Clerk to the voter and the voter must return his cast absentee ballot by mail to the Municipal Clerk.

3. The Municipal Clerk may accept requests for absentee ballot applications by telephone.

4. The parent, child, spouse, sibling, legal guardian, a person empowered with a power of attorney, or agent of the voter designated in writing by the voter may request an application on behalf of the voter.

5. An absentee ballot application must have the original seal of the Municipal Clerk and be initialed by the Municipal Clerk or a deputy clerk.

6. A third party requesting an absentee ballot application for another registered voter eligible to cast an absentee ballot must complete and sign the bottom section of the absentee ballot application entitled "Certificate of Delivery," providing the third party's name and address and the voter's information for whom he/she is requesting the application.

7. The absentee ballot application of a person who is permanently physically disabled may be accompanied by a statement signed by a physician or nurse practitioner, which statement must show the person signing the statement is a licensed, practicing medical doctor or nurse practitioner and must indicate the person requesting an absentee ballot is permanently physically disabled to such an extent it is difficult for him/her to vote in person.

   An absentee ballot application accompanied by a statement of a physician or nurse practitioner entitles the permanently physically disabled voter to automatically receive an absentee ballot by mail for all elections on a continuing basis without the need to complete any other application.[31]

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[31] *Section 23-15-629, Miss. Code Ann.*

8. Absentee ballot applications must be acknowledged ("sworn to and subscribed") by an official authorized to administer oaths for absentee balloting, such as a notary public or a court clerk.

9. Applications of persons temporarily or permanently disabled must be witnessed by a person 18-years of age or older, who does not have to be a registered voter. Applications of persons temporarily or permanently disabled do not need to be acknowledged ("sworn to and subscribed") by an official authorized to administer oaths.

10. A candidate whose name appears on the ballot cannot be an attesting witness for an absentee voter. A candidate whose name appears on the ballot also may not provide assistance in the marking of an absentee voter's ballot.[32]

Voting in the Municipal Clerk's Office

All eligible voters may cast their absentee ballots in the Municipal Clerk's office by completing an absentee ballot application. All eligible voters who cast absentee ballots in the Municipal Clerk's office must present an acceptable form of photo ID before being given an absentee ballot. After completing the absentee ballot application and presenting an acceptable form of photo ID, the voter is issued (given) an absentee ballot to mark in secret. The completed ballot is placed in an absentee ballot envelope, and the envelope is signed by both the voter and Municipal Clerk or deputy clerk across the flap of the envelope after it is sealed. The envelope containing the voted absentee ballot is deposited into a sealed ballot box maintained in the Municipal Clerk's office.[33]

Voting by Mail

Eligible absentee voters may request an absentee ballot by mail by first requesting, receiving and returning an absentee ballot application by mail to the Municipal Clerk. The following registered voters are legally eligible to receive and return an absentee ballot by mail:

A. Temporarily residing outside the city, meaning the absentee ballot application and absentee ballot will be mailed to an address outside of your city;

B. Temporarily or permanently physically disabled;

C. Sixty-five (65) years of age or older; or,

D. The parents, spouses, or dependents of temporarily or permanently physically disabled persons who are hospitalized outside of their cities of residence or more than fifty (50)

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[32] *Section 23-15-631(e)(f), Miss. Code Ann.*
[33] *Sections 23-15-717, 23-15-719, Miss. Code Ann.*

miles away from their residences if the parents, spouses, or dependents will be with such persons on election day.[34]

The absent ballot applications and absentee ballot envelopes of these voters eligible to receive and return the same by mail must be acknowledged by an official authorized to administer oaths, such as a notary public or court clerk; except, however, the applications and ballot envelopes of those who are temporarily or permanently disabled, which must be witnessed and signed by a person eighteen (18) years of age or older. This person does NOT have to be a registered voter.

Voter Assistance when Absentee Voting

Any eligible absentee voter who is blind, physically disabled or unable to read or write is entitled to request and receive assistance in marking his/her absentee ballot. The voter may be given assistance by anyone of the voter's own choosing other than a candidate whose name appears on the ballot, the voter's employer, agent of the voter's employer or an officer or agent of the voter's union. A person who provides assistance is required to sign and complete the "Certificate of Person Providing Voter Assistance" section on the absentee ballot envelope disclosing the date and time assistance was provided and relationship to the voter (if any). The person providing assistance to the voter should not be the person acknowledging and/or witnessing the voter's signature on the absentee ballot envelope.[35]

Absentee Voting Deadlines

1. *First Primary Election*

   A. Voting in the Municipal Clerk's office – The first day for voting by absentee ballot in the first primary election in the Municipal Clerk's office is forty-five (45) calendar days before the election. The deadline for casting absentee ballots in the Municipal Clerk's Office is 12:00 p.m. (noon) on the Saturday immediately preceding a Tuesday election. If a voter appears before the Municipal Clerk and the Primary Election ballot has not yet been printed, the Municipal Clerk shall have the voter complete an absentee ballot application and, when the ballot is printed, mail the absentee ballot to the voter.[36]

   B. Voting by Mail – Absentee ballots must be available forty-five (45) days prior to the election. The deadline for the Municipal Clerk's actual receipt of absentee ballots returned by mail is the day immediately preceding the election.[37]

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[34] *Section 23-15-715, Miss. Code Ann.*
[35] *Section 23-15-631(f), Miss. Code Ann.*
[36] *Section 23-15-715(a), Miss. Code Ann.*
[37] *Section 23-15-721, Miss. Code Ann.*

2. *Second Primary (Runoff) Election*

   A. Voting in the Municipal Clerk's office – Second primary (runoff) election absentee ballots to be voted in the Municipal Clerk's office should be available as soon as possible after the first primary election. The deadline for casting absentee ballots in the Municipal Clerk's Office is 12:00 p.m. (noon) on the Saturday immediately preceding a Tuesday election.

   B. Voting by Mail – Absentee ballots should be available for the second primary election as soon as possible following the first primary election. The deadline for the Municipal Clerk's actual receipt of absentee ballots returned by mail is 5:00 p.m. on the day immediately preceding the election.

3. *General Election*

   A. Voting in the Municipal Clerk's office – The first day for voting by absentee ballot in the general election in the Municipal Clerk's office is forty-five (45) calendar days before the election. The deadline for casting absentee ballots in the Municipal Clerk's Office is 12:00 p.m. (noon) on the Saturday immediately preceding a Tuesday election. If the voter appears before the Municipal Clerk, and the general election ballot has not yet been printed, the Municipal Clerk shall have the voter complete an absentee ballot application and, when the ballot is printed, mail the absentee ballot to the voter.

   B. Voting by Mail – Absentee ballots must be available forty-five (45) days prior to the election, or as soon as possible. The deadline for the Municipal Clerk's actual receipt of absentee ballots returned by mail is the day immediately preceding the election.

POLL WORKERS

The officials in charge of the election are required to appoint and train a sufficient number of poll workers[38] to insure the election is properly conducted. The municipal party executive committee appoints and trains poll workers for party primary elections and the municipal election commission appoints and trains poll workers for general and special elections.

A poll worker must be a registered voter of the municipality in which he/she is to serve.[39]

The minimum number of poll workers for a polling place is three (3).[40] Additional poll workers may be appointed based on the number of registered voters in each precinct.[41] Poll workers appointed to serve in general or special elections cannot all be of the same political party

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[38] The terms poll worker and poll manager are used interchangeably as there is no legal distinction between the terms.
[39] *Section 23-15-231, Miss. Code Ann.*
[40] *Section 23-15-231, Miss. Code Ann.*
[41] *Section 23-15-235, Miss. Code Ann.*

affiliation if suitable persons of different political party affiliations can be found in the municipality.[42]

Poll workers are paid a minimum of seventy-five dollars ($75) for each election. The governing authority of a municipality may, in its discretion, pay poll workers additional compensation in an amount not to exceed fifty dollars ($50) per election. A poll manager designated as the Receiving and Returning Manager is entitled to an additional ten dollars ($10) for carrying the boxes to the polling place and another ten dollars ($10) for returning the boxes after the election. If the Receiving and Returning Manager uses a privately owned motor vehicle, he/she receives for each mile actually and necessarily traveled in excess of ten (10) the federal mileage rate.[43]

Training of Poll Managers

The officials in charge of the election (the Executive Committee for primary elections and the Election Commission for other elections), in conjunction with the Municipal Clerk, are responsible for conducting training sessions to instruct poll workers as to their duties in the proper conduct of the election no less than five (5) calendar days prior to the election. The municipal governing authority, in its discretion, may compensate managers who attend such training sessions. The compensation rate may not be less than the federal hourly minimum wage, nor more than twelve dollars ($12.00) per hour, for not more than 16 hours of attendance at training.[44]

No poll worker may serve in any election unless he/she has received training within the twelve (12) months preceding the election. Training by a county executive committee or county election commission within twelve (12) months of an election would qualify one to serve as a poll worker in a municipal election. Alternate poll managers must also be trained and utilized in the event a poll manager is unable to serve for any reason. However, emergency appointments may be made pursuant to *Section 23-15-231, Miss. Code Ann*.

POLL WATCHERS

Each candidate on the ballot, or his/her representative designated in writing by the candidate, has the right to be present as a poll watcher at each polling place. In general and special elections, each political party which has a candidate on the ballot may designate in writing two (2) representatives to serve as poll watchers in each polling place. The poll managers are required to assign all poll watchers a suitable position from which they may observe the election process and challenge any voter's qualification to vote, yet not interfere in the election process or compromise the voter's right to secrecy in casting his/her ballot.

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[42] *Section 23-15-231, Miss. Code Ann.*
[43] *Sections 23-15-227, 23-15-229, Miss. Code Ann.*
[44] *Section 23-15-239, Miss. Code Ann.*

Poll watchers are prohibited from communicating with any voter, physically touching or handling any ballot, absentee ballot envelope, absentee ballot application or affidavit ballot envelope, viewing or photographing the pollbooks while in the polling place, and photographing the receipt books (sign-in sheets) while at the polling place. [45]

Only the candidates, credentialed 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.[46]

MISSISSIPPI VOTER PHOTO ID

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

Acceptable Photo Identification means a current and valid:

- 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 photo 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 form of photo identification at the polling place or in the Municipal Clerk's Office are entitled to vote by an affidavit ballot. Remember, no voter is ever denied the right to vote.

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[45] *Section 23-15-577, Miss. Code Ann.*
[46] *Section 23-15-245, Miss. Code Ann.*

Exemptions

Certain voters are exempt from presenting an acceptable form of photo identification when casting a ballot. These exemptions are limited to the following:

1. A voter who casts an absentee ballot by mail, e-mail or fax,
2. A voter who resides in a state-licensed care facility and who votes in person in a precinct located in the same state-licensed care facility, and
3. A voter who has a religious objection to being photographed.

Voter ID Affidavit Ballots.

A voter who (1) is unable to present an acceptable form of photo ID, or (2) presents an acceptable form of photo ID but the voter's name on the photo ID is not substantially similar to the voter's name as it appears on the poll book, or (3) presents an acceptable form of photo ID but the picture on the photo ID does not fairly depict the voter, may only cast an affidavit (provisional) ballot.

An affidavit ballot is a regular election day, paper ballot which is placed into an Affidavit Ballot Envelope. The affidavit ballot envelope must be completed by the voter and must include the voter's name, address (current and previous, if moved), telephone number, and signature. A poll manager must also sign the affidavit ballot envelope. The failure of the poll manager or the voter to sign the envelope must result in the rejection of the affidavit ballot.

Once the voter and poll manager have completed the affidavit ballot envelope, the affidavit voter signs a separate receipt book and is issued a paper ballot. The voted paper ballot is placed into the completed Affidavit Ballot Envelope and immediately deposited into the sealed ballot box by the voter.

A voter casting an affidavit ballot because he/she could not present an acceptable form of photo ID has five (5) business days following Election Day within which to present an acceptable form of photo ID to, or executive an Affidavit of Religious Objection in, the Municipal Clerk's Office. All affidavit voters must be provided with written instructions at the polling place with a contact person and telephone number so they may ascertain if their affidavit ballots were counted and, if not, the reason therefor.

VOTER CHALLENGE

Anyone entitled to be within thirty (30) feet of where the voting is taking place may challenge any voter's qualifications. The following persons are authorized challengers and are able to challenge the qualifications of any person presenting to vote:

1. Any candidate whose name is on the ballot in the polling place in which the challenge is made,

2. Any authorized representative and designated poll watcher of a candidate whose name is on the ballot in the polling place in which the challenge is made,

3. A poll watcher designated by a political party which has a candidate on the ballot in the polling place in which the challenge is made (not applicable for party primary elections),

4. Any qualified voter of the polling place in which the challenge is made, and

5. Any poll manager of the polling place in which the challenge is made.[47]

A person presenting to vote may be challenged only for the following reasons:

1. The person is not a registered voter in the precinct.

2. The person is not the registered voter under whose name he/she has applied to vote.

3. The person has already voted in the election.

4. The person is not a resident in the precinct where he/she is registered.

5. The person has illegally registered to vote.

6. The person has removed his/her ballot from the polling place.

7. The person has cast an absentee ballot but is ineligible to do so.

8. The person is otherwise disqualified by law.[48]

When a challenge is made, the poll workers must rule upon the challenge at that time. The three (3) possible rulings are as follows:

- If the poll workers unanimously agree the challenge is frivolous, disregard the challenge and accept the offered vote as though it had not been challenged by allowing the voter to cast a regular Election Day ballot.

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[47] *Section 23-15-571, Miss. Code Ann.*
[48] *Sections 23-15-571, 23-15-643, 23-15-731, Miss. Code Ann.*

- If the poll workers cannot unanimously agree upon the challenge, the voter is issued a paper ballot, which is marked on the back thereof by the poll workers as "Challenged," placed into a separate strong envelope labeled "Challenged Ballots," sealed and deposited into the sealed ballot box.

- If the poll workers unanimously agree the challenge is valid or well taken, the voter is issued a paper ballot, which is marked by the poll workers on the back thereof as "Rejected" together with the name of the voter, then placed into a separate strong envelope labeled "Rejected Ballots," sealed and deposited into the sealed ballot box.

At the close of the polling place, the ballots labelled as "Challenged Ballots" are separately counted, tallied and totaled, with a separate return made of those challenged ballots. Under no circumstances may any challenged ballots be added to the regular ballot totals.[49]
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.[50]

VOTER ASSISTANCE

Before any voter may receive assistance in the marking of his/her ballot, the voter must make a request for assistance to the poll managers and state the reason why he/she requires such assistance. To receive assistance in the marking of his/her ballot, a voter must assert he/she is blind, physically disabled or unable to read or write, and the poll managers must be satisfied the voter is blind, physically disabled or unable to read and write, thus requiring the requested assistance.

The purpose for requiring a declaration by a voter to the election officials of blindness, physical disability or an inability to read or write rendering the voter unable to mark his/her ballot is to protect the voter and to preserve the secrecy of his/her ballot. If election officials permitted all voters to receive assistance in marking their ballots, without regard to whether the voter is entitled to assistance, secrecy of the ballot would be destroyed, voters would be subject to coercion and undue influence and the opportunity for fraud would be unlimited.[51]

Any voter who declares to the poll workers he/she requires assistance to vote by reason of blindness, physical disability, or an inability to read or write may be given assistance by a person of the voter's own choice except the voter's employer, agent of that employer, or officer or agent of the voter's union.[52]

No assistance may be lawfully allowed if the proper procedure is not followed. Care must be taken to not destroy the secrecy of the voter's ballot. The decision to seek assistance must be

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[49] *Section 23-15-579, Miss. Code Ann.*
[50] *Misso v. Oliver*, 666 So. 2d 1366 (Miss. 1996).
[51] *O'Neal v. Simpson*, 350 So. 2d 998 (Miss. 1977).
[52] *Section 23-15-549, Miss. Code Ann.*

made by the voter without coercion or influence from any other person. Ballots marked with assistance may be found invalid if the proper procedure is not followed.[53]

CURBSIDE VOTING

A physically disabled voter who drives, or is driven, to the polling place, but is unable to enter the polling place may vote curbside if the poll managers, in exercising sound discretion, determine the voter is physically unable to enter the polling place.

Two (2) poll managers take the poll book, receipt book, and a ballot or voting device to the vehicle and follow the voting process. After the voter casts his/her ballot in secret, the Poll Managers return the voted ballot to the ballot box. If, while a voter is voting by curbside, there are less than three (3) Poll Managers present in the polling place, voting must stop inside the polling place until the Poll Managers conducting the curbside voting return inside so there are at least three (3) Poll Managers present within the polling place to conduct the election at all times.[54]

EXAMINATION OF BALLOT BOXES

While there is no formal "recount" procedure in Mississippi law, a candidate may request to examine the contents of the ballot boxes at any time within twelve (12) calendar days after the election results have been certified by the municipal party executive committee in primary elections or the municipal election commission in general and special elections.[55]

The requesting candidate must provide at least three (3) days written notice in advance of the date set for the examination to all opposing candidates. Notice must be provided to each opposing candidate by delivering a copy of the notice personally to each candidate or by performing two (2) of the following: (1) leaving a copy at each candidate's usual place of residence with a family member, who must be at least sixteen (16) years of age and reside in the opposing candidate's residence, (2) email or fax a copy of the notice to each opposing candidate, or (3) mail a copy of the notice by registered or certified mail to each opposing candidate's usual place of residence.[56]

The examination is conducted by the candidate or his/her representative in the presence of the Municipal Clerk or deputy municipal clerk, who ensures none of the contents of the boxes are removed or in any way with tampered. The contents of the ballot boxes may not be photocopied by copy machine or photographed by camera or cell phone. [57]

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[53] *O'Neal v. Simpson*, 350 So. 2d 998 (1977).
[54] *Section23-15-541, Miss. Code Ann.*
[55] *Section 23-15-911, Miss. Code Ann. (Amended, 2017);*
AG Op., Hon. Deborah Hood Neal (Sept. 26, 2003).
[56] *Section 23-15-911, Miss. Code Ann. (Amended, 2017).*
[57] *AG Op., Hon. Valerie T. Smith (June 13, 1997);*
AG Op., Fritzie Toney Youngman, Esq. (June 22, 2001).

Once a candidate or his/her representative begins a ballot box examination, he/she must continue from day to day until the examination is completed. The examination must be completed within twelve (12) calendar days of the date the election results were certified.

Once a candidate (or his/her representative) completes the examination, all contents are returned to the ballot boxes and the boxes are resealed.

CONTEST OF ELECTION

To contest the results of a primary election, a petition is filed with the respective municipal party executive committee within twenty (20) calendar days after the date of the election.[58] The petition must set forth specific facts or grounds upon which the primary election is contested. The municipal party executive committee thereafter schedules a meeting at which to consider the election contest. Notice of the election contest and of the date of the meeting is provided to all concerned parties at least five (5) days before the date of the meeting. At the meeting, the executive committee proceeds to investigate the grounds upon which the election is contest and, by a majority vote of the members of the committee present, declares the true results of the primary election. If the executive committee fails to meet, or having met, fails to grant the relief requested by the contestant, he/she has the right to file a petition for judicial review in the circuit court of the county within ten (10) days after the date the contest or complaint was filed with the executive committee.[59]

To contest the results of a general election, a petition is filed in the circuit court of the county in which the election was conducted within twenty (20) calendar days after the date of the election. The petition must set forth specific facts or grounds upon which the general election is contested. When such a petition is filed, the Circuit Clerk of the county immediately notifies the Chief Justice of the Mississippi Supreme Court, who thereafter designates a circuit judge or chancery judge of a district other than that which embraces the city, district or county involved in the election contest.[60]

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[58] *Section 23-15-921, Miss. Code Ann.*
[59] *Section 23-15-927, Miss. Code Ann.*
[60] *Section 23-15-951, Miss. Code Ann.*

CHAPTER SIXTEEN

MUNICIPAL COURTS

William D. Eshee Jr. and Rodney P. Faver

INTRODUCTION

Municipal Courts are created by state law and provide one of the most important contact points between the general populace and the government which represents them. Here, the citizen sees the law in action. For many, the municipal court may be the only legal tribunal that they observe or in which they may be a participant. Therefore, it is essential for them to leave court with the perception of having received fair and just treatment, regardless of the extent of or the nature of their participation.

The municipal court is a criminal court of limited jurisdiction which is empowered by statute to hear and dispose of misdemeanor offenses, traffic and parking violations, and municipal ordinance violations. Additionally, the court conducts preliminary hearings for felonies charged within the corporate limits of the municipality. Most cases heard in municipal courts involve misdemeanor and traffic offenses which, when considering the issue of seriousness and severity of punishment in comparison to felonies, are minor offenses. However, for the citizen charged with a less severe crime, such as a misdemeanor, defending the charge in court may result in serious consequences in the event of a conviction. These consequences may include fines, jail confinement, loss of job or employability, and damage to reputation within the community. Thus, the municipal court proceeding may become a focal point in the life of a citizen. Municipal courts are, in effect, a mirror of society and how society provides a tribunal of justice for its people. Municipal courts reflect the integrity of the municipal government, and, consequently, should be of major importance to the governing authorities.

The dispensation of justice is the sole function of the court. Because the municipal judge is the head of the judicial department and on whose shoulders rests the judicial credibility of the municipality, great care should be taken in his appointment. The governing authorities should sift the candidates for municipal judge through a very fine mesh and select the best qualified for the position. Qualifications, experience, judicial temperament, general reputation within the legal profession and community and, above all, integrity should be dominating factors in selecting an attorney-at-law for the municipal judge. Although the municipal judge derives the position through appointment by the governing authorities, the governing authorities must adopt a policy of strict non-interference with the court proceedings.

The physical surroundings of municipal court, including the courtroom and appropriate furnishings therein, the judge's chamber, the municipal court clerk's office and equipment, witness rooms, and attorney/client conference rooms are the responsibility of the municipality. The dramatic increase in case loads over the last decade has resulted in many municipal courtrooms becoming acutely overcrowded and some facilities are presently inadequate to deal with these increased volumes. All citizens, whether they are defendants, witnesses, or observers in municipal court have the right to participate in the proceeding in an environment which is

dignified, uncrowded, and safe. No matter how competent the judge, the perception of justice may be unnecessarily marred by a courtroom setting which is unreasonably crowded or inappropriately equipped to deal with the work of the court. The judicial environment and physical facilities of municipal court should be adequate to accommodate the significant numbers of citizens who pass through.

ESTABLISHMENT AND JURISDICTION OF MUNICIPAL COURTS

Mississippi statutory law provides that a municipal court be established in all municipalities of this State.[1]

Jurisdiction refers to the authority of the court to hear and finally adjudicate certain types of cases. Municipal court is a criminal court of limited jurisdiction with the authority to adjudicate misdemeanors, traffic and parking offenses, and city ordinance violations. Municipal court also has jurisdiction over felony cases to the extent that preliminary hearings are conducted and upon a finding of probable cause, the defendant is bound over to the grand jury of the county for further proceedings. The territorial jurisdiction of the court extends to the boundaries of the municipality. Punishment authority includes the imposition of fines up to $1,000.00 and jail confinement up to six (6) months in duration, or both, for each violation of state misdemeanor laws. By statute, all offenses under the penal laws of the state which are misdemeanors, along with the penalty provided for the violation of the particular misdemeanor, are made without any further action of the governing authorities. Similarly, criminal offenses against the municipality in whose corporate limits the offenses may have been committed are treated as though such offenses were made offenses against the municipality by separate ordinance in each case.[2]

When the offense charged is a violation of a municipal ordinance, the jurisdiction punishment of municipal court is limited to fines not exceeding $1,000 or imprisonment not exceeding ninety (90) days, or both.[3] During judicial proceedings, should it become necessary to prove the existence of any municipal ordinance, a copy of the ordinance duly certified by the clerk of the municipality or the ordinance book in which the ordinance is entered, may be introduced into evidence, and is *prima facie* evidence of the existence of such ordinance, and that the ordinance was adopted and published in the manner provided by law.[4]

Mississippi law provides that in any county where there is no county court or family court as of July 1, 1979, there may be created a youth court division of the municipal court in any city, if the governing authorities of the city adopt a resolution to that effect. In the event a youth court division of the municipal court is created, its costs will be paid from any funds available to the municipality for the purpose, excluding state and county funds.[5]

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[1]*Code*, § 21-23-1.
[2]Ibid., § 21-13-19; 21-23-7.
[3]Ibid., § 21-13-1.
[4]Ibid., § 21-13-17.
[5]Ibid., § 43-21-107.

A police officer of a municipality must be sworn before assuming any law enforcement duties, however, there is no requirement that a police officer must be sworn in by the Mayor or Vice-Mayor; a municipal court judge is the "police justice" of a municipality and, therefore, could administer the oath of office.[6]

APPOINTMENT OF THE MUNICIPAL JUDGE

The governing authorities of the municipality have the duty of selecting and appointing the municipal judge. This appointment is made at the time provided for the appointment of other officers of the municipality. In order to be statutorily qualified, the municipal judge must be a qualified elector of the county in which the municipality is located and be an attorney-at-law. The municipal judge shall receive a salary to be paid by the municipality and the amount of the salary shall be fixed by the governing authorities of the municipality.[7]

In municipalities with a population of Twenty Thousand (20,000) or less the municipal judge shall be an attorney licensed in the State of Mississippi or a justice court judge of the county in which the municipality is located. The mayor or mayor pro tempore of the city shall not serve as the municipal judge.[8]

POWERS AND DUTIES OF THE MUNICIPAL JUDGE

As mandated by law, the municipal judge shall hold court in a public building designated by the governing authorities of the municipality and may hold court every day except Sundays and legal holidays if the business of the municipality requires. The municipal judge may hold court outside the boundaries of the municipality but not more than within a sixty-mile radius of the municipality to handle preliminary matters and criminal matters such as initial appearances and felony preliminary hearings. The municipal judge hears and determines all cases charging violations of the municipal ordinances and state misdemeanor laws made offenses against the municipality and sets punishment for offenders as prescribed by law. The municipal judge is both the fact finder and law giver as all cases are heard by the judge alone, without a jury. Municipal court is not a court of record because cases are adjudicated without a record of testimony. All criminal proceedings are brought into municipal court by the filing of a sworn affidavit. The sworn complaint must state the essential elements of the offense charged and cite the specific statute or ordinance which makes the alleged conduct a violation. The complaint is not required to conclude with a general averment that the offense is against the peace and dignity of the state or in violation of the ordinances of the municipality.

The municipal judge may sit as a committing court in all felonies allegedly committed within the municipality, with the power to bind over the accused to the grand jury of the county or to appear before the proper court having jurisdiction over the case. When dealing with felony bind-overs, the municipal judge has the responsibility to set the amount of bail or refuse bail and commit the

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[6]Thomas, May 9, 2003, A.G. Op. #03-0212
[7]Ibid., § 21-23-3.
[8]Ibid., § 21-23-5.

accused to jail when the case is not bailable. Additionally, the municipal judge is a conservator of the peace within his municipality. The municipal judge is empowered to conduct preliminary hearings in all violations of the criminal laws of the state within the municipality, and the individuals arrested for a violation of law within the municipality may be brought before him for an initial appearance.

Where the objects of justice would be more likely met through an alternative to the imposition or payment of fine and/or incarceration, the municipal judge has the discretion to sentence convicted offenders to work on a public service project where the court has established, by written guidelines filed with the clerk for public record, such a program of public service. The public service project shall provide for reasonable supervision of the offender and the work is to be commensurate with the fine and/or incarceration which would have been ordinarily imposed. The program of public service may be utilized in the implementation of the provisions of § 99-19-20, and public service work may be supervised by persons other than the sheriff.

The municipal judge is vested with authority to take oaths, affidavits, and acknowledgments; to issue orders, subpoenas, summons, citations, warrants for arrest and search (upon a finding of probable cause), and other process under seal of the court to any county or municipality to be executed by the lawful authority of the county or the municipality of the respondent. The municipal judge has the authority to enforce obedience to such process. The absence of a seal does not invalidate the process. Municipal judges may also solemnize marriages.

When a person is charged with an offense in municipal court which is punishable by confinement, the municipal judge, after being satisfied that the person is an indigent person who is unable to employ an attorney-at-law, may, in the discretion of the court, appoint an attorney-at-law. This attorney, who must be a member of the Mississippi Bar and reside in the county, shall represent the indigent person before the municipal court. Compensation for the appointed attorney-at-law must be approved, allowed by the municipal judge, and paid by the municipality. The maximum compensation shall not exceed $200.00 for any one case. In their discretion, the municipal governing authorities may appoint one or more public defenders who are licensed attorneys-at-law. The public defender(s) receives a salary which is determined by the governing authorities.

The municipal judge is empowered to suspend the sentence and to suspend the execution of the sentence or any part of the sentence on whatever terms he may impose. The suspension of imposition or execution of a sentence may not be revoked after a period of two (2) years. The municipal judge is authorized to establish and operate a probation program, dispute resolution program, and other practices or procedures which are appropriate to the judiciary and designed to aid in the administration of justice. These programs which are established by the court must be filed with written policies and procedures with the clerk of the court.

Municipal judges are granted the power to expunge some misdemeanor convictions. The municipal judge in his sound discretion, may order the record of conviction of a person of any and all misdemeanors in that municipal court expunged where upon prior notice to the municipal prosecuting attorney and upon a showing in open court of rehabilitation, good conduct for a period of two (2) years since the last conviction in any courts and that the best interest of society would be served by doing so. When the record has been expunged, the affected person thereafter legally stands as though he had never been convicted of the misdemeanor(s) and may lawfully so

respond to any query of prior convictions. In addition, the municipal judge may expunge the record of any case in which an arrest was made, the person arrested was released and the case was dismissed, or the charges were dropped, or there was no disposition of the case.

The municipal judge in his sound judgement and discretion may take pleas of *nolo contendere* (no contest) to any charge in municipal court. When the plea of *nolo contendere* is made and is duly accepted by the municipal judge, the municipal judge shall convict the defendant of the offense charged and sentence the defendant in accordance with law. When a plea of *nolo contendere* is made, the judgement of the court will reflect that the plea was made and accepted by the court. Appeals may be made from a conviction on a plea of *nolo contendere* as in other cases.

The municipal judge has the discretion of issuing a citation instead of an arrest warrant. A citation is merely an order to the defendant to appear in court to answer the charge made against him without the requirement of bail. Should the defendant not appear in court as ordered, the municipal judge may issue an arrest warrant and require bail. Upon direction of the municipal judge, the clerk of the court or deputy clerk may issue citations.

The municipal judge has the power to make rules for the administration of the business of the court. Should the municipal judge order such rules of administration, the rules will be in writing and filed with the clerk of the court.

The municipal judge has the responsibility of maintaining dignified and orderly court proceedings and ensuring that the orders of the court are properly followed and executed. To aid him in these important duties, the Legislature has endowed him with sufficient contempt of court powers. Should contempt of court power be necessary, the municipal judge may impose a fine of not more than $1,000 or six (6) months imprisonment, or both, as punishment. The municipal judge also has the power to impose reasonable costs of court as specified by state law. However, no filing fee or similar cost may be imposed for the bringing of an action in municipal court.

In the event the municipal judge is prohibited from presiding over a case by the Canons of Judicial Ethics and provided that venue and jurisdiction are proper in the justice court, the municipal judge shall not dismiss the criminal case but may transfer the case to the justice court of the county. When a case is transferred, the municipal judge must provide the municipal court clerk a written order to transmit the affidavit or complaint and all other records and evidence in the court's possession to the justice court by certified mail or to instruct the arresting officer to deliver the documents and records to the justice court. When the municipal judge orders a transfer of a case to justice court, no court costs will be charged.[9]

The municipal judge is authorized, in his discretion, to impose intermittent sentences for misdemeanor convictions. The municipal judge may sentence a person so convicted to: (a) a period of time in jail to be served either on weekends only; (b) other periods of time during the week when the offender may not be engaged in gainful employment, or (c) a specified number of days in jail with a provision for the release of such offender for the purpose of engaging in gainful employment at such times as the offender is actually gainfully employed, whether self-employed or otherwise. The municipal judge, in his discretion, may sentence any convicted offender to split

[9]*Code*, § 21-23-7.

periods of incarceration. Additionally, the court is not required to order any offender to serve a sentence of imprisonment all in one period but may suspend the sentence from time to time.[10]

The Attorney General of the State of Mississippi has rendered several opinions regarding the powers and duties of the municipal judge. Municipal courts have jurisdiction to try defendants who have been charged with criminal violations of municipal ordinances, including municipal zoning ordinances.[11] Mississippi law places an affirmative duty upon the municipal court judge to conduct preliminary hearings where the crime occurs within the municipality; however, in the event the municipal judge is precluded by judicial canon or other recognized rule from conducting the preliminary hearing, the justice court judge of the county in which the crime occurred, acting as a conservator of the peace, would conduct the preliminary hearing.[12] Fees for appointed attorneys representing indigent defendants before the municipal court may not be imposed on the indigent defendants but the cost must be borne by the municipality.[13] A municipal court may suspend sentences on such conditions as it deems advisable, and may establish and operate probation programs, including the use of alternative sentencing programs which are administered by private companies.[14] The municipal court has authority to enforce its orders through contempt charges. An indirect contempt of court charge may be brought by the municipal prosecuting attorney. Due process including proper notice and hearing, must be provided to any individual charged with indirect contempt charges.[15] When tickets made by patrolmen, sheriffs or constables charging violations of state law are issued within a municipality, these tickets should be returned to justice court for disposition.[16] Because Mississippi law (*Code*, § 21-23-7) provides that the municipal judge has jurisdiction "to hear and determine, without a jury and without a record of testimony, all cases charging violations of the municipal ordinances and state misdemeanor laws," municipal court judges may hear false pretense or bad checks cases.[17] The imposition of a $0.50 assessment on those convicted of misdemeanor offenses to fund undercover drug investigations is not an "item of court cost."[18]

The imposition of a court cost under subsection (11) is within the discretion of the court.[19]

A traffic offense that has been dismissed, dropped, or has no disposition is eligible to be expunged under subsection (13), and this subsection is retroactive and applies to any case in municipal court that has been dismissed, dropped, or has no disposition regardless of the date the charges were filed.[20]

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[10]Ibid., § 21-23-20.
[11]Via, May 16, 1990, A.G. Op. #90-0329.
[12]McMillian, Aug. 29, 1990, A.G. Op. #90-0636.
[13]Moore, Oct. 26, 1990, A.G. Op. #90-0153.
[14]Maggio, June 26, 1996, A.G. Op. #98-0340.
[15]Gilfoy, October 11, 1996, A.G. Op. #96-0686.
[16] Brame, June 24, 1992, A.G. Op.#92-0451.
[17] Gorrell, Mar. 3, 1993, A.G. Op.#93-0086.
[18] Gregory, Mar. 2, 1994, A.G. Op.#94-0098.
[19] Lawrence, Feb. 9, 2001, A.G. Op. #2001-0052.
[20] Miller, Sept. 14, 2001, A.G. Op. #01-0570.

Under subsection (11), a court may impose an item of court cost that does not exceed $50.00 for the purpose of purchasing or expanding additional municipal court facilities and, similarly, may impose such a cost for the purpose of compensating court employees; however, the expenditure of any such costs collected must be appropriated by the municipal governing authorities.[21]

A dispatcher who takes original information from an incoming telephone call, thereby becoming a potential fact witness, may perform the administrative function of acknowledging or taking an officer's oath on a charging document that results from the situation.[22]

Although § 21-23-7 requires a complaint filed in municipal court to state the statute or ordinance relied upon, the Uniform Traffic Ticket statute constitutes an exception thereto for traffic violations.[23]

A municipal judge may set a standard assessment under § 21-23-7(11), the proceeds of which could be used for the purchase of a computer.[24]

A municipality may pay a constable for service of a municipal court warrant and then charge the cost of that fee to the defendant upon a conviction.[25]

A constable may not be paid mileage simply for serving a warrant, however, a municipality may pay a constable a mileage fee as warranted by § 25-7-27 (1)(c); the municipal court is limited by § 21-23-7(11) when imposing such mileage reimbursements as a cost of court to the defendant upon conviction.[26]

Subsection (7) of this section specifically excludes traffic violations, and therefore said law is not applicable to DUI convictions under § 63-11-30.[27]

A state misdemeanor charge may be enforced in municipal court as a violation of city ordinance. However, a highway patrolman, sheriff, or constable has no jurisdiction to enforce city ordinances, and must enforce the state misdemeanor laws in justice court even if the offense occurred within the city limits.[28]

A municipal court judge has the authority to issue restraining orders, protective orders, and similar orders to enforce its decisions in domestic violence cases heard by the court. A municipal court, otherwise, may only use contempt to enforce its orders. [29]

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[21] Payne, Mar. 15, 2002, A.G. Op. #02-0110.
[22] Holland, Apr. 5, 2002, A.G. Op. #02-0158.
[23] Gilfoy, Oct. 25, 2002, A.G. Op. #02-0613.
[24] Gilfoy, Nov. 1, 2002, A.G. Op. #02-0630.
[25] Ringer, Feb. 21, 2003, A.G. Op. #03-0074.
[26] Ringer, Feb. 21, 2003, A.G. Op. #03-0074.
[27] Livingston, Sept. 3, 2004, A.G. Op. 04-0417.
[28] Ringer, Sept. 24, 2004, A.G. Op. 04-0468.
[29] Collins, Jan. 15, 2005, A.G. Op. 04-0635.

Policemen acting in their capacity as employees of a city must use traffic tickets issued by that city and identifying that city's municipal court as the court hearing the cause. Any tickets issued by the sheriff's office, constables, or highway patrolmen should be issued on tickets identifying respective departments and heard by justice court.[30]

A traffic ticket that contains the information set forth in § 63-9-21 constitutes a "sworn affidavit" as referred to in § 21-23-7(1) when the officer who issues the ticket has it properly attested and filed with the proper court; a criminal affidavit can be acknowledged by any person authorized by law to administer oaths and this would include a court clerk or deputy court clerk from another jurisdiction or a notary public.[31]

A municipality may enter into an agreement with a constable to serve municipal warrants in the county and the constable's service fee may be collected as an item of court cost pursuant to § 21-23-7(11). There is no authority to add the constable's fee to the bond on each warrant.[32]

A ticket/citation for non-traffic misdemeanors must be in the form of an affidavit (uniform traffic citation) and must state the essential elements of the offense charged and include the ordinance or statute relied upon.[33]

A municipal court may establish and operate probation programs including the use of alternative sentencing programs, including house arrest administered by private companies, and the court may order the defendant to pay costs to the third party for such monitoring and may authorize the use of monitoring bracelets.[34]

The municipal judge has the judicial duty of setting the amount of bail for persons charged with offenses in municipal court and may approve the bond or recognizance therefore. In some instances, the municipal judge may not be available and has not previously provided a bail schedule or otherwise provided for the setting of bail. In this situation, it is lawful for any officer or officers designated by the municipal judge to take bond, cash, property, or recognizance, with or without sureties, in an amount to be determined by the officer, of not less than Fifty Dollars ($50.00) nor more than One Thousand Dollars ($1,000.00), payable to the municipality and conditioned for the appearance of the person on the return day and time of the writ before the court before whom the warrant is returnable, or in cases of arrest without a warrant, on the day and time set by the court or officer for arraignment, and there remain from day-to-day and term-to-term until discharged. Any and all bonds are to be promptly returned to the court, along with any cash deposited, and be filed and proceeded on by the court in a case of forfeiture. Approval of bonds or recognizances may be accomplished by the chief of the municipal police or a police officer or officers designated by order of the municipal judge.

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[30] Bush, Jan. 14, 2005, A.G. Op. 04-0641.
[31] Aldridge, Apr. 1, 2005, A.G. Op. 05-0111.
[32] Redmond, Aug. 26, 2005, A.G. Op. 05-0447.
[33] Clark, Oct. 27, 2006, A.G. Op. 06-0524.
[34] Bruni, Dec. 15, 2006, A.G. Op. 06-0608.

Should a defendant, prosecutor, or witness fail to comply with the terms of his bond or recognizance, the municipal judge may, at any time after default is made, enter *judgement nisi*[35] against the obligor and his sureties on the bond or recognizance, and may issue a *scire facias*[36], which would be returnable to a day and time in the future sufficient to allow five (5) days service of process. When the return of the service of the *scire facias* is accomplished or upon the return of two (2) writs of *scire facias* by a law officer of the municipality or county where the bonds or recognizance were entered into "not found," judgement may be absolute, unless a sufficient showing to the contrary be made to the court at the return time of the *scire facias* and the judgement may be entered on the judgement roll of any county by filing an abstract for execution as in other judgements or in case of willful refusal to pay the amount in default. The defaulting party may be cited for contempt of court and punished according to law for the default.[37]

Guidelines for judges to use in determining the amount of bail are set forth in Clay v. State, 757 So.2d 236 (Miss. 2000).[38] The factors to consider include:

- Defendant's length of residence in the community;
- His employment status and history and his financial condition;
- His family ties and relationships;
- His reputation, character and mental condition;
- His prior criminal record, including any record of prior release on recognizance or on bail;
- The identity of responsible members of the community who would vouch for the defendant's reliability;
- The nature of the offense charged and the apparent probability of conviction and the likely sentence, insofar as these factors are relevant to the risk of non-appearance; and
- Any other factors indicating the defendant's ties to the community or bearing on the risk of willful failure to appear.

THE MUNICIPAL JUDGE PRO TEMPORE

The municipal judge pro tempore is a temporary substitute for the municipal judge when the municipal judge is unable to perform his duties because of sickness, conflict of interest, absence, or similar reasons. The governing authorities in any municipality where a municipal judge is appointed have the power and authority to appoint a municipal judge pro tempore. The municipal judge pro tempore has the same powers and qualifications for the office of municipal judge as the municipal judge. The municipal judge pro tempore shall perform all the duties of the municipal judge in the absence of the municipal judge.

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[35] A judgement that will take effect unless the person against whom it is issued comes to court to show cause why it should not take effect.
[36] A judge's command to a person to come to court and explain why a record in that person's possession should not be wiped out.
[37] *Code*, § 21-23-8.
[38] Starling, Sept. 26, 2003, A.G. Op. 03-0521.

When a municipal judge pro tempore is not appointed, is absent, or for any reason is unable to serve, any justice court judge of the county or any municipal judge of another municipality may serve in his place with the same power and authority upon designation by the municipal judge.[39]

A justice court judge does not have authority to sign a municipal court warrant unless that justice court judge has been appointed to serve as the municipal court judge.[40]

A municipal court judge has the authority to appoint a justice court judge of the county or a municipal court judge of another municipality to serve in his place in the event the municipal court judge and the municipal court judge pro tempore are unavailable. A justice court judge so appointed would have the same power and authority as the municipal court judge, including the authority to execute warrants. The justice court judge would be entitled to compensation in the same manner and amount as the municipality provides for the appointed or elected municipal judge who is absent; there is no authority to pay the justice court judge a separate fee for each warrant executed.[41]

THE MUNICIPAL PROSECUTING ATTORNEY

The municipal prosecuting attorney, a member of the executive branch of government, is the municipal official who represents the interests of the municipality in all proceedings before the municipal court. The municipal prosecuting attorney is appointed by the governing authorities of the municipality at the time provided for the appointment of other municipal officers. The municipal prosecuting attorney shall receive a salary which is to be fixed and paid by the governing authorities of the municipality. Should the municipal prosecuting attorney have a conflict of interest which arises in any proceeding before the municipal court or any other reason requires that he recuse himself, and then the mayor of the municipality may appoint a special prosecuting attorney for that particular proceeding. The special prosecuting attorney is compensated for his services in the same manner as for appointed attorneys-at-law for indigent persons.[42] A municipal court judge may make a temporary appointment of a municipal prosecuting attorney until such time as the municipal prosecuting attorney is appointed in accordance with § 21-23-5, and any compensation of such appointee shall be set by the city council.[43]

THE EXECUTIVE OFFICER OF MUNICIPAL COURT

The executive officer of municipal court is the marshal or chief of police of the municipality. His duties include attending the proceedings of municipal court in person or by duly appointed deputies. The executive officer is under the direction of the municipal judge.

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[39] Starling, Sept. 26, 2003, A.G. Op. 03-0521.
[40] Adams, Aug. 1, 2003, A.G. Op. 03-0368.
[41] Sorrell, Mar. 12, 2004, A.G. Op. 04-0101.
[42] Op. cit., Note 6.
[43] Jordan, Aug. 24, 2006, A.G. Op. 06-0414.

An *ex officio* deputy marshal may be any police officer of the municipality. It is the duty of the marshal or chief of police to execute all process by himself or by his deputies and perform other duties which may be required of him by the municipal judge in the line of his duty.[44]

THE CLERK OF THE MUNICIPAL COURT

The clerk of the municipal court is the clerk of the municipality (city clerk), unless the governing authorities otherwise elect. The duties of the clerk are many and varied. The clerk must attend the sittings of the court in person or by properly appointed deputies. The clerk is under the direction of the municipal judge. As authorized by law, the governing authorities may authorize the municipal judge to appoint other municipal employees as deputy court clerks to assist the clerk of the court in the conduct of the responsibilities of the court, or the governing authorities may appoint deputy clerks of the court. The appointment of deputy clerks of the court and/or the authorization to appoint them will be entered in the minutes of the municipality. The clerk of the court or a deputy clerk of the court may be a police officer of the municipality. The training of court personnel is the responsibility of the governing authorities of the municipality. Among the duties of the clerk of the court is the requirement to keep and maintain permanent dockets upon which all cases shall be entered. The dockets must contain the style of the case and the nature of the charge against the defendant, and the names of witnesses for the prosecution and the defense. A minute record is also required to be maintained by the clerk of the court in which all court orders and judgements are entered. The same record may serve as both the docket record and the minute record. The clerk of the court is responsible for the issue of all process from the court, except arrest warrants or process for the seizure of persons and property. Also, the clerk of the court has the duty of administering the collection of all fines, penalties, fees, and costs which are imposed by the municipal court and deposit all collections with the municipal treasurer. The responsibilities of the municipal court clerk include the purchase of dockets, minute records, and other supplies for the municipal court; the account must be approved by the municipal judge. The clerk of the court and deputy clerks of the court have the authority to take acknowledgments, administer any oaths required by law to be taken by any person, and take affidavits which may charge any crime against the municipality or the state.

Should the municipal judge be unavailable, persons charged with the commission of misdemeanor violations within the municipality may be brought before the clerk of the court for initial appearances. As required by the Mississippi Uniform Criminal Rules of Circuit Court Practice, this can occur when the clerk of the court has satisfactorily completed a course of training and education on the subject of initial appearances (conducted by the Mississippi Judicial College of the University of Mississippi Law Center) and when the municipal judge has established written guidelines and procedures for the clerk of the court to discharge this duty.[45]

Mississippi law requires every individual appointed as the clerk of the municipal court to attend and complete a comprehensive course of training and education conducted or approved by the Mississippi Judicial College of the University of Mississippi Law Center. Beginning with the first training seminar conducted after the clerk is appointed, the clerk is required to attend. The course consists of at least twelve (12) hours of training per year. A certificate of completion is furnished

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[44] *Code*, § 21-23-13.
[45] *Code*, § 21-23-13.

to the clerks of municipal court who satisfactorily complete the course, and each certificate is to be made a permanent record of the minutes of the board of aldermen or city council in the municipality from which the municipal clerk is appointed. Should the person appointed as clerk of the municipal court fail to file the above certificate of completion within the first year of appointment, such person is not then allowed to carry out any of the duties of the office of clerk of the municipal court and shall not be entitled to compensation for the period of time during which the certificate remains unfiled.[46]

The intent of the Legislature is that a municipal court clerk is required to receive at least 12 hours of training and education each year; the clerk must receive 12 hours of training within the first year of being appointed as clerk and then receive an additional 12 hours of training on an annual basis; if a clerk receives more than the required 12 hours of training in one year, up to six of those hours may be carried forward to be applied to the next year's requirement.[47]

Failure of a municipal court clerk to receive required training prohibits the clerk from performing any of the duties of the job and from receiving any compensation until training is completed; upon finding that the statute has not been complied with, the governing authorities should suspend the clerk without pay until the clerk complies with the requirements, and continued payments to an unqualified clerk should be reported to the State Auditor.[48]

Records of the municipal court are public records and must be provided to the governing authorities, if requested. [49]

Operation of the municipal court, of whatever nature, is under the auspices and control of the municipal judge.[50]

The municipal judge directs the clerk's attendance upon the court.[51]

Neither the municipal judge, the marshal or chief of police, or any police officer, or any other officer, shall receive any fees or costs in any case in the municipal court. Court officers shall not receive fees or costs.[52]

DISPOSITION OF MOTOR VEHICLE AND TRAFFIC OFFENSES

Mississippi law provides that traffic violations under Title 63 of the *Mississippi Code* are misdemeanors. Persons convicted of traffic violations for which penalties are not otherwise provided shall be punished by a fine of not more than $100.00 or by imprisonment for not more than ten (10) days; for a second such conviction within one (1) year thereafter, the offender shall

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[46] Ibid., § 21-23-12.
[47] Kossman, Mar. 9, 2001, A.G. Op. #01-0133.
[48] Kossman, Mar. 9, 2001, A.G. Op. #01-0133.
[49] Smith, Mar. 3, 2006, A.G. Op. 06-0066.
[50] Smith, Mar. 3, 2006, A.G. Op. 06-0066.
[51] Smith, Mar. 3, 2006, A.G. Op. 06-0066.
[52] Ibid., § 21-23-15.

be punished by a fine of not more than $200.00 or by imprisonment for not more than twenty (20) days or by both such fine and imprisonment; and upon a third or subsequent conviction within one (1) year after the first conviction, the offender shall be punished by a fine of not more than $500.00 or by imprisonment for not more than 6 months or by both such fine and imprisonment.[53] As stated above, violations of duly passed municipal ordinances provide punishment for fines up to $1,000.00 or imprisonment not exceeding ninety (90) days, or both.

It is the responsibility of the clerk of the municipal court to keep and maintain a full record of the proceedings of every case in which a person is charged with any violation of law regulating the operation of vehicles on the highways, streets, or roads of the state. Unless otherwise provided by law, within forty-five (45) days after the conviction of a person upon a charge of violating any law regulating the operation of vehicles on the highways, streets, or roads of the state, the clerk of the municipal court in which such conviction was had shall prepare and immediately forward to the Department of Public Safety an abstract of the record of the court covering the case in which the person was convicted. The abstract must be certified by the person so authorized to prepare it to be true and correct. The abstract must be made on the form approved by the Department of Public Safety and include the name and address of the party charged, the registration number of the vehicle involved, and if the fine was satisfied by prepayment or appearance bond forfeiture, and the amount of the fine or forfeiture. The failure by refusal or neglect of any judicial officer to comply with any of the above stated requirements is misconduct in office and is grounds for removal.[54]

All clerks of the municipal court are responsible for overseeing the administration of the Uniform Traffic Ticket Law. State law provides that all traffic tickets be printed in the original and at least two (2) copies and such other copies as may be prescribed by the Commissioner of Public Safety. All traffic tickets must be uniform as prescribed by the Commissioner of Public Safety and the Attorney General, except for violations of the Mississippi Implied Consent Law which are required to be separate and uniform in form throughout all jurisdictions in the State of Mississippi. The Commissioner of Public Safety and the Attorney General may alter the form and content of traffic tickets to meet the varying jurisdictions of the different law enforcement agencies.

All traffic tickets are to be bound in book form, be consecutively numbered, and be accounted for by the officer issuing the ticket book. For municipalities, the traffic ticket book is issued to each municipal police officer by the clerk of the municipal court. The clerk of the municipal court is responsible for keeping a record of all traffic ticket books issued and to whom issued and accounting for all books printed and issued.

The original traffic ticket is delivered by the police officer issuing the traffic ticket to the clerk of the municipal court and there retained in the records of the court and the number noted on the docket. The officer issuing the traffic ticket must give the accused a copy of the traffic ticket. The clerk of the municipal court shall file a copy with the State Auditor within forty-five (45) days after judgement is rendered showing the amount of the fine and cost or in cases where no judgement has been rendered, within one hundred twenty (120) days after issuance of the ticket.

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[53] Ibid., § 63-9-11.
[54] Smith, Mar. 3, 2006, A.G. Op. 06-0066, § 63-9-17.

All copies must be retained for at least two (2) years. Clerks of municipal courts are mandatorily required to comply with these provisions and failure to so comply is a misdemeanor which is punishable by a fine of not less than Ten Dollar ($10.00) nor more than One Hundred Dollars ($100.00).[55]

In all cases involving any violations of traffic or motor vehicle laws in municipal court, where the person has been issued a traffic ticket and desires to waive a trial and not appear in court to defend the charge, in the discretion of the court, the amount of the fine may be paid in advance to the clerk of the municipal court. In this event, when the fine is paid in advance, the individual cited must be notified by language plainly printed on the traffic ticket of their right to a trial and the consequences of the voluntary advance payment of the fine. In cases in which formal charges have been made and the individual who has charges has been notified to appear in municipal court on a certain date and time, the clerk of the municipal court is authorized to accept a cash appearance bond not to exceed the amount of the fine, conditioned upon the appearance of the charged individual at the certain date and time in municipal court. In the event of default where the individual does not appear in municipal court at the certain date and time, the cash bond may be forfeited in payment of any judgement in the case in an amount not to exceed the amount of the bond. In these types of forfeiture cases, the judgement is final without the necessity of *judgement nisi* and the issuance of the writ of *scire facias*. After notice of their rights when an individual issued a citation pays a fine in advance, this constitutes a waiver of formal charge, arraignment, and trial. In these cases and in cases of default on appearance bonds, the action is tantamount to an entry of a plea of *nolo contendere* by such individual and the court may, upon the advance payment of the fine or the default on the appearance bond, convict the individual of the offense charged on the traffic ticket or formal charges without further appearance by the individual so charged. The conviction is reported to the Commissioner of Public Safety as required by law. It is not necessary to enter these types of traffic ticket cases in the municipal court docket. However, the above forfeiture provisions in non-appearance cases do not apply to charges which require mandatory imprisonment upon conviction or to repeat offenders where a sentence of imprisonment is likely to be imposed.[56] In addition to the reporting requirements relating to traffic violations, the clerk of the municipal court has reporting requirements for non-traffic misdemeanors to the Mississippi Justice Information Center.[57] When an individual is convicted of a misdemeanor and/or for whom an arrest warrant has been issued for a misdemeanor involving burglary tools, commercial gambling, dealing in gambling devices, contributing to the delinquency of a child, dealing in stolen property, dangerous drugs, marijuana, narcotics, firearms, dangerous weapons, explosives, pandering, prostitution, sex offenses where children are victims, fraud, or false pretenses, the clerk of the municipal court must report this information to the Mississippi Justice Information Center.[58] Also, the clerk of the court must supply[59] certain information to the Center relating to arrest warrants and promptly report all cases where records of convictions of criminals are ordered expunged by the municipal court.[60]

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[55] Ibid., § 63-9-21.
[56].§ 21-23-17.
[57] Ibid., § 45-27-3.
[58] Ibid., § 45-27-7.
[59] Ibid., § 45-27-9(4).
[60] Ibid., § 45-27-9(10).

§ 63-9-21. Uniform Traffic Ticket Law

(1) This section shall be known as the Uniform Traffic Ticket Law.

(2) All traffic tickets, except traffic tickets filed electronically as provided under subsection (8) of this section, shall be printed in the original and at least two (2) copies and such other copies as may be prescribed by the Commissioner of Public Safety. All traffic tickets shall be uniform as prescribed by the Commissioner of Public Safety and the Attorney General, except as otherwise provided in subsection (3)(b) and except that such state officers may alter the form and content of traffic tickets to meet the varying requirements of the different law enforcement agencies. The Commissioner of Public Safety and the Attorney General shall prescribe a separate traffic ticket, consistent with the provisions of subsection (3)(b) of this section, to be used exclusively for violations of the Mississippi Implied Consent Law.

(3) (a) Except as otherwise provided in paragraph (b) of this subsection, every traffic ticket issued by any sheriff, deputy sheriff, constable, county patrol officer, municipal police officer or State Highway Patrol officer for any violation of traffic or motor vehicle laws shall be issued on the uniform traffic ticket consisting of an original and at least two (2) copies and such other copies as may be prescribed by the Commissioner of Public Safety.

(b) The traffic ticket, citation or affidavit which is issued to a person arrested for a violation of the Mississippi Implied Consent Law shall be uniform throughout all jurisdictions in the State of Mississippi. It shall contain a place for the trial judge hearing the case or accepting the guilty plea, as the case may be, to sign, stating that the person arrested either employed an attorney or waived his right to an attorney after having been properly advised of his right to have an attorney. If the person arrested employed an attorney, the name, address and telephone number of the attorney shall be written on the ticket, citation or affidavit.

(c) Every traffic ticket shall show, among other necessary information, the name of the issuing officer, the name of the court in which the cause is to be heard, and the date and time such person is to appear to answer the charge. The ticket shall include information which will constitute a complaint charging the offense for which the ticket was issued, and when duly sworn to and filed with a court of competent jurisdiction, prosecution may proceed thereunder.

(d) The traffic ticket shall contain a space to include the current address and current telephone number of the person being charged. It shall not contain a space to include the social security number of the person being charged; this provision does not affect the right a person may have under other law to use the person's social security number as the person's driver's license number.

(4) All traffic tickets, except traffic tickets filed electronically under subsection (8) of this section, shall be bound in book form, shall be consecutively numbered and each traffic ticket shall be accounted for to the officer issuing such book. Said traffic ticket books shall be issued to sheriffs, deputy sheriffs, constables and county patrol officers by the chancery

clerk of their respective counties, to each municipal police officer by the clerk of the municipal court, and to each State Highway Patrol officer by the Commissioner of Public Safety.

(5) The chancery clerk, clerk of the municipal court and the Commissioner of Public Safety shall keep a record of all traffic ticket books issued and to whom issued, accounting for all books printed and issued. All traffic tickets submitted electronically shall be filed automatically with the Commissioner of Public Safety and either the clerk of the municipal court or clerk of the justice court using the system of electronic submission for the purpose of maintaining a record of account as prescribed by the subsection (5).

(6) The original traffic ticket, unless the traffic ticket is filed electronically as provided under subsection (8) of this section, shall be delivered by the officer issuing the traffic ticket to the clerk of the court to which it is returnable to be retained in that court's records and the number noted on the docket. However, if a ticket is issued and the person is incarcerated based upon the conduct for which the ticket was issued, the ticket shall be filed with the clerk of the court to which it is returnable no later than 5:00 p.m. on the next business day, excluding weekends and holidays, after the date and time of such incarceration. The officer issuing the traffic ticket shall also give the accused a copy of the traffic ticket. The clerk of the court shall file a copy with the Commissioner of Public Safety within forty-five (45) days after judgment is rendered showing the amount of the fine and cost or, in cases in which no judgment has been rendered, within one hundred twenty (120) days after issuance of the ticket. Other copies that are prescribed by the Commissioner of Public Safety pursuant to this section shall be filed or retained as may be designated by the Commissioner of Public Safety. All copies shall be retained for at least two (2) years.

(7) Failure to comply with the provisions of this section shall constitute a misdemeanor and, upon conviction, shall be punishable by a fine of not less than Ten Dollars ($ 10.00) nor more than One Hundred Dollars ($ 100.00).

(8) (a) Law enforcement officers and agencies may file traffic tickets, including tickets issued for a violation of the Mississippi Implied Consent Law, by computer or electronic means if the ticket conforms in all substantive respects, including layout and content, as provided under subsection (2) or (3)(b) of this section. The provisions of subsection (4) of this section requiring tickets bound in book form do not apply to a ticket that is produced by computer or electronic means. Information concerning tickets produced by computer or electronic means shall be available for public inspection in substantially the same manner as provided for the uniform tickets described in subsection (2) of this section.

(b) The defendant shall be provided with a paper copy of the ticket. A law enforcement officer who files a ticket electronically shall be considered to have certified, signed and sworn to the ticket and has the same rights, responsibilities and liabilities as with all other tickets issued pursuant to this section.

An individual, who is not a municipal police officer, may file an affidavit with the municipal court charging another individual with a traffic offense that occurred within the municipal limits. A uniform traffic ticket need not be used in such a circumstance.[61]

A traffic citation must indicate the title of the individual acknowledging the citation in order for it to be properly sworn to; however, if the lack of "title" is raised, the court may allow the citation to be amended to reflect the proper title of the one administering the oath.[62]

DISPOSITION OF PARKING VIOLATIONS

Mississippi law does not make it necessary to name any person in a traffic ticket issued for a violation relating to the parking of vehicles. A traffic ticket attached to the unlawfully parked vehicle is sufficient to require that the operator who unlawfully parked the vehicle appear in municipal court at the time stated in the traffic ticket. Should the name of the operator of an unlawfully parked vehicle be unknown, the owner of record of the unlawfully parked vehicle is, as a matter of law, presumed to be the operator of the vehicle and may be charged with the parking violation. In the event the operator or owner of the unlawfully parked vehicle fails to appear in court in response to the traffic ticket, the owner or operator shall not be arrested, except on affidavit and issuance of an arrest warrant. It is not necessary for the clerk of the municipal court to enter parking violation cases on the municipal court docket or to enter a final judgment in the minute book of the court, unless an arrest warrant has been issued.[63]

A private contractor hired by a municipality to operate public parking may not issue traffic tickets or citations. A city could authorize the contractor to immobilize or tow illegally parked vehicles if requested by law enforcement.[64]

Issuance of parking tickets is an exercise of the municipality's essential power to police the conduct of its citizens and cannot be delegated to a private contractor.[65]

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[61] Sorrell, May 21, 2004, A.G. Op. 04-0220.
[62] McClellan, Apr. 21, 2006, A.G. Op. 06-0103.
[63] McClellan, Apr. 21, 2006, A.G. Op. 06-0103.
[64] Kohnke, May 27, 2005, A.G. Op. 05-0186.
[65] Kohnke, May 27, 2005, A.G. Op. 05-0186 affirmed. Kohnke, Feb. 23, 2006, A.G. Op. 05-0343.

CHAPTER SEVENTEEN

INFORMATION TECHNOLOGY

Mariah L. Smith

As stated in previous chapters, the various offices and departments that fall under the umbrella of city government are integral to the public's overall image of their local city government as well as providing an access point for citizens to interact with their elected officials. For most in city government, they assume the role with the understanding that they will be responsible for such day-to-day activities as record keeping, financial management, and issuance of commercial business licenses to name but a few. However, most are not prepared to deal with the onslaught of technology related options that await them as they look to transform their office from pen and paper to a digital, on-line work place.

This is particularly true in a State like Mississippi where much of the population lives in rural towns or cities of less than 10,000 people. In this environment the city faces a difficult juxtaposition between meeting the needs of rural Mississippians and using modern technology to transform its offices to meet future demands. According to the, "State New Economic Index," roughly 17% of all Mississippians have access to the Internet which puts Mississippi last in the nation (2010). This too, poses significant problems as municipal offices discover they have greater access to technology than their constituents. This chapter will seek to provide an overview of information technology related issues that city governments may face as they go about their duties. However, it should be noted that the information outlined is only intended to be a source of educational information and should not be acted upon without consulting the city's information technology group.

EQUIPPING THE LOCAL CITY GOVERNMENT OFFICE

Many municipal government offices face technology related obstacles from the beginning of their tenure because they have inherited the technology left them by their predecessor. They may walk into an office with various models of computers, numerous software packages, outdated dot-matrix printers and scanners that no longer scan. There is an old adage that says, "An ounce of prevention is worth a pound of cure." While normally applied to our day-to-day lives, the maxim also holds true when it comes to technology. Technology in an office will only run as well as the people that implement and maintain it. Implementing a well-thought out technology hardware plan for the office is crucial to establishing a cohesive infrastructure.

To begin, first take a careful inventory of the all computers, monitors, printers, scanners, cameras, and software utilized in the office. Pay careful attention to any software that requires a specific operating system to run. The operating system, or OS as it is sometimes referred to, provides the graphical interface from which the clerk can use a mouse to control the computer. If there were no operating system, the user would need to employ programming commands to control the computer which would be very time intensive. The operating system provides the point and click icons (such as My Computer, My Documents, Save, etc.) that most users are familiar with. However, many old record keeping databases utilized in the city clerk's office for

example, may only work with older operating systems such as Windows 98, Windows 2000, or Windows XP. While there may be money allotted to upgrade computer hardware in an office it will do little good if the software programs are unable to run with newer operating systems (such as Windows 7 or Windows 8).

After a careful inventory has been completed, rank the equipment in order from oldest to newest. Remember to bundle equipment that goes together; for example software to keep up with homestead filings, dot-matrix printers and a Windows 98 operating system would all go together, and make other plans for how that work will be distributed when new computers and operating systems are deployed. For example, if the oldest computer in the office is running Windows 98 and has a scanner attached to it and it is decided that the computer should be replaced first, the scanner will most likely not work on a brand new computer running a Windows 7 operating system. Thus, both the computer and scanner will need to be replaced.

PURCHASING HARDWARE

When purchasing computer hardware for the office there are three options; a desktop computer, a laptop computer, or a netbook. Most municipal offices will find that a desktop computer suits their needs more aptly than either a laptop or netbook. Desktop computers are also known as towers, boxes, or CPU's (Central Processing Units). Desktop computers are a great choice if the computer is stationary. They are generally cheaper than a laptop and much more durable. Additionally, they are faster than their laptop counterparts and much easier to repair. Simply stated, desktops provide more computer for the money spent and they are better able to handle multiple software programs running at the same time. However, if the job of the city government employee requires a great deal of traveling, a laptop computer should be a consideration for the office.

When purchasing computers keep the following in mind: Most computers on the market today come with at least a 500 GB (Gigabyte) hard drive. A 500 GB hard drive is fine for the everyday user. The next size up is 1000 GB or, as it is also known, 1 TB (Terabyte). Many manufacturers are choosing to market their computers with 1000 GB rather than 1 TB because 1000 GB makes the consumer think they are getting more for their money. Manufacturers will try to save money or reduce the cost of the computer by lowering the amount of memory in the computer. Memory or RAM (Random Access Memory), as it is also called, is a key determinant in how fast the computer retrieves and processes information. More RAM equals a faster computer. If a computer in the office will be handling large amounts of images (land images, document scanning, etc.) it is important to invest in as much hard drive and RAM capacity as can be afforded.

The 5 most critical areas to look at when purchasing a computer are:

- The size of the hard drive (500 GB to 1 TB)
- The amount of memory (3 GB to 8 GB)
- The CD-ROM and/or DVD-ROM (most computers do not come with floppy drives anymore)

- The software such as the Operating System (Windows 7), anti-virus, etc.
- The warranty or support which comes with the computer.

PURCHASING SOFTWARE

When purchasing a computer from the manufacturer, it should come with an Operating System. The current operating systems are Windows 7 and Windows 8. Most users will also need to purchase a copy of Microsoft Office. Office editions of Microsoft Office include Word, PowerPoint, and Excel. Publisher and Access are both available in the Business/Professional version in addition to the other programs and cost around $250. If the budget does not allow for the purchase of Microsoft Office, a program called Open Office can be downloaded for free (also known as Libre Office). Open Office is similar to Microsoft and comes with a word processor, spreadsheet, and presentation software that is compatible with Microsoft Office. Open Office can be downloaded from *www.openoffice.org*.

In addition to the operating system and office system, an antivirus program should be required for all computers in the office. Both Norton (also known as Symantec) and McAfee sell an antivirus program for around $40. No computer should be on the Internet without anti-virus protection. A free anti-virus program called AVG Anti-Virus can be downloaded from *www.avg.com*.

MAINTAINING HEALTHY COMPUTERS

Technology is an incredible tool when it works...when it doesn't, that's another matter all together. Replacing a computer can cost anywhere from $500 to $1500 depending on the technical specifications of the computer. Computer repair (when you can find someone to do it) can take anywhere from 1 day to 2 weeks depending on the repair shop chosen. An average repair shop may charge as much as $125 to reload a computer (reload means that they format the hard drive which deletes everything on the computer and reload the operating system) but no attempt is made to recover your data. The average repair time is 3-6 days. If the technician attempts to save office data, it will cost on average $175, with no guarantees and the wait time could be anywhere from 6-10 days.

Aside from replacing computers or having them repaired, dealing with a computer that is running slow is enough to make most users bang their heads against the desk in frustration. However, most computer problems can be avoided by following 10 simple steps that any user can follow. Computers are not malicious by nature. They simply do or don't do, what they are asked to do by the user. Bottom line, the health of the computer's in the city government office is a reflection of office personnel and their computer habits. Listed below are ten simple steps personnel can follow to ensure the health of their computer:

Run Anti-Virus Software Weekly

No computer should be on the Internet without anti-virus protection. Anti-virus software works in two different ways depending on the software. The first method uses a virus dictionary. This method uses a dictionary of known viruses to detect infected files. Any time a new file is opened it compares that file to known files listed in the virus dictionary. If the opened file is found in the dictionary the software may then delete or quarantine the file. The virus dictionary must be updated often to keep the dictionary up to date with the latest virus definitions. The second method monitors all computer programs looking for suspicious behavior. Once the computer identifies the suspicious behavior, it alerts the user to the behavior and asks the user what they would like for the software to do.

Some examples of anti-virus software are Symantec/Norton, McAfee, and AVG-Antivirus. All anti-virus programs can be set to update automatically. However, if a virus, Trojan or spyware infect your computer it can cause the anti-virus program to quit updating. If the computer is running slow or acting oddly, check to make sure the anti-virus software is current or that it will do a manual update. This is a quick way to determine if something serious is going on with the computer. The first thing a virus will attack is the anti-virus software. If it can disable the ant-virus software, it can install more malicious software on the computer.

If a computer contracts a virus, it should be removed from the network immediately. The computer can be booted in safe mode and anti-virus software run to see if the software can capture the virus. If it cannot quarantine the virus in safe mode, the best option is to have the computer reloaded. Occasionally, "patches" can be run to quarantine and remove the virus, however viruses by nature leave "back-doors" open on the computer so they can re-infect the computer at a later point in time. A reload removes the possibility of the virus having a "back door."

Run Windows Critical Updates Bi-Weekly

The Microsoft Windows Operating System is the most widely used operating system in the world. Thus, many hackers try to write software programs that attempt to harm computers that use it. When Microsoft discovers vulnerabilities in its Operating System, the company releases a 'patch' to update the operating system and protect it from rogue hackers. Check for Windows Critical Updates bi-weekly. To check, open Internet Explorer and left-click on the Tools button. In the drop down menu that appears left-click Windows Update. In the Update screen, left-click Express and follow the on-screen prompts to update Windows, it is a good idea to reboot the computer once the update is finished.

Delete Internet Cookies

A cookie, also known as a tracking cookie, stores small pieces of information on the computer every time a website is visited. Most cookies are helpful and can assist in performing tasks quickly, however some cookies are harmful. They can store corrupt information and cause problems when trying to retrieve information from the web.

Whether good or bad, the fact remains that every time a computer goes online, it is acquiring cookies. Over time thousands of cookies are accumulated on the computer which slows the computer down. Deleting cookies once a month is a great way to help keep the office computers running smoothly.

To delete cookies, simply open Internet Explorer and left-click on Tools. Left-click Internet Options. In the Internet Options Window, locate browsing history and left-click the delete button. Left-click Delete Cookies.

Deleting Temporary Internet Files

Every time a computer visits a website it stores a copy of the images and frames for the website on the computer. It stores the website frames and images on the computer so that the next time the computer visits the website it will load more quickly. The only problem with that occurs if the computer launches a website with a virus or spyware on it. The rogue website is also be saved to the computer. If the computer has pop-ups appear on the screen for no apparent reason, there is a good chance it is due to an infected website that is stored in the temporary Internet Files. Deleting the temporary Internet files once a month or after viewing a suspicious website is an easy way to speed up the computer and prevent infection.

To delete temporary Internet files open Internet Explorer and left-click on Tools. In the drop down menu left-click Internet Options. In the Internet Options window locate browsing history and left-click the delete button. Left-click Delete Files. It may take several minutes to finish if this process has not been done recently.

Position the Computer Appropriately

Computers can get very hot. Computers have two fans that run constantly to help circulate air through the computer. One fan sits directly on the processor and the other fan sits at the back of the computer. The processor or central processing unit is the “brain of the computer” and processes information from the hardware to the software and back again. If the computer gets too hot it will overheat and literally fry the motherboard.

Before it gets to that point, however, there will be a noticeable decline in the computer’s performance. Make sure that there is at least six inches of space at the front of the computer and the back of the computer so that the fans can draw cool air into the computer to keep it from getting too hot.

Run Disk Defragmentation

Disk defragmentation is an utility software that organizes all of the software and files on the computer. It helps the computer find information faster so that it can retrieve it faster. Run disk defragmenter every time a software program is added or removed. To run disk defragmenter, double left-click on the My Computer icon on your desktop. Next, double left-click on the C: Drive. In the C: Drive left-click Search. Search for Disk Defragmenter. Once it appears (it is a standard program on all computers, it comes with the operating system), double left-click on it. Left-click Defragment. It may take 30 minutes to an hour to complete. When it is finished, it will display a window that says View Report. Review the report or simply close out of it.
Do NOT run Disk Defragmenter on SSD (Solid State Drive). It will ruin the computer.

Empty the Trash

When a file is deleted on the computer it goes to the Recycle Bin. The recycle bin is the last stop before permanent deletion. The recycle bin does not empty on its own, it must be told to empty. Once the recycle bin has been emptied the files are permanently deleted. Do not empty the recycle bin if you are not 100% sure the files can be deleted. To empty the recycle bin, double left-click on the icon located on your desktop. Verify there are no files in the recycle bin that you need. Left-click Empty the Recycle Bin. A window will appear and ask if you are sure you want to delete these items. Left-click Yes. Close the recycle bin window. Be sure to empty the recycle bin once a month.

Clean Off the Desktop

Shortcuts to files and folders are fine on the desktop but do not save documents or programs to the desktop. The more files saved to the desktop the longer it takes the computer to boot up. Software programs should be saved to the C:\Program Files folder. Documents and files that you create should be saved in the C:\My Documents folder. If you have documents on the desktop that need to be moved to the My Documents folder simply right-click on the document and in the pop-up menu left-click Send To. Another pop-up window will appear, left-click My Documents. Clearing the desktop of unnecessary files will make the computer boot faster.

Do Not Click on Pop-Ups

The #1 way users harm their computer is by clicking on something they shouldn't have. People commonly contract a computer virus by clicking on video links in Facebook or email. Often, the link appears to be from someone they know, when the link is clicked, it prompts the user to update a flash player, then downloads a virus to your computer.

The second most common way users infect their computer is by opening email attachments that contain a virus. Several file extensions to be wary of include: filename.exe (an .exe file means that it is an executable file that will run when downloaded), filename.pif, filename.vbs, filename.bat, and filename.com (both.bat files and .com files will execute a program when downloaded). Always save the attachment by right-clicking on it from email and then left-

clicking Save Target As. Saving the attachment allows the anti-virus program to scan it for possible infection.

A third way users harm their computer is by clicking on pop-ups. Never click on a pop-up that just 'appears' on the computer. Many times a pop-up will appear that tells the user their computer is infected and they must download an update in order to protect it. In reality, that is the virus trying to trick the user into downloading it. Never run your mouse over a pop-up, never left-click the red X in the right hand corner, or left-click close. Doing so often gives the virus permission to install itself on the computer. Press the ALT key and the F4 key at the same time on the keyboard to close the foremost window on the desktop. Or, right click the program icon in the task bar and then left-click Close in the pop-up window.

Back-Up Important Data Regularly

Backing up office data is easy to do and it provides peace of mind when facing emergency situations. USB jump drive or flash drives as they are called, are relatively inexpensive and can hold large amounts of data. Additionally, jump drives fit easily in emergency ToGo boxes, vaults, glove compartments, etc. To back up the data simply right-click on the My Documents folder. In the pop-up menu left-click Copy. Double left-click on My Computer. In the My Computer window double left-click on the removable disk (or the name of the jump drive, often called drive: E). Left-click Edit from the main menu and left-click Paste. *See the section on Creating an Emergency Back-Up Technology Plan for City Government below.*

CREATING AN OFFICE COMPUTER POLICY

As established earlier, maintaining the backbone of the office's computers is largely the responsibility of the employees that work in the office and requires due diligence. Often it is lamented that users "do nothing but play games on the Internet and stay on Facebook," which inevitably results in the computer contracting a virus and leads to loss of productivity in the office. It is essential that every office have a user policy in place that governs how work place computers are utilized. Check with your city or county technology group to see if such a policy exists. All employees should be required to sign the policy and the policy put on file so if questions arise it can be referred back to at a later point in time. If no such policy exists in your city or county, consider writing your own and seek the approval of appropriate city personnel.

Among items to include in such a policy:

- Using the office computer for non-work related purposes
- Playing games on the computer
- Posting information about the city government's function or interactions with the public to employees personal Facebook or other social media sites
- Sending chain emails, or propagating viruses by forwarding emails with video, jokes, pictures, etc. attached
- Accessing, producing, or disseminating pornographic materials
- Posting political inclinations, jokes, cartoons, etc.
- Having city business information sent to personal email accounts

- Personal reimbursement for the cost to repair or replace a computer that has become infected

There are numerous other items that could be added to a work-place policy but the governing idea should be that if the information cannot be put on official city letterhead, it should not be put in an email, instant message, or posted to a social media site. All policies should be signed and dated every year and placed in personnel files.

PUBLIC REQUEST FOR INFORMATION RECORDS

The Public Records Act (Title 25, Chapter 61, Mississippi Code of 1972) states that, "It is the policy of this state that public records shall be available for inspection by any person unless otherwise provided by this chapter; furthermore, providing access to public records is a duty of each public body and automation of public records must not erode the right of access to those records. As each public body increases its use of, and dependence on, electronic record keeping, each public body must ensure reasonable access to records electronically maintained, subject to records retention" (1983). What does this mean for government? It means any email sent to the city personnel, whether it is to their professional email account or a private account is subject to the Public Records Act if the email pertains to city business. The same is true of instant messages, blog posts, status or wall updates in Facebook, images posted to the Internet, and YouTube videos to name but a few of the various electronic media covered.

According to the Mississippi Department of Archives, "Work-related email messages and attachments are public records under Mississippi law, and must be managed in the same manner as other public records. The guidelines linked below include ways to determine whether an email is an official record, methods and systems to store email, guidelines for selecting email archiving systems, and a sample email management policy. Follow the retention schedule for the appropriate record series. Junk email (spam) and other non-official email can be deleted" (http://mdah.state.ms.us/recman/email.php, 2011). Please visit the Mississippi Department of Archives website to review a detailed description of the email retention guidelines (http://mdah.state.ms.us/recman/email_guidelines.pdf).

CREATING A WEB PRESENCE FOR THE MUNICIPALITY

Every city government should create and maintain an official website. With the passage of the Broadband Initiative in Mississippi, many rural Mississippi communities will soon have access to high-speed Internet access. A website is an effective way to communicate to the public and provide timely information. It is also useful in disseminating information quickly in emergency situations. A well constructed website can ease constituents through the often confusing world of city government and provide answers to commonly asked questions thus reducing the amount of redundant telephone calls to the various offices.

Unfortunately, some cities seek local contractors to create their websites. Many local contractors create websites for the city with URL addresses such as www.city.com or www.city.org. A website with the .com suffix indicates that the website is a commercial or business website. A website with the .org suffix indicates that the website is a non-profit organization. Thus, they are

not official government websites. If a city wishes to create an official government website they need to make sure they have a .gov suffix. The .gov suffix indicates that the website is an official government website. With the increases in phishing attacks and website spoofs it is imperative that local governments in Mississippi have the proper domain name for their website, www.city.gov.

In order to obtain a .gov domain name the technology consultant will need to go to GSA Federal Acquisition Office website, *https://www.dotgov.gov/portal/web/dotgov/registration-process*, and fill out the appropriate forms. It is important to remember that the city website is an official form of communication and represents the city to the people that it represents. All social media (Facebook, YouTube, Twitter, etc.) should be linked from the official website. A blog or Facebook created for the city does not constitute an official form of communication from elected officials to constituents.

Important information that should be included on the city's website should include the following:

- The name and contact information for the departments and personnel
- The responsibilities of each person in the office
- Directions to the office as well as the hours of operation
- The mission of the office
- Any disclaimer statement that would appear on official city letterhead

Optional information that may prove beneficial to constituents includes the following:

- A photo of personnel
- Frequently requested forms such as public records request, voter registration, employment application, forms for ordinances and permits
- Voter information such as what requirements must be met to be eligible to vote, registration deadlines, voting precincts, general information about primary elections as well as general and special elections, absentee voting, and voter ID requirements
- Directions (using MapQuest, Google Maps, etc.) to precincts
- Emergency contact information if there are problems during an election
- Minutes from board meetings
- Short, narrated videos that talk to the public through issues such as voter registration or other issues addresses regularly by the office
- A section on frequently asked questions
- Links to the city's YouTube page (video of board meetings), Facebook page, or Twitter account (used to remind constituents to pay bills or advertise upcoming events)

There are also several items that should *not* be included on the website:

- Biographies or detailed information about employees, with identity theft on the rise care should be taken to avoid posting of overly personal information
- Personal information about constituents
- Inappropriate information posted to social media sites should be removed immediately
- Pictures of constituents (if using local pictures with recognizable people in them, make sure to have a signed release form) or pictures of children (pictures of minors require parental consent)
- Outdated information

CREATING AN EMERGENCY BACKUP PLAN

Every office should be prepared for emergencies; in Mississippi this most often takes the form of hurricanes, tornadoes, and flooding. A good plan 'B' will include an external back up of important data that is also portable. What is an external backup? An external backup is a backup of the computer's data to either a remote server or to a portable device like a CD, jump drive or external hard drive. Businesses and government entities required by law (banks, federal government offices, etc.) to have a backup of their data at a remote site. These organizations use a backup service to automatically backup their data. This type of service is offered by a company for a set price each month. A backup of the computers in the office is done every day (usually at night). In the event of loss data or catastrophe you simply call the company and they email or mail the data via CD-ROM to you.

Two such companies are:

- Connected DataProtector - http://www.connected.com
- Ibackup for Windows - http://www.ibackup.com

For most small organizations and individuals wishing to protect their data, using an external storage device is the most economical way to go. An external storage device would include data written to a CD-ROM and stored in a secure place, an external hard drive, or a USB jump drive/pen drive. Back-ups should be done every week on a set day. The back-up should be placed in a secure location, usually the city vault, where access to the device can be controlled. It is not recommended that personnel take the back-up devices to their homes or keep it on their person.

In the unlikely event that you have time to prepare for a potential threat, there are some additional steps you can take to help ensure your equipment makes it through in "working order."

Follow these steps to secure the office:

<u>Computers (Desktop)</u>:

- Back up all documents, photos, Quicken books, etc. to an external hard drive or jump drive
- Label the computer (name, address, etc.)
- Put the computer in a 10m trash bag. Seal the bag with duct tape or a zip tie.
- Move the computer to higher ground (at least desk level). Do not stack the computers more than two computers high.

Computers (Laptop):

- Take the laptop with you when you leave.
- Place the laptop in its carrying case.
- Put the laptop in a 10m trash bag. Seal the bag with duct tape or a zip tie.
- Move the computer to higher ground (at least desk level). Laptops are lightweight so make sure they are properly secured but do not put anything heavy on top of them. You might put them on a shelf in a closet or filing cabinet.

Monitors:

- Place a soft cloth over the glass screen of the monitor.
- Put the monitor in a 10m trash bag. Either seal the bag with duct tape or a zip tie.
- Store the monitor (screen side down) in a high, secure location.

Printers:

- Take the paper out of the paper trays.
- If it is a small printer, put it in a 10m trash bag and seal the bag. If it is a large printer cover the printer with a trash bag.

Digital Cameras:

- Charge the cameras' battery.
- Take the camera with you when you leave.
- If you can't take the camera with you place the camera in its carry bag.
- Place the camera in Ziploc bag or 10m trash bag and seal.
- Place the sealed bag in the "to go box."

Scanners:

- Place a soft cloth over the glass in the scanner.
- Tape the lid of the scanner to the base of the scanner (with Scotch tape).
- Place the scanner in a 10m trash bag and seal the bag.
- Place the scanner in an interior room off the ground.

Floppies/CD-Roms/External Hard Drives:

- Floppies and CD's that have data on them should be placed in your "to go box."
- Place the floppy disks in a Ziploc bag and seal the bag.
- Place CD's in their case and place them in a Ziploc bag, seal the bag.

Keyboards/Mice: (are cheap and easily replaceable)

- Keyboards and mice are not that expensive so they are easily replaced.
- Mice should be placed in a Ziploc bag and sealed
- Keyboards should be placed in a 10m trash bag and sealed.

Being prepared for an emergency situation enables local governments to operate effectively even as they meet the needs of their constituents during times of crisis. In the aftermath of crisis three of the most essential technology needs are cell phone chargers, cell phone towers, and GPS coordinates of city streets, electric lines, gas lines, etc. Contact your local MEMA official to

coordinate the city's technology plan during emergencies. Obviously, power can be supplied by generators which can charge cell phones as well. However, if there is no electricity to charge a phone you could consider utilizing battery powered emergency cell phone chargers or solar/hand-crank chargers. Additionally, the Remote Mobility Zone from AT&T launched in early 2011 provides a portable cell phone tower that can handle up to 14 calls simultaneously.

NETWORKING THE LOCAL GOVERNMENT OFFICE

Most local governments utilize high-speed Internet access to conduct their day-to-day business. However, many places in Mississippi do not have access to high-speed Internet access. The Mississippi Broadband Connection Coalition, administered by the Southern Rural Development Center is seeking to assist rural areas in attaining high-speed Internet access. If your municipality does not have high-speed Internet access, contact the Southern Rural Development Center at 662-325-3207 for help and information on bringing high-speed Internet access to your area.

To establish a network for your office, first determine who your local Internet providers are. Once that is established, determine their monthly rates and whether or not special discounts are given to government agencies. An important consideration is the speed of at which information can be sent and received over the network, also referred to as bandwidth. Bandwidth is measured in kbps or kilo bytes per second. Kilo bytes per second measure the rate at which 1000 bits can traverse the network. Eight bits is equal to 1 byte. It takes 8 bits to equal one letter in the alphabet. The higher the bandwidth the faster the Internet connection. Viruses, downloading music and videos, listening to the radio online, and videoconferencing, can all slow down the speed of the Internet as it gets bogged down 'bits' of information being sent and received through the network.

When all of the computers in your office share a single printer or copier, they are connected through what is called a local area connection or LAN. This means that the computers in your office can talk to one another but someone outside your office cannot. When the computers in your office are able to send and receive data from online databases or the World Wide Web, it means that your office is part of a wide area connection or WAN. If someone sitting in your office is attempting to retrieve data from an online database, their computer or client as it is called, sends a packet of information containing the request to the server. The server controls access to the information or service and determine what will be accepted or rejected. Once the server accepts the request from the client, the information is bundled together in a packet and sent back to the client computer. When the client computer (the user) opens a search engine (like Google, Yahoo, Firefox, Safari, etc.) and types in keywords into the search bar, that request is sent to the search engines' server and the requested information is sent back to the user. All computers have a unique IP (Internet Protocol) address that identifies them on the World Wide Web. The IP address identifies your country, state, network, and computer.

Understanding the technology behind networking is not difficult, but it is lengthy and time-consuming. Planning the networking in your office is critical. The most frequent problem city governments run into is lack of available ports. Every computer that gets on the Internet must connect through a port (if hard-wired, wireless is a separate issue). That port then connects to the patch panel, via wiring run through the building that connects to the server which in turn

connects to the fiber optic cable that puts the user out onto the World Wide Web. Many government offices are in older facilities that were built before the creation of the Internet. Thus, they fail to have adequate ports to support the growing number of computers, faxes, copiers, and printers that require an IP address that is secured through the port. When building new office spaces, users should plan on incorporating a port on each wall of the office, except the wall that contains the door. Computers that are on the network must be kept up-to-date with the appropriate Windows security patches and anti-virus updates.

CONCLUSION

Technology is a vast and expansive resource that can seem untamable; especially by city government whose more immediate concern is people, not technology. That is why it is imperative to develop a comprehensive, sustainable plan than can be implemented and managed rather than allowing the technology determine what actions must be taken. Technology for the sake of technology is wasteful. Technology that enables the city government to better meet the needs of their constituents should be the goal.

CHAPTER EIGHTEEN

ENVIRONMENTAL ISSUES

Michael Caples and Brian Garrott

NATIONAL AMBIENT AIR QUALITY STANDARD

In order to protect the health and well-being of Americans, the U.S. Environmental Protection Agency (EPA) and state and local governments share the responsibility for regulating air quality under the Clean Air Act (CAA). National Ambient Air Quality Standards (NAAQS) are standards, established by the EPA for pollutants considered harmful to public health and the environment. The CAA established two types of national air quality standards: primary and secondary. Primary standards set limits to protect public health, including the health of "sensitive" populations such as children, asthmatics and the elderly. Secondary standards set limits to protect public welfare including protection against decreased visibility, damage to animals, crops, vegetation, and buildings.

The EPA has set NAAQS for six principal pollutants deemed "criteria" pollutants. These pollutants are Carbon Monoxide (CO), Lead, Nitrogen Dioxide (NO_2), Ground-Level Ozone, Particulate Matter, and Sulfur Dioxide (SO_2). If the EPA finds the concentration of one or more criteria pollutants in a geographic area exceeds the regulated level for one or more of the NAAQS, the agency can classify the area as a "nonattainment" area. The EPA does classify areas with concentrations of criteria pollutants that are below the levels established by the NAAQS as "attainment."

MISSISSIPPI AIR QUALITY REGULATION

The state of Mississippi has integrated its Air Quality Regulation with its water quality legislation.

The standards for air and water are set out together in the Air and Water Pollution Control Law (AWPCL). (Miss. Code Ann. § 49-17-1 to -43). The AWPCL establishes that the standards are determined by the Mississippi Commission on Environmental Quality (CEQ) (Miss. Code Ann. § 49-17-19). The AWPCL sets out guidelines for unlawful actions pertaining to both air and water standards in the state. (Miss. Code Ann. § 49-17-29). All rules, regulations, and standards relating to air quality and air emissions are consistent with and must not exceed the requirements of federal statutes, regulations, and standards including air pollutants named as air toxics. (Miss. Code Ann. § 49-17-34).

The Ambient Air Quality Standards for Mississippi are the Primary and Secondary NAAQS as dually promulgated by the U.S. EPA in 40 CFR Part 50. Under APC-S-4, "all such standards promulgated by the U.S. EPA as of June 22, 1988, are hereby adopted and incorporated herein by the Commission by reference as the official ambient air quality standards of the State of Mississippi and shall hereafter be enforceable as such."

EPA must designate areas as meeting (attainment) or failing to meet (nonattainment) the required standards. The CAA requires states to develop a general plan to attain and maintain the NAAQS in all areas of the country and a specific plan to attain the standards for each area designated nonattainment for a NAAQS. State and local air quality management agencies develop these plans, known as State Implementation Plans (SIPs), and submit those plans to the EPA for approval. If a SIP is not acceptable, EPA can take over enforcing the CAA in that state.

Nitrogen Dioxide

NO_2 forms when fuel is burned at high temperatures. The primary manmade sources of NO_2 are motor vehicles (49%) and electric utilities (27%).

In 1971, EPA established the first primary and secondary NO_2 standard at 53 parts per billion (ppb) averaged annually. (40 CFR § 50.11) In 2010, EPA established the first hourly NO_2 standard. This new 1-hr standard is set at 100 ppb. (75 Fed. Reg. 6474)

Ozone

Ozone is primarily formed when nitrogen oxides and volatile organic compounds (VOCs) react in the presence of sunlight. Primary VOC contributors are automobile and industrial exhaust.

Since the 1970's, EPA has periodically revised the ozone NAAQS. In 1971, EPA set the first primary and secondary NAAQS at 0.08 parts per million (ppm) over a 1-hr averaging period. In 1979, the EPA revised the primary and secondary standards upward to 0.12 ppm. (40 CFR § 50.9) In 1997, EPA revised the primary and secondary standards back to 0.08 ppm, but changed the averaging period to an 8-hr average concentration. (40 CFR § 50.10) In 2008, EPA again lowered primary and secondary standards to 0.075 ppm. (40 CFR § 50.15) In December 2009, EPA proposed to lower the standards further, including (1) lowering the 8-hr primary standard to a range between 0.06 and 0.07 ppm and (2) establishing a new secondary standard within the range of 7 to 15 ppm-hours based on a cumulative, seasonal standard. (75 Fed. Reg. 2938) In December 2015, the EPA officially set the primary and secondary standards for ozone at 0.07 ppm over an 8-hr period.

Sulfur Dioxide

Sulfur dioxide primarily emitted from stationary sources such as coal-fired power plants, steel mills, refineries, and pulp and paper mills. Electric utilities produce about 70% of all sulfur dioxide.

In 1971, EPA created two sulfur dioxide standards: (1) an annual average and (2) a maximum 24-hour concentration. The annual average standard was set at 30 ppb. (40 CFR §50.4) The 24-hour standard was set at 140 ppb. (40 CFR § 50.4)

In 2009, EPA proposed to establish a new 1-hr primary standard within the range of 50 to 100 ppb. In 2010, EPA established a new 1-hr standard at a level of 75 ppb. Furthermore, the EPA established a 3-hr secondary standard at a level of 0.5 ppm that cannot be exceeded more than

once per year. The EPA also revoked both existing 24-hr and annual primary standards. (75 Fed. Reg. 35520)

Particulate Matter

Particulate matter includes emissions from all types of combustion, including motor vehicles, power plants, agricultural burning, and some industrial processes. The EPA regulates only particulate matter with a diameter of 10 microns or less, known as PM10. Particulate matter comes from a wide variety of stationary, mobile, and natural sources.

In 1997, EPA set primary and secondary ambient air quality standards for fine particulate matter (PM2.5). The primary and secondary standards were set at an annual average of 15 µg/m3 and a 24-hour average of 65 µg/m3.

In 2006, the EPA lowered the 24-hour average primary/secondary standards from 65 µg/m3 to 35 µg/m3. The annual average standard remained at 15 µg/m3. (40 CFR §50.13)

Monitoring Ozone and Air Quality in Mississippi

MDEQ monitors 8 locations in 8 counties in Mississippi, focusing on the population centers of Jackson, Tupelo, the Gulf Coast, and DeSoto County. The 8 locations include: Adams, Bolivar, DeSoto, Harrison, Hinds, Jackson, Lauderdale, and Lee counties. In 2004, the EPA designated all counties as "attainment," based on 2001-2003 air monitoring data. However, in 2012 a portion of Desoto County was listed as non-attainment, based upon the latest air modeling, it appears that Desoto County will be listed as attainment when the EPA list comes out sometime in 2017, thereby, making all counties in Mississippi as attainment with air quality.

A "nonattainment" designation would not directly impact economic development, but there can be indirect consequences due to the designation. For example, industrial facilities could be required to install pollution control equipment, take limits on their production, or otherwise find reductions in emissions by "offsetting" in order to expand. In addition, new facilities wanting to locate in a nonattainment area will most likely be required to install pollution controls or take stringent operational limits.

The 1990 Clean Air Act Amendments (CAAA) requires that, in areas experiencing air quality problems, transportation planning must be consistent with air quality goals. This is determined through the transportation conformity process. Transportation conformity is a way to ensure that Federal funding and approval goes to those transportation activities that are consistent with air quality goals. Conformity applies to transportation plans, transportation improvement programs (TIPs), and projects funded or approved by the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA) in areas that do not meet or previously have not met air quality standards for ozone, carbon monoxide, particulate matter, or NO_2. The EPA labels these areas as "nonattainment areas."

§ 176 of the CAAA defines conformity to a SIP to mean conformity to the plan's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving

expeditious attainment of the standards. Designated Metropolitan Planning Organizations are required to perform conformity determinations by ozone nonattainment area for their Transportation Plans and TIPs.

GREENHOUSE GAS AND CLIMATE CHANGE

Greenhouse Gas

In 2010, the EPA published its final rule to control green house gas emissions (GHGs) from stationary sources under the two major CAA permitting programs. (75 Fed. Reg. 31514) Beginning January 2, 2011, GHG became a regulated pollutant and thus became subject to the air pollution permitting programs.

Mississippi has adopted the "Tailoring Rule" for GHG's which set thresholds for emissions that define when permits under the New Source Review Prevention of Significant Deterioration (PSD) and Title V Operating Permit programs are required for new and existing industrial facilities. The tailoring rule increases the GHG applicability threshold so that only the larger emitting sources will be subject to regulation.

To be subject to GHG permitting, facility emissions must trigger GHG's on both a mass and a Global Warming Potential basis. GHG's refer to a group of six pollutants: Carbon Dioxide, Methane, Nitrous Oxide, Hydro Fluorocarbons, Per Fluorocarbons, and Sulfur Hexafluoride.

According to MDEQ, the agency will implement the GHG regulations in two initial phases:

PSD Construction Program

Step 1 (January 2, 2011 – June 30, 2011)
Only sources currently subject to the PSD permitting program (i.e., those that are newly constructed or modified that significantly increases emissions of traditional pollutants) could be subject to PSD for GHG emissions. PSD permitting for GHGs would be required if emissions exceed the significant threshold of 75,000 tpy total GHG on a CO_2 equivalent (CO_2e) basis and have a net mass increase (>0 tpy) of total individual GHGs. If MDEQ issued a facility a PSD permit prior to January 1, 2011 and that facility has not begun actual construction until after January 1, 2011, the facility does not have to go back and include GHGs in their PSD permit.

Step 2 (July 1, 2011 to June 30, 2013)
PSD permitting can now be triggered if GHGs exceed the major source threshold for GHGs even if they do not exceed the PSD permitting thresholds for any other pollutant (i.e. PSD major if emissions are 100,000 tpy CO_2e or more and 100/250 tpy GHGs on a mass basis). Modifications at existing major facilities that increase GHG emissions by at least 75,000 tpy of CO_2e will be subject to permitting requirements, even if they do not significantly increase emissions of any other pollutant. If MDEQ issues a facility a permit prior to July 1, 2011, and that facility has NOT begun "actual" construction, they must address GHGs before beginning construction.

Step 3 (June 29, 2012)
In Step 3, the EPA continued to focus GHG permitting on the largest emitters by retaining the permitting thresholds that were established in Steps 1 and 2. The rule also revised the plant wide applicability limitations to allow a source that emits or has the potential to emit at least 100,000 tons per year of CO2e, but that has minor source emissions of all other regulated NSR pollutants, to apply for a GHG PAL while still maintaining its minor source status.

Title V Operating Program

Step 1 (January 2, 2011 – June 30, 2011)
Only sources currently subject to the program (i.e., newly constructed or existing major sources for a pollutant other than GHGs) would be subject to Title V requirements for GHGs. Sources will have to address GHG emissions and any applicable requirements in their Title V applications.

Step 2 (July 1, 2011 to June 30, 2013)
Title V will apply to sources based on their GHG emissions even if they would not apply based on emissions of any other pollutant. Facilities that emit at least 100,000 tpy CO_2e and 100 tpy GHGs on a mass basis will be subject to title V permitting requirements. Upon becoming subject to the Title V program, sources will have 12 months to submit a Title V application.

Utility Air Regulatory Group v. EPA
On June 23, 2014, the U.S. Supreme Court issued its decision in Utility Air Regulatory Group v. EPA, 134 S. Ct. 2427 (2014) ("UARG"). The Court held that EPA may not treat GHGs as an air pollutant for purposes of determining whether a source is a major source required to obtain a PSD or title V permit. Thus, in effect, the Supreme Court ruled the EPA can regulate GHGs with respect to power plants and other large stationary sources, but not for smaller sources like shopping centers and schools.

Climate Change

The Federal government is using voluntary and incentive-based programs to reduce emissions and has established programs, such as the Climate Change Technology Program (CCTP), to promote climate technology and science. CCTP is a multi-agency, planning and coordination entity that assists the government in carrying out the President's National Climate Change Technology Initiative. The Department of Energy (DOE) manages and organizes the CCTP around five technology areas for which the DOE established working groups.

The Trump Administration has been active on climate change issues. In his first 100 days, President Trump proposed an EPA budget cut of 31%, revoked a rule that prohibited mining companies from dumping toxic waste into waterways near their mines, and approved the Keystone Pipeline. As the administration continues to move quickly and intermittently, many current climate change programs and policies are subject to change.

SMART GROWTH AND FARM LAND PROTECTION

Smart Growth

"Smart growth" covers a range of development and conservation strategies that help protect the natural environment. Smart growth is a movement to protect farmland and open space, revitalize neighborhoods, and provide more transportation services.

Proponents of Smart Growth are most active at the local level, where local governments usually make land use decisions. Still, national and state policy is a significant part of the equation, as it can provide incentives or disincentives for local governments and set standards. Democratic and Republican governors in states across the country are coordinating with local jurisdictions to reinvigorate existing communities and promote transportation planning and more environmentally sound land use.

One of the core principles of Smart Growth is the recognition that all levels of government play an important role in creating and implementing policies that support Smart Growth. Local governments have long been the principal stewards of land and infrastructure resources through implementation of land use policies. Smart Growth respects that tradition, yet recognizes the important roles that federal and state governments play as leaders and partners in advancing Smart Growth principles at the local level.

Farmland Protection

In 1981, the National Agricultural Land Study found that the nation was converting millions of acres of farmland in the United States each year. This study identified the need for Congress to implement programs and policies to protect farmland and combat urban sprawl and the waste of energy and resources that accompanies sprawling development. Congress passed the Agriculture and Food Act of 1981 containing the Farmland Protection Policy Act (FPPA). (75 CFR § 658)

The purpose of the FPPA is to minimize the impact Federal programs have on the unnecessary conversion of farmland to nonagricultural uses. To the extent possible, it assures that the federal government administers its programs to be compatible with state, local units of government, and private programs and policies to protect farmland. Federal agencies are required to develop and review their policies and procedures to implement the FPPA every two years.

The FPPA does not authorize the Federal Government to regulate the use of private or nonfederal land. For the purpose of FPPA, farmland includes prime farmland, unique farmland, and land of statewide or local importance. Farmland subject to FPPA requirements does not have to be currently used for cropland. It can be forestland, pastureland, cropland, or other land, but not water or urban built-up land.

Mississippi Farmland Preservation

In Mississippi, the state allows local county and city governments to regulate activities on land as long as the regulation promotes the health, safety, morals, or general welfare of the area.

Additionally, any county or city government has the authority to divide areas into zones to further the purpose of government business. However, a local government cannot regulate the zoning of agricultural lands concerning the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. (Miss. Code Ann. § 17-1-7)

In addition, the state prohibits local and county governments from requiring permits with reference to land used for agricultural purposes or for the erection, maintenance, repair, or extension of farm buildings or farm structures outside the corporate limits of municipalities. (Miss. Code Ann. § 17-1-3)

ENVIRONMENTAL JUSTICE

Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. The achievement of environmental justice within counties and municipalities hinges on providing residents with opportunities for meaningful public involvement regarding local environmental decisions.

Environmental Justice 2020 Action Agenda

The EJ 2020 Action Agenda is the EPA's strategic plan for environmental justice for 2016-2020. The EPA hopes to incorporate environmental justice into everything it does so to make economically disadvantaged communities healthier, cleaner, and more sustainable. Therefore, the EPA will be looking to working with state and local governments in the nation's most overburdened and vulnerable communities to achieve significant environmental results and meaningful public participation. Possible measures will include offering environmental justice training to all appropriate state and local agencies and discussing possible joint projects to advance environmental justice.

Environmental Justice Small Grants Program

The Environmental Justice Small Grants Program supports and empowers communities working on solutions to local environmental and public health issues. The program assists recipients in building collaborative partnerships to help them understand and address environmental and public health issues in their communities. Successful collaborative partnerships involve not only well-designed strategic plans to build, maintain, and sustain the partnerships, but also working towards addressing the local environmental and public health issues. Recipients may use funds for projects supporting the improvement of air quality, the management of chemical risks, the cleaning of hazardous-waste disposal sites, the reduction of greenhouse gas emissions, or the protection of water sources.

BROWNFIELD REDEVELOPMENT

Government agencies define a brownfield as, under certain legal exclusions and additions, real property that the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. Brownfield

property means any property where use is limited by actual or potential environmental contamination, or the perception of environmental contamination, and that is or may be subject to remediation under any state environmental law, regulation or program or under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 USCS 9601 et seq. (1997) (CERCLA). In 2002, the government implemented the Small Business Liability Relief and Brownfields Revitalization Act (Pub.L.No. 107-118, 115 stat. 2356, "the Brownfields Law") which amended the CERCLA by providing funds to assess and clean up brownfields, clarified CERCLA liability protections, and provided funds to enhance state response programs. Other related laws and regulations impact brownfields cleanup and reuse through financial incentives and regulatory requirements. The Mississippi Brownfields Voluntary Cleanup and Redevelopment Act, Miss. Code Ann. § 49-35-1, details brownfield activity in Mississippi and establishes regulations to redevelop the properties without use of taxpayer funds.

The purpose of these policies is to promote the voluntary remediation of contaminated sites within the state. The regulations establish remediation requirements based on public health and environmental risks specific to the Brownfield Agreement Site. The regulations set forth formats and procedures designed to advise a person, prior to submitting an application, of the information necessary to achieve the adequate and cost-effective characterization and remediation of a Brownfield Agreement Site.

Brownfield Tax Incentives

The Mississippi Legislature has passed two economic incentives for the redevelopment of brownfield property. The Brownfield Voluntary Cleanup and Redevelopment Incentives Act, Miss. Code Ann. §27-7-22.16, provides for tax credit up to twenty-five percent (25%) of the cost paid for the assessment, investigation, remediation, monitoring and related activities. The annual credit shall not exceed the lesser of $40,000 or the amount of the income tax imposed upon the brownfield party for the taxable year. Any unused portion of the credit may be carried forward for succeeding years with a total tax credit cap of $150,000.00.

The Mississippi Economic Redevelopment Act, Miss. Code Ann. §57-91-1 was designed to promote the redevelopment of brownfield property with incentive to defray the remediation cost associated with cleaning up contaminated property. Under this incentive plan, the state will reimburse a Brownfield Party, up to two and half time (2.5) the amount spent on remediation cost at a site. After approval of the remediation plan by MDEQ and the project by Mississippi Development Authority, all sales, income and franchise taxes collected from businesses located in the redevelopment project area would be deposited into a special fund that would be used to reimburse the Brownfield Party over a period of 15 years, with the maximum distribution of two and a half times the allowable remediation cost. In other words, if person spends one million dollars on remediation at a site, they can be reimbursed up to two and half million dollars.

Targeted Brownfield Assessment

MDEQ's Targeted Brownfield Assessment (TBA) Program attempts to help cities and counties, among others, minimize the uncertainties of contamination often associated with brownfields. Under the TBA program, MDEQ provides assessment and planning services at brownfield sites throughout the State. A TBA may encompass one or more of the following activities:

- A screening or "all appropriate inquiry" (Phase I) assessment, including a background and historical investigation of the brownfield site;
- A full environmental assessment, including sampling activities to identify the types and concentrations of contaminants and the areas of contamination to be remediated; and
- Establishment of cleanup options (Corrective Action Plan) and cost estimates based on future uses and redevelopment plans.

Local Governments Capital Improvements Revolving Loan Program

Additionally, local governments are eligible under the Mississippi Development Authority (MDA) to access the Local Government Capital Improvements Revolving Loan Program to help finance the remediation of brownfield agreement sites. MDA designed the program to make loans to counties or municipalities to finance capital improvements in Mississippi. Applicants are encouraged to use these loans in connection with state and federal programs. To apply for this program, the local government should contact MDA for additional program information. § 57-1-301, MS Code 1972, 2008.

Environmental Protection Agency Programs

There are several channels for brownfield redevelopment offered through the EPA. These opportunities include assessment grants, revolving loans, cleanup grants, environmental workforce development and job training grants, and targeted brownfields assessments.

Brownfield Assessment Grant

An EPA Brownfield Assessment Grant provides funding to inventory, characterize, assess, and conduct planning and community involvement related to brownfield sites. An eligible entity may apply for up to $200,000 to assess a site contaminated by hazardous substances, pollutants, or contaminants (including hazardous substances co-mingled with petroleum) and up to $200,000 to address a site contaminated by petroleum. Applicants may seek a waiver of the $200,000 limit and request up to $350,000 for a site contaminated by hazardous substances, pollutants, or contaminants and up to $350,000 to assess a site contaminated by petroleum. The EPA bases these waivers on the anticipated level of hazardous substances, pollutants, or contaminants (including hazardous substances co-mingled with petroleum) at a single site. A coalition of three or more eligible applicants can submit one grant proposal under the name of one of the coalition members for up to $1,000,000. The performance period for these grants is three years and all local governments are eligible.

Brownfields Revolving Loan Fund

An EPA Brownfields Revolving Loan Fund (RLF) Grant provides funding to capitalize a revolving loan fund that provides subgrants to carry out assessment and/or cleanup activities at brownfield sites. The grants provide up to $1MM per eligible entry and recipients may use the funds to address sites contaminated by petroleum and/or hazardous substances, pollutants, or contaminants (including hazardous substances co-mingled with petroleum). An RLF award requires a 20% cost share, which may be in the form of a contribution of money, labor, material, or services. The performance period for a RLF grant is five years and all local governments are eligible to apply to this program.

Brownfields Cleanup Grants

The EPA Brownfields Cleanup Grants provide funding to conduct cleanup activities at brownfield sites. Recipients of the grants may use the funds to address sites contaminated by petroleum and/or hazardous substances, pollutants, or contaminants (including hazardous substances co-mingled with petroleum). The Cleanup Grant will fund up to $200,000 per site – but no entity may apply for funding cleanup activities at more than five sites. The Cleanup Grants also require a 20% cost share, which may be in the form of a contribution of money, labor, material, or services. The performance period for a RLF grant is three years and all local governments are eligible to apply to this program.

Environmental Workforce Development and Job Training Grants

The EPA designed the Environmental Workforce Development and Job Training Grants to provide funding to recruit, train, and place predominantly low-income and minority, unemployed and under-employed residents of solid and hazardous waste-impacted communities with the skills needed to secure full-time, sustainable employment in the environmental field and in the assessment and cleanup work taking place in their communities. Residents learn the skills needed to secure full-time, sustainable, employment in the environmental field, including a focus on assessment and cleanup activities. The use of grant funds is wide and varied. All local governments are eligible to apply. These grants help to create green jobs that reduce environmental contamination and build more sustainable futures for communities.

Targeted Brownfields Assessment

The EPA designed the Targeted Brownfields Assessment (TBA) program to help municipalities – especially those without EPA Brownfields Assessment Grants – minimize the uncertainties of contamination often associated with brownfields. The TBA program is not a grant program, but a service provided through an EPA contract in which the EPA directs a contractor to conduct environmental assessment activities to address the requestor's needs. Unlike grants, the EPA does not provide funding directly to the entity requesting the services. TBA assistance is available through the EPA directly, or through MDEQ. The goals of the EPA program mirror those of the similar MDEQ program. Targeted Brownfields Assessments supplement and work with other efforts under EPA's Brownfields Program to promote the cleanup and redevelopment of brownfields. All local governments are eligible to apply for a TBA.

ENVIRONMENTAL COVENANTS

The Mississippi Uniform Environmental Covenants Act (MUECA), Miss. Code Ann. § 89-23-1, et. Seq. (Rev. 2008), is one of the uniform acts drafted by the National Conference of Commissioners on Uniform State Laws. The act provides clear rules for perpetual real estate interests—an environmental covenant—to regulate the use of brownfield land when parties transfer real estate from one owner to another.

When contaminated properties are remediated under the supervision of a governmental agency, there are occasionally issues requiring a long-term Land Use Control (LUC) or Activity Use Limitation (AUL) which regulatory officials seek to have recorded on the property title or deed prior to clearing it for reuse. These LUCs or AULs may list prohibitions on future uses (i.e. no residential housing, childcare facilities, wells, drilling), requirements for ongoing monitoring and remediation (i.e. monitoring and vapor extraction wells) or note protective structures and engineered controls. The purpose of MUECA is to ensure that future LUCs, which have been created for a particular site, are not invalidated by conflicts or misunderstandings with other local, state or federal regulations. MUECA seeks to make sure environmental covenants are preserved and enforceable over a long term against successive owners by applying traditional real estate law. Part of the philosophy is that if all parties to the covenant are confident MDEQ will enforce site-appropriate activity and use limitations in the covenant, it is more likely that environmental regulators and the owners of contaminated real property will allow those properties to be developed, rather than continue to stand as abandoned and dangerous areas. The goal is that redevelopment of the property will help revitalize those areas and serve the economic and social interests of the nearby residents.

MDEQ and the CEQ enforce the covenants and any amendment or termination of the covenant must be pursuant to Miss. Code Ann. § 89-23-1, et. Seq. (Rev. 2008).

UNDERGROUND STORAGE TANKS (GASOLINE & DIESEL)

In environmental law, an underground storage tank (UST) means any one or combination of tanks (including any connected underground pipes) that is designed to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is ten percent or more beneath the surface of the ground. This category does not include any farm or residential tank with capacity of 1,100 gallons or less that an owner uses for storing motor fuel for noncommercial purposes, tanks used for storing heating oil for consumptive use on the premises, or septic tanks.

The EPA charges the Office of Underground Storage Tanks with implementing the regulatory program for USTs. However, in Mississippi the Underground Storage Tank Branch of the Office of Pollution control of MDEQ carries out the implementation of the program. The UST Assessment and Remediation Program investigates petroleum releases from USTs and oversees the initial response, assessment, monitoring, risk evaluation, and remediation of petroleum contamination to remove risks to human health and the environment. The legal authority derives from Mississippi's Underground Storage Tank Act of 1988, Miss. Code Ann., § 49-17-405, which also created the Mississippi Groundwater Protection Trust Fund. Through the Mississippi

Groundwater Protection Trust Fund, the Assessment and Remediation Program reimburses eligible tank owners for the reasonable and just costs associated with assessment and remediation activities.

When tank owners report a release at the facility, they are the responsible parties for all assessment and remediation activities. After the report, MDEQ assigns the site to a project manager Division of Owners per Project Manager. MDEQ requires information from the tank owner, performs a site visit, and if necessary, determines if the site is eligible for the Mississippi Groundwater Protection Trust Fund. In order to be eligible for reimbursement from the trust fund, a release at an underground storage tank site must:

- be confirmed;
- be a motor fuel;
- be in use on or after July 1, 1988;
- be in substantial compliance with UST regulations; and
- pose a threat to the environment or public health or welfare.

If the site is Trust Fund Eligible, the tank owner will be responsible for hiring either an Environmental Response Action Contractor or an Immediate Response Action Contractor. The tank owner will also need to complete a Trust Fund application, forms required to receive reimbursement, and a certification affidavit.

PUBLIC WATER SUPPLY

"Water supply system" refers to pipelines, conduits, pumping stations and all other structures, devices and appliances used in transporting water to public agencies or to a point of ultimate use (Miss. Code Ann. § 51-9-191). Mississippi has three types of public water systems (PWS). The largest is a community PWS used to distribute water throughout towns. The second type of PWS is a nontransient, noncommunity that schools or factories utilize. The last type is a transient noncommunity system that is located at rest stops or parks. Mississippi currently has 1,211 community PWSs, 109 nontransient noncommunity PWSs, and 140 transient noncommunity PWSs. In 2016, Mississippi had 1,204 public water systems. According to the Mississippi State Department of Health, in July 2016, 51 of these systems had health-based violations.

Safe Drinking Water Standards

The EPA requires that PWSs monitor their water systems in order to detect unregulated contaminants. Currently, the EPA only approves certain methods for the analysis of drinking water samples.

The Federal Safe Drinking Water Act requires water quality analysis and the revenue comes from the state's Drinking Water Quality Analysis Fund. A full description and further stipulations can be found in the Mississippi Safe Drinking Water Act of 1997 (Miss. Code Ann. § 41-26-23). This fund may receive monies from any available public or private source, including fees, proceeds, and grants. The fund uses the fees and other revenue streams to pay all reasonable direct and indirect costs of water quality analysis.

The National Primary Drinking Water Regulations, as published under 40 CFR Part 141.21, stipulates that it is the responsibility of each supplier of water to comply with the monitoring and analytical requirements under the act. The required frequency of monitoring and reporting depends on the size of the population that the water systems serve. The larger the population, the more frequently PWSs must monitor and report their findings. The Division of Water Supply compiles data for the calendar year and sends the information to all community water systems in Mississippi. This allows PWSs to report the data to customers served by that water supply. Every Community Water System is required to deliver to its customers a brief, annual water quality report.

Once the samples are gathered, the PWS monitors the public drinking water by checking for contaminants using two different control processes: Maximum Contaminant Levels (MCLs) and Treatment Techniques (TT). The EPA establishes these MCLs, which are national limits on the specific amount of contaminants in drinking water. When the amount of a specific contaminant is below the MCL, the PWS deems the water safe for human consumption. However when the contaminant levels exceed the MCLs, the PWS will be found to be in violation of the required standards. Mississippi's maximum contaminant levels are consistent with the contaminant levels stipulated in the National Primary Drinking Water Regulations published under 40 CFR Part 141.

When the EPA finds the PWS to be in violation of regulations or standards, the EPA requires the PWS operator to notify the consumers. Federal law requires this notification to include a clear and understandable explanation of the nature of the violation, its potential adverse health effects, steps that the PWS is undertaking to correct the violation, and the possibility of alternative water supplies during the violation.

WASTEWATER TREATMENT PLANTS

All highway roadside parks, rest areas, weigh stations, or welcome centers with wastewater treatment facilities shall hold a valid permit issued by the MDEQ in accordance with guidelines set forth by the EPA. The Roadway Design Division is responsible for obtaining the initial permit(s) for the construction or reconstruction of a wastewater treatment facility. The Maintenance Division is responsible for permit renewals for all wastewater treatment facilities. The Maintenance Division must keep all permit renewals on file with copies made available to the District Wastewater Treatment Operators. No source shall discharge treated or untreated wastewater into any public stream without a valid permit. The wastewater treatment plants shall be operated at all times in strict accordance with permit requirements (Miss. Admin. Code 37-1-13:17001).

Total Maximum Daily Loads (TMDL)

Mississippi's TMDL program, a branch of the Surface Water Division, is responsible for developing TMDLs. A TMDL reports the acceptable amount of a specific pollutant a stream can handle without a violation of water quality standards. § 303(d) of the Clean Water Act requires the identification of water bodies not meeting their designated use and the development of

TMDLs. Under this act states, territories, and authorized tribes are required to develop lists of impaired waters every two years (i.e., § 303(d) list). The states identify all waters where required pollution controls are not sufficient to attain or maintain applicable water quality standards. States are required to establish priorities for development of TMDLs for waters on the 303(d) List (40C.F.R. §130.7(b)(4)). Many times, nonprofit statewide environmental groups or watershed organizations have taken on significant responsibility in the development of the TMDL document and supporting analysis

National Pollutant Discharge Elimination System (NPDES)

§ 402 of the CWA specifically required EPA to develop and implement the NPDES program.

National Pollutant Discharge Elimination System (NPDES) permit program controls water pollution by regulating point sources that discharge pollutants into waters of the U.S. Point sources are discrete conveyances such as pipes or manufactured ditches. Individual homes that are connected to a municipal system, use a septic system, or do not have a surface discharge do not need an NPDES permit. However, industrial, municipal, and other facilities must obtain permits if their discharges go directly to surface waters. In most cases, authorized states administer the NPDES permit program. The chart below shows Mississippi's program:

State	Approved State NPDES Permit Program	Approved to Regulate Federal Facilities	Approved State Pretreatment Program	Approved General Permits Program	Approved Biosolids (Sludge) Program
Mississippi	✔	✔	✔	✔	

The Clean Water Act § 402 (b) and 40 CFR Part 123 authorizes Mississippi through a specially defined process. Municipal staff is responsible for meeting NPDES permit obligations. They rely on assistance from other partners, such as industry, developers, and homeowners, to ensure that they can meet the requirements contained in their municipal NPDES permits.

The regulations pertaining to the pretreatment program are found in 40 CFR Part 403. This includes the pretreatment standards and limits, prohibited discharge standards, categorical pretreatment standards, and local limits.

ON-SITE WASTEWATER DISPOSAL SYSTEMS (SEPTIC TANKS)

Title 41, Chapter 67 of the Mississippi Code governs on-site wastewater disposal in Mississippi. Mississippi relies on septic systems and other types of individual onsite waste disposal systems (IOWDS) to process wastewater. If the controlling authority improperly installs or maintains these systems, they can sometimes cause polluted runoff.

The Mississippi Department of Health (MDH) has primary responsibility over onsite wastewater treatment systems in the state. MDH regulates individual wastewater systems such as those used in small commercial buildings, restaurants, and single dwellings (Miss. Code Ann. § 41-67-6).

The department requires wastewater to remain on the property that was responsible for creating it. When septic systems are improperly maintained, or built in areas where soil will not absorb the wastewater or filter out its impurities, sewage may emerge at the surface and rainfall can wash it into streams and lakes.

MDEQ regulates all other wastewater systems. This includes municipal, districts, private, industrial, individual systems, and subdivision review.

MDH's Regulation Governing Individual Onsite Wastewater Disposal Systems (IOWDS) is found in Miss. Code Ann. § 41-67-6. This section prohibits any individual from constructing or installing an on-site wastewater disposal system that does not comply with the rules and regulations set forth by the board. Furthermore, Miss. Code Ann. § 41-67-6 (1) requires a professional evaluator or licensed professional engineer installing an IOWDS to notify, and get authorization from, the department before beginning construction. The department must then respond within 10 business days. However, if no professional is installing the IOWDS, Miss. Code Ann. § 41-67-6 (2) requires an individual owner, lessee, or developer to notify the department before beginning construction. Once the individual owner gives notification, the department must conduct a soil and site evaluation within five (5) businesses days. The board may also require the owner to repair a wastewater disposal system that is on that owner's property. The repair requirements and penalties are addressed in Miss. Code Ann.§ 41-67-21. When a person knowingly violates a rule or regulation they are guilty of a misdemeanor (Miss. Code Ann. § 41-67-28).

Regulations for the 82 counties in Mississippi can be found in Miss. Code Ann. § 41-67-15. Regulations found within that section do not limit the authority of municipalities who chose to adopt stricter local ordinances. If the ordinance is more restrictive, that ordinance will govern and the Department will not be responsible for enforcing the stricter ordinance. Although these stricter ordinances are acceptable, the health department cannot approve a system if it does not comply with the Board of Supervisors ordinance, rule, or regulations.

STORMWATER PERMITTING

Beginning in 2003, Phase II of the EPA stormwater program expanded to regulate additional operators of municipal separate storm sewer systems (MS4s) in urbanized areas and operators of small construction sites, as well as large construction sites. Using National Pollutant Discharge Elimination System (NPDES) permits, Phase II regulations thus required the counties of DeSoto, Madison, Rankin, Hinds, Forrest, Lamar, Hancock, Harrison, and Jackson to develop and implement comprehensive stormwater management programs. Phase II also extended the requirement of stormwater permitting and the subsequent implementation of stormwater management programs for certain types of construction and industrial activities to all counties in Mississippi and lowered the regulatory threshold from five acres to one acre.

In Mississippi, MDEQ regulates the stormwater permitting process. The General Permits Branch of the Environmental Permits Division (EPD) oversees the development, issuance, and maintenance of the general permits issued by EPD. Permits must be issued in accordance with the provisions of the Mississippi Water Pollution Control Law (Miss. Code Ann. § 49-17-1) and pursuant to § 402(b) of the Federal Water Pollution Control Act (33 U.S.C. 1251-1376).

Construction activities covering one to five acres within a county or municipality require the Small Construction General Permit. Construction activities disturbing five or more acres require the Large Construction Permit. Under either permit, construction may begin after the completion of a Construction Notice of Intent (CNOI) to the MDEQ and the development and implementation of the required Storm Water Pollution Prevention Plan (SWPPP). It is important to note that MDEQ does not consider routine ditch and road maintenance as constituting "construction" for the purposes of the permit.

The MDEQ reissued the Large Construction Storm Water General Permit (MSR10) for construction activities on January 13, 2017. This general permit authorizes the discharge of storm water from construction sites that disturb five or more acres by clearing, grading, excavating, or other land disturbing activities. This general permit replaces the previous Large Construction Storm Water General Permit that expired December 31, 2015.

Municipal Separate Storm Sewer Systems (MS4s)

An MS4 is a conveyance or system of conveyances that a public entity owns and uses to collect or convey stormwater. MS4s include municipal or county owned storm drains, pipes, and ditches, provided they are not part of a public sewage treatment plant.

The MS4 general permit authorizes a discharge or emission within a geographical area. The permitting of selected storm sewer systems is required because of the EPA's Phase II Storm Water Rule. This permit authorizes discharges of storm water from small municipal Separate Storm Sewer Systems (MS4s), as defined in 40 CFR 122.26(b)(16).

Small MS4s within Mississippi are authorized to discharge under the terms and conditions of the general MS4 permit provided they are either located in one of the aforementioned urbanized counties as determined by the latest census and pursuant to 40 CFR 122.32 or have been designated by the MDEQ pursuant to 40 CFR 122.32(a)(2), 122.32(b), or 123.35(b)(3) or (4).

For the Mississippi Department of Transportation, permit coverage must be obtained for the entire counties (including cities within) of DeSoto, Forrest, Hancock, Harrison, Hinds, Jackson, Lamar, Madison and Rankin and any other county containing an urbanized area as determined by the latest census conducted by the U.S. Census Bureau.

An MS4 is eligible for coverage under this permit for discharges of pollutants of concern to water bodies for which there is a TMDL established or approved by EPA if measures and controls are incorporated that are consistent with the assumptions and requirements of such TMDL. To be eligible for coverage under this permit, the facility must incorporate in the Storm Water Pollution Prevention Plan or runoff limitation any conditions applicable to any discharge(s) necessary for consistency with the assumptions and requirements of such TMDL. If, after coverage issuance, the EPA establishes a specific waste load allocation that would apply to the facility's discharge, the facility must implement steps necessary to meet that allocation.

SOLID WASTE

Planning and Updates

In order to protect the public health, safety, and well-being of its citizens and to protect and enhance the quality of its environment, Mississippi adopted the Nonhazardous Solid Waste Planning Act. The act, Mississippi Code § 17-17-201 et seq (Supp. 2002), requires that local governments prepare, adopt, and submit a local nonhazardous solid waste management plan to the CEQ. The law also provides that local governments shall comprehensively update the local nonhazardous solid waste management plans (SWM Plans) at a frequency determined by the CEQ no more than once every five years.

All local governments should, at a minimum, be a part of a local solid waste management plan and should participate and contribute to the local planning process. These local governments may include counties, cities, regional solid waste management authorities, and/or solid waste management districts. Generally, county governments, by law and in practice, have taken the lead in developing these plans and municipalities have joined that planning process with the county. However, some communities have incorporated solid waste management authorities or solid waste management districts to facilitate long-term solid waste planning. Some municipalities have elected to develop and adopt their own solid waste management plans separate from the county or regional planning process. The manner in which these plans are developed is a decision of the local government(s), based on which planning concept offers the most opportunities, advantages, and benefits to the community.

This paper discusses government funds available for solid waste plans and projects in the section titled "Grants."

Garbage

Once the plan is in place, the question becomes how a local government pays for garbage collection. The government can obtain operating revenue from three sources: tax financing, user fees, and selected grants. Counties are authorized under §19-5-17 and § 19-5-21 and Municipalities are authorized under §21-19-1(2) to establish rates, fees and charges for the actual costs to collect and dispose of garbage and rubbish. Counties may elect to pay for solid waste collection and disposal through Ad Valorem tax, special assessment and/or fees. Counties, except for Hinds, Tunica and Leake, are limited to the amount of the Ad Valorem taxes they may charge to 4 mils and an additional fee or 6 mils and no additional fees. Municipalities are limited solely to fee structure for paying for solid waste disposal.

Counties and Municipalities may collect a fee from each residence that generates garbage. Industrial, commercial and multi-family homes may be charged a fee if they do not already have a contract with the waste hauler. All residents are required to pay for cost of residential solid waste collection and disposal, even though they dispose of the garbage they generate without using the government's system. For renters and property owners, § 19-5-22 of the code contends the fees shall be assessed jointly and severally against the generator and against the owner of the property furnished the collection service. Governing body shall not hold liable any person who

pays, as a part of a rental or lease agreement, an amount for garbage or rubbish collection or disposal services upon the failure of the property owner to pay those fees. Failure to pay the fees by the property owner shall be a lien upon the real property offered garbage or rubbish collection or disposal service. Should the Board of Supervisors increase the fees for garbage collection and disposal, § 19-5-21 requires that the government shall give actual notice by mail to every generator.

The collection of garbage fees is authorized under § 19-5-17 and §21-19-1 which allows the local government to initiate civil action to recover delinquent fees and administrative and legal costs associated with collecting the delinquent fees. The local government may designate a county official to collect fees, may hire a private attorney or collection agency to collect garbage fees.

Counties have additional methods for collection pass due garbage fees that are not granted to the Municipalities, including the holding of car tags (§19-5-22(4)); special assessment on property tax (§19-5-22(5) and impose a late fee of up to ten percent per month (§19-5-22(1).

Rubbish (Class I & II)

Rubbish is nonputrescible solid wastes (excluding ashes) consisting of both combustible and noncombustible wastes. Combustible rubbish includes paper, rags, cartons, wood, furniture, rubber, plastics, yard trimmings, leaves, and similar material. Noncombustible rubbish includes glass, crockery, metal cans, metal furniture and like material that will not burn at ordinary incinerator temperatures (not less than 1600 degrees F.).

For any rubbish disposal sites, it is the responsibility of the operator to remove and properly dispose of any prohibited wastes that were inadvertently or illegally disposed at the site. If the operator has any doubts as to the acceptability of a certain waste, the operator should contact the Office of Pollution Control (OPC), Solid Waste Management Branch for assistance.

ACCEPTABLE WASTES (RUBBISH CLASS I):

- Construction and demolition debris, such as wood, metal, etc.
- Brick, mortar, concrete, stone, and asphalt
- Cardboard boxes
- Natural vegetation, such as tree limbs, stumps, and leaves
- Appliances that have had the motor removed, except for refrigerators
- Furniture
- Plastic, glass, crockery, and metal, except containers
- Sawdust, wood shavings, and wood chips

PROHIBITED WASTES (RUBBISH CLASS I):

- Any waste listed above contaminated by a possible pollutant, such as a food or chemical
- Household garbage
- Food or drink waste
- Industrial waste, unless specifically approved by the OPC

- Liquids
- Sludges
- Contaminated soils
- Paint or paint buckets
- Oil containers and chemical containers
- Any metal, glass, plastic, or paper container, unless specifically approved by the OPC
- Fabric, unless specifically approved by the OPC
- Paper wastes, unless specifically approved by the OPC
- Engines or motors
- Refrigerators
- Whole tires
- Cut or shredded tires, unless specifically approved by the OPC
- Batteries
- Toxic or hazardous waste
- Asbestos and asbestos containing material
- Medical Waste
- Other waste that may have an adverse effect on the environment

ACCEPTABLE WASTES (RUBBISH CLASS II):

- Natural vegetation, such as tree limbs, stumps, and leaves
- Brick, mortar, concrete, stone, and asphalt

PROHIBITED WASTES (RUBBISH CLASS II):

- Any waste listed above contaminated by a possible pollutant, such as a food or chemical
- Household garbage
- Food or drink waste
- Metal, glass, plastic, paper
- Paint, paint buckets, oil containers, and chemical containers
- Construction and demolition debris
- Shingles
- Furniture
- Cardboard Boxes
- Sawdust, wood shavings, and wood chips generated by an industry
- Industrial waste
- Liquids
- Sludges
- Contaminated soils
- Fabric
- Engines or motors
- Appliances
- Tires in any form
- Batteries
- Toxic or hazardous waste
- Asbestos and asbestos containing material

- Medical Waste
- Other waste that may have an adverse effect on the environment

Hazardous Waste

The Resource Conservation and Recovery Act (RCRA) is our nation's primary law governing the disposal of solid and hazardous waste. The RCRA provides general guidelines for the waste management program. It includes a Congressional mandate directing EPA to develop a comprehensive set of regulations to implement the law. Under RCRA Subtitle C, the hazardous waste program establishes a system for controlling hazardous waste from the time it is generated units its ultimate disposal. This program regulates commercial businesses as well as federal, State, and local government facilities that generate, transport, treat, store, or dispose of hazardous waste. 40 CFR Part 260 contains all of the RCRA regulations governing hazardous waste identification, classification, generation, management, and disposal.

Hazardous wastes are a class of wastes specifically defined in the RCRA. Hazardous wastes contain certain toxic chemicals or have certain characteristics that cause them to be a significant risk to the environment and/or human health. EPA encourages States to assume primary responsibility for implementing a hazardous waste program through State adoption, authorization, and implementation of the regulations. In Mississippi, MDEQ enforces hazardous waste.

Mississippi's Solid Waste Disposal Law of 1974 is in §17-7-1 through § 17-17-507 of the Mississippi Code. The MDEQ is responsible for creating and enforcing rules and regulations regarding solid waste disposal.

Mississippi's Hazardous Waste Management Regulations are found in HW-1:

- Generators of hazardous waste in Mississippi shall meet the requirements of Part 262 as published in the EPA Hazardous Waste Regulations. (40 CFR part 262)
- Each generator of greater than two hundred twenty (220) pounds of hazardous waste in any calendar month during the previous calendar year shall report annually by March 1 of each calendar year to the MDEQ, on forms provided by the MDEQ, the type and amount of hazardous waste generated during the preceding calendar year.
- Transporters of hazardous waste in and through Mississippi shall meet all the requirements of Part 263 of the EPA Hazardous Waste Regulations. (40 CFR part 263)
- Owners and operators of hazardous waste treatment, storage, and disposal facilities in Mississippi shall design, construct, operate, close, and maintain such facilities in accordance with the requirements found in Part 264 of the EPA Hazardous Waste Regulations. (40 CFR part 264)

The Environmental Compliance & Enforcement Division (ECED) implements and oversees the majority of the compliance and enforcement programs for MDEQ. ECED is responsible for regulating over 15,000 sites for compliance with applicable air, water, hazardous waste, and nonhazardous waste permits and regulations. When a site fails to comply with the permit(s) or regulations, ECED takes appropriate enforcement action to return the site to compliance. ECED,

in conjunction with the Field Services Division, is also responsible for responding to citizen complaints regarding air pollution, water pollution, solid waste issues, and hazardous waste issues.

Tire Disposal

In response to growing problems with proper waste tire management and disposal, Mississippi adopted the Waste Tire Law. This law authorized the CEQ to establish regulations for the collection, transportation, storage, processing, and disposal of waste tires. According to § 17-17-409 of the Mississippi Code, each county, regional solid waste management authority or municipality must plan and provide an adequate number of waste tire collection sites within its jurisdiction. These sites are for the deposit of waste tires from small quantity waste tire generators and to ensure the delivery of these tires to an authorized waste tire processing/disposal facility operated by the county, regional solid waste authority or private entity. Counties may establish, own, and/or operate their own waste collection site, or may enter into leases or other contractual arrangements with other counties or private entities for the operation of waste tire collection sites. Nothing in this section of the code prevents a county or regional solid waste authority from providing a more expansive waste tire management service.

The local government can consider different options for their collection sites. A fixed collection site is a location where generators may deposit tires. Generally, these sites should be located adjacent to or on the property of a facility where the local government manages other solid wastes such as a dumpster location, transfer station, rubbish disposal site, or municipal solid waste landfill. The sites should also be easily accessible for the general public and for large collection vehicles retrieving the tires. In addition, the sites should be developed and maintained in a manner that would prevent contamination of the waste tires with dirt, mud, rocks, etc. A second option is a mobile collection unit where a mobile trailer or other unit moves between different fixed locations of the county or city to provide all residents an equal opportunity to dispose of their tires through the program. Generally, the station of the collection unit may be at one fixed location as previously described, throughout much of the year. A third option for the local government entities is waste tire collection days. This is better suited for smaller communities where the local government collects tires at a location and on a date that the government publicly advertises, in conjunction with another collection day for household hazardous wastes or other wastes. This type of program could be conducted quarterly or semiannually depending upon the need. Lastly, any combination of the above described programs or any other innovative programs that the local government may develop. Such programs might involve public/private partnership with local waste service companies.

GRANT PROGRAMS

Solid Waste Planning

The Solid Waste Policy, Planning, and Grants Branch of MDEQ conducts a variety of policy, planning, regulatory and financial assistance activities involving the management and disposal of nonhazardous solid wastes in the state of Mississippi. The solid waste planning grants fund is used to make grants to counties, municipalities, regional solid waste management authorities, or

other multi-county entities to assist in defraying the cost of preparing solid waste management plans as required by § 17-17-227 of the Mississippi Code. Recipients may use the grants to defray the costs of preparing and developing a local solid waste management plan, where the employee, person, contractor, or organization developing the plan has obtained approval from MDEQ to prepare such comprehensive solid waste plans in Mississippi. These costs include personnel/contractual costs, travel related to the planning process, public notice/hearing, and publication/survey costs. A grant applicant may select an approved person or organization to conduct the local planning efforts from a listing maintained by MDEQ.

In addition to the MDEQ solid waste planning grant, the U.S. Department of Agriculture (USDA) has a Solid Waste Management Grant Program listed under Federal Regulation 7 CFR 1775. The goals of this program are to reduce or eliminate pollution of water resources in rural areas, and improve planning and management of solid waste sites in rural areas (USDA defines rural areas as any area not in a city or town with a population in excess of 10,000, according to the latest decennial census of the United States). These grants may be used to evaluate current landfill conditions, to determine threats to water resources, provide technical assistance and/or training to enhance operator skills in the operation and maintenance of active landfills, provide technical assistance and/or training to help communities reduce the solid waste stream, or provide technical assistance and/or training for operators of landfills which are closed or will be closed in the near future with the development and implementation of closure plans, future land use plans, safety and maintenance planning, and closure scheduling within permit requirements.

The USDA also has a grant program for Technical Assistance and Training. This grant program is designed to identify and evaluate solutions to water and waste disposal problems in rural areas, assist applicants in preparing applications for water and waste grants made at the State level offices, and improve operation and maintenance of existing water and waste disposal facilities in rural areas (USDA defines rural areas as any area not in a city or town with a population in excess of 10,000, according to the latest decennial census of the United States). Specifically regarding solid waste planning, the recipients may use these grants to identify and evaluate solutions to waste problems of associations in rural areas relating to collection, treatment, and disposal. Additionally, the recipient of the grant may use the funds to assist associations that have filed a pre-application with the USDA in the preparation of a waste loan and/or grant applications, and provide training to association personnel that will improve the management, operation, and maintenance of waste disposal facilities.

Hazardous Waste

MDEQ offers a Household Hazardous Waste (HHW) Grant promulgated by the CEQ under the authority of § 49-17-17, 49-17-29, and 17-17-441, Miss. Code Ann. of 1972(Supp. 1992). These grants are for use in collection and proper treatment, storage or disposal of HHW, transportation costs, administration and dissemination of public information, and other costs for a successful HHW program.

Nonhazardous Solid Waste Corrective Action Trust Fund (CATF)

The Mississippi legislature established CATF in accordance with § 17-17-63 of the Mississippi Code. CATF provides financial assistance to site owners for corrective actions at closed or abandoned municipal solid waste (MSW) landfills that closed prior to the effective date of the Federal Subtitle D Regulations. The recipient can use the funds for preventive or corrective actions due to a real – or potential – release of contaminants from the landfill, or for monitoring/abating other problem conditions at an eligible closed landfill. The recipient can utilize CATF to assess the impacts (onsite or offsite) from potential groundwater contamination and landfill gas migration. CATF can also remediate contaminants at an old closed landfill.

Under current Mississippi law, the state considers only closed sanitary or municipal landfills that accepted household garbage during the life of the landfill eligible for funding assistance from CATF. In addition, only those closed landfills that ceased receiving waste prior to the effective dates of Federal Subtitle D Regulations: October 9, 1993 (>100 tons per day) or April 9, 1994 (<100 tons per day) are eligible for funding consideration through the CATF.

MDEQ has assisted various landfill owners with corrective action projects related to groundwater and surface water impacts, methane gas migration, repair of erosion and subsidence and restoration of the final cover system at a number of old closed MSW landfills. If MDEQ or a site owner determines that corrective actions appear necessary for an eligible closed or abandoned landfill site, the site owner or MDEQ should arrange a preproject meeting to discuss the specifics of a proposed corrective action project and the eligibility of expected project costs. Upon determining which correction actions are eligible for funding assistance, the site owner should complete a funding assistance application form (CATF-1) in order to receive formal consideration for funding assistance through the CATF Program. A complete application shall include a written narrative justifying the eligibility of the proposed project for funding assistance, appropriate maps and drawings, engineering and remediation work plans, and other pertinent information.

Waste Tire Abatement Program

MDEQ has a solid waste assistance program with the purpose of cleaning up illegal waste tire dumps. The Waste Tire Abatement Program is open to those municipalities and counties for providing a waste tire collection site for small quantity waste tire generators and for use in clean up of unauthorized waste tire dumps. Applicants may submit grants to the MDEQ at any time, and the entire cost of the local community waste tire collection and clean-up program may be eligible for the grant award. Recipients can use the grant money for collection sites, transportation costs, storage trailers/units, contractual disposal costs, and public education programs.

Diesel Engine Replacement

The Energy Policy Act of 2005 created the Diesel Emissions Reduction Program (DERA). DERA gave the EPA new grant and loan authority for promoting diesel emission reductions through FY2011. After reauthorization, there is $11 million available in competitive grant

funding for FY2017. DERA is required to use 70% of their funds for national competitive grants. Using these guidelines, the EPA developed programs that include the National Funding Assistance Program (NFAP), Clean Diesel Emerging Technologies Program (CDETP), and SmartWay Clean Diesel Finance Program (SWCDFP).

The NFAP provides funding to reduce emissions from existing diesel engines through a variety of strategies, including add-on emission control retrofit technologies, idle reduction technologies, cleaner fuel use, engine repowers, engine upgrades, and/or vehicle or equipment replacement, and the creation of innovative finance programs to fund diesel emissions reduction projects. All local governments with jurisdiction over transportation or air quality are eligible to apply for this grant. The NFAP funds will be for the benefit of public fleets. This includes private fleets contracted or leased for public purpose, such as private school buses, refuse haulers, or equipment at public ports. However, only eligible entities can apply directly to the EPA for funding (e.g., a local government would apply and administer a project on behalf of the private refuse hauler contractor). The types of fleets that qualify for funding include buses, medium or heavy trucks, marine engines, and nonroad engines used in construction, handling of cargo, agriculture, and energy production (stationary generators and pumps).

The CDETP is an opportunity to advance new technologies capable of diesel emission reduction from existing fleets. Under this competitive grant program, the EPA provides funding assistance to eligible entities for the deployment of diesel emission reduction technologies the EPA has not yet verified or certified. To qualify as an emerging technology, the manufacturer of the technology must be in the initial stages of the verification process with EPA and listed on EPA's Emerging Technology List. All local governments with jurisdiction over transportation or air quality are eligible to apply for this grant. Recipients of a project funded through the CDETP can only use technologies on the Emerging Technologies List. Recipients may use funding to monitor and evaluate performance of the emerging technology.

The SWCDFP uses cooperative agreements to establish innovative finance programs for buyers of eligible diesel or alternatively fueled vehicles and equipment. Innovative finance projects include those where the loan recipient receives a specific financial incentive (i.e., better than current market rates or conditions) for the purchase of eligible vehicles or equipment. Particular emphasis is on establishing low cost loan programs for the retrofit of used pre-2007 highway vehicles and nonroad equipment with EPA verified emission control technologies. All local governments with jurisdiction over transportation or air quality are eligible to apply for this grant. The financing must lower costs to the buyer by providing lower interest rates, longer repayment terms, greater likelihood of loan approval, or some other financial incentive. Finance proposals may include, but are not limited to, the issuance of loan guarantees, the issuance of tax exempt or taxable bonds to create a low-cost loan program, or revolving loan funds.

Energy Grants

The USDA offers a Rural Energy for America Program Grants/Energy Audit and Renewable Energy Development Assist (REAP/EA/REDA). This program will provide grants up to $500,000 for energy audits and renewable energy development assistance. The USDA awards the grants on a competitive basis and recipients are required to pay at least 25% of the cost of the

audit. All local governments are eligible entities. The grants will allow agriculture producers and rural small businesses to become more energy efficient and use renewable technologies. For all projects, the system must be located in a rural area, must be technically feasible, and the applicant must own the system.

The Bureau of Ocean Energy Management, Regulation and Enforcement offers the Coastal Impact Assistance Program (CIAP) for Construction. Funds are available only to the State of Mississippi and eligible Coastal Counties within Mississippi. The CIAP aims to mitigate the impacts of Outer Continental Shelf oil and gas activities (based upon allocation formulas prescribed by the Energy Policy Act). The purpose of the CIAP is to disburse funding ($1,000-$10MM) to eligible producing counties for the purpose of conservation, protection, or restoration of coastal areas including: wetlands, mitigation of damage to fish, wildlife, or natural resources, planning assistance and the administrative costs of complying with these objectives, implementation of a federally-approved marine, coastal, or comprehensive conservation management plan, and mitigation of the impact of Outer Continental Shelf activities through funding of onshore infrastructure projects and public service needs.

Multimedia State and Tribal Assistance Grants (STAG)

EPA provides grants to states, local governments, Tribes, and others through the STAG program. To strengthen the EPA's compliance assurance efforts and build relationships with states and tribes, the EPA provides these grants to enhance the capacity of the recipients to carry out compliance assurance activities within their respective jurisdictions. Since 1999, the EPA has selected 124 proposals for funding making over $19MM available to 53 different states, tribes, universities, or organizations. These projects have addressed data quality, public access, Tribal and state inspector training, program planning and performance measurement, data management, outcomes measurement, and environmental enforcement training.

The projects selected cover a wide range of activities that have and will continue to enable states to demonstrate compliance assurance and enforcement outcomes from their activities, while serving as models for other states. These capacity-building activities include training, studies, surveys, and investigations. Grant funds are available to regulatory partners to strengthen their ability to address environmental and public health threats, while furthering the art and science of environmental compliance.

APPENDIX I

Mississippi State University Extension Service
Center for Government and Community Development

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 certification 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 911 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 center's certification activities include:

- Award, in cooperation with the Mississippi Clerks and Collectors Association, the Certified Municipal Clerk designation to municipal clerks, tax collectors, and deputies who complete the exam-based Certification Program for Municipal Clerks and Collectors. At any given time, some 125 municipal clerks, tax collectors, and deputy municipal clerks, representing over 75 different municipalities, will be working toward certification.

- 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, with combined salary supplements exceeding $850,000.

- 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.

- 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.

- Conduct workshops for tax collectors in collaboration with the Mississippi Department of Revenue, the Office of the State Auditor, and the Mississippi Assessors and Collectors Association.

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

The Mississippi State University Extension Service 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). Individual board officers and their certified water operators will represent the water associations of each county at discussion sessions. 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 with 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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APPENDIX II

Certification Training Program for Municipal Clerks, Deputy Clerks, and Tax Collectors

For 40 years, 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 3-year period with two, two and one-half day sessions each year (sessions in February and October). 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 and 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, Office of the Attorney General, Office of the Secretary of State, Mississippi Ethics Commission, Mississippi Development Authority, 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 30 individual, exam-based, half-day courses are part of the 3-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 his/her 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 and Community Development, Mississippi State University Extension Service, Box 9643, Mississippi State, MS 39762, 662-325-3141, 662-325-8954 (fax), or patrick.miller@msstate.edu; or from the GCD's website at www.gcd.msstate.edu.

Mississippi Municipal Clerk Certification Program Curriculum

The Mississippi Municipal Clerk Certification Program is a 3-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 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
- Liability in Government
- Managing Municipal 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
- Inner Management: Time & Memory
- Interpersonal Communications & Conflict Resolution
- Leadership Survival Skills
- Problem Solving
- Written and Oral Communications

ELECTIVES (6 courses required)

- Ad Valorem Taxation
- Elections
- Emergency Management
- Grants
- Privilege License & Transient Vendors
- Public Employees Retirement System
- Risk Management

APPENDIX III

MISSISSIPPI MUNICIPAL LEAGUE

The Mississippi Municipal League (MML) is a private, non-profit, non-partisan association representing 295 cities and towns in Mississippi.

The mission of the MML is helping cities and towns excel by:

- providing an atmosphere of opportunity and inclusion for members.
- maintaining a strong resource base.
- advocating aggressively for municipal-friendly legislation.
- providing exceptional training for municipal elected officials and leaders.
- serving as a communication and networking base for municipal elected officials.
- representing municipalities with federal, state, and private entities.

The Mississippi Municipal League is governed by its board of directors, which is led by the president, first vice president, and second vice president. Board members represent cities and towns from each of the three Mississippi Supreme Court Districts and are appointed each year by the MML officer from that district. The MML board meets three times during the year to review recommendations from the MML executive committee.

The MML employs a seven-member staff headed by the executive director. The staff performs their assigned duties under the direction of the executive director, who is the chief operating officer of the league and implements the decisions of the board of directors.

Legislative Advocacy

The League advocates aggressively for municipal-friendly legislation with the help of a professional lobbyist. The MML legislative committee, along with the league staff, meets with legislators to ensure that they are informed and up-to- date on the interests of our cities and towns. Legislation of municipal concern is closely monitored and tracked. Each week of the legislative session, MML sends out a legislative update via email that details the current status of all tracked legislation, as well as provides the membership with calls-to-action when needed.

Mississippi Municipal Foundation

The Mississippi Municipal League formed the Mississippi Municipal Foundation, a 501(c)(3) non-profit organization, to administer funds received for charitable and educational purposes in the following programs:

- The League Educational Training Scholarship (L.E.T.S.) gives cities and towns with a population of 5,000 or under the opportunity to apply for financial assistance in attending the Small Town Conference, the Mid-Winter Conference, or the Annual Conference. Each year, the league and the Mississippi Association of Clerks and Collectors fund scholarships to pay registration fees for these conferences. Applicants must meet specific criteria to be considered.

- The MML Annual High School Scholarship program awards three scholarships to high school students with an interest in pursuing a career in municipal government. The program is co-sponsored by the Mississippi Municipal Service Company, Mississippi Power Company, and Phelps Dunbar LLP.

Publications

The MML distributes timely information and news to its members through the publication of its quarterly magazine *Mississippi Municipalities,* weekly email updates, social media posts, and regular news announcements on its website.

The league provides research and technical assistance in the form of published reports, technical briefs, surveys, and grant updates through the City Hall Center.

The MML membership directory is updated after each municipal election year. The new edition of the MML directory will be available in late 2017.

Education and Training

In recent years, the league has greatly enhanced and improved education efforts with the implementation of the Certified Municipal Officials' program, which provides specialized training for municipal elected officials. There are three levels of the CMO program: basic, advanced, and professional development.

In addition to the CMO program, the league hosts regional training programs, annual education conferences, and other training opportunities for local officials. The league also works with the guidance of the MML education committee to develop training agendas that are relevant and that address current municipal issues.

MML Conferences

The league sponsors several conferences and work sessions each year, which include well-known speakers; an array of workshops on important information and updates; awards and recognition programs; legislative planning; and the election of MML officers.

Annual conferences include:

- The MML Mid-Winter Legislative Conference, held each January in conjunction with the state's legislative session.
- The MML Statewide Youth Leadership Summit, held each spring.
- The MML Annual Conference, the largest gathering of MML members, held each summer.
- The MML Small Town Conference, held each fall.

MML Affiliates

The MML is currently works with a number of affiliate organizations that represent an interest in municipal government. By forming partnerships with these organizations, the MML is able to improve advocacy in many policy areas.

The MML affiliate organizations are:

- Mississippi Clerks and Collectors Association
- Mississippi Municipal Court Clerks Association
- Mississippi City Attorneys Association
- Mississippi Police Chiefs Association
- Mississippi Fire Chiefs Association
- Mississippi Chapter of American Public Works
- Association o f Mississippi Tax Collectors/Assessors
- Mississippi Chapter of American Planning Association
- Mississippi Parks & Recreation Association

CAUCUS GROUPS

- Mississippi Black Caucus of Local Elected Officials

APPENDIX IV

THE MISSISSIPPI MUNICIPAL SERVICE COMPANY

As a member of the Mississippi Municipal League (MML), chances are your city has insurance protection through the Mississippi Municipal Liability Plan and the Mississippi Municipal Workers' Compensation Group. With over 260 members currently participating, these programs have emerged as the leaders in protecting municipalities and elected officials against potentially devastating liability and workers' compensation losses.

Years ago, the Mississippi Municipal Liability Plan was formed in response to a crisis need for affordable liability protection for municipalities. The goal was to provide an alternative insurance product with coverage that extended beyond what was being offered by commercial insurers. In addition to traditional general liability coverage, the self-insured plan includes auto liability, law enforcement liability, employment liability and sexual harassment, errors and omissions, directors' and officers' liability, and extended coverage for elected and public officials.

As a comprehensive plan, great emphasis is placed on finding coverage for municipalities, thereby reducing the threat of policy exclusion denials of certain claims. Another unique feature of the Mississippi Municipal Liability Plan is that there are no per-claim or yearly deductibles. For the first time, municipalities are able to budget yearly insurance expenses without having to worry about satisfying unpredictable deductibles throughout the term of the coverage period.

The success of the Mississippi Municipal Liability Plan set the momentum for developing the Mississippi Municipal Workers' Compensation Group. Due to cyclical changes in the commercial insurance market, many cities in Mississippi were unable to obtain mandatory workers' compensation coverage at an affordable price. Like many states across the nation, municipalities in Mississippi met this challenge by taking control themselves and forming a self-insured pool. This self-insured pool not only satisfies the workers' compensation requirements for all city employees, but the plan also provides limited medical coverage for some qualified volunteer fire and law enforcement personnel.

In 1991, elected officials went one step further and formed their own service company, the Mississippi Municipal Service Company (MMSC). The idea was simple—providing claims administration and risk management services for plan members could be done more efficiently and effectively through an "in-house" service company. In addition to claims administration, MMSC has a full line of risk management membership services including safety training, loss control, and law enforcement training. As cities get more and more involved in their own loss control efforts, MMSC is there every step of the way, providing training materials and programs to promote safety awareness. Similarly, MMSC has worked with nearly every member to provide consultation services when contractual liability agreements need interpretation. MMSC knows that "risk transfer" is an intricate part of a risk management program. It is MMSC's commitment to assist members in these matters.

Through the years, MMSC has emerged as the most efficiently administered claims service company in Mississippi's municipal market. With a highly experienced claims staff dealing exclusively with Mississippi municipal and governmental risk management issues, our members enjoy a level of dedication that benefits municipalities through lower premium costs, a more loss-conscious workforce, and safety policies beneficial to all citizens.

MMSC employees provide help and risk management information whenever needed. This is what the word "service" in the Mississippi Municipal Service Company is all about.

Mail	600 East Amite Street Suite 200 Jackson, MS 39201
Telephone	(601) 355-8581 (800) 898-1032
Fax	(601) 355-8584
Email	info@msmsc.com
Web	www.msmsc.com

APPENDIX V

SELECTED INFORMATION ABOUT MISSISSIPPI MUNICIPALITIES

David Brinton

The following tables contain selected information from Mississippi's 297 municipalities. Included in the lists are each municipality's population, form of government, date of incorporation, and type of charter. *Mississippi Code of 1972* ' 21-1-1 divides the municipal corporations existing in Mississippi into three classes. Municipalities having 2,000 inhabitants or more are classified as cities; those having fewer than 2,000 and not fewer than 300 inhabitants are classified as towns; and those having fewer than 300 and not fewer than 100 inhabitants are classified as villages. The population data are from the 2010 Census by the U.S. Census Bureau.[1] The first table is arranged alphabetically by municipality name. The second table is arranged by estimated population, from largest to smallest.

Mississippi Municipalities

listed alphabetically by name

Municipality	2015 Population	Form of Government	Date of Incorporation	Type of Charter
Abbeville	447	Mayor-Aldermen	1870	Code
Aberdeen	5,466	Mayor-Aldermen	1837	Private
Ackerman	1,861	Mayor-Aldermen	1884	Code
Algoma	677	Mayor-Aldermen	1987	Code
Alligator	328	Mayor-Aldermen	1927	Code
Amory	7,151	Mayor-Aldermen	1888	Code
Anguilla	542	Mayor-Aldermen	1913	Code
Arcola	274	Mayor-Aldermen	1904	Code
Artesia	380	Mayor-Aldermen	1875	Code
Ashland	524	Mayor-Aldermen	1871	Code
Baldwyn	3,139	Mayor-Aldermen	1861	Code
Bassfield	272	Mayor-Aldermen	1903	Code
Batesville	7,413	Mayor-Aldermen	1860	Code
Bay Springs	1,738	Mayor-Aldermen	1904	Code
Bay St. Louis	10,861	Mayor-Council	1882	Code
Beaumont	1110	Mayor-Aldermen	1955	Code
Beauregard	328	Mayor-Aldermen	1865	Code
Belmont	2,119	Mayor-Aldermen	1908	Code
Belzoni	2,325	Mayor-Aldermen	1895	Code
Benoit	462	Mayor-Aldermen	1890	Code

[1]U.S. Census Bureau, Census 2015 Redistricting Data (Public Law 94-171)

Municipality	2015 Population	Form of Government	Date of Incorporation	Type of Charter
Bentonia	521	Mayor-Aldermen	1884	Code
Beulah	359	Mayor-Aldermen	1882	Code
Big Creek	265	Mayor-Aldermen	1905	Code
Biloxi	44,825	Mayor-Council	1907	Code
Blue Mountain	937	Mayor-Aldermen	1838	Code
Blue Springs	282	Mayor-Aldermen	1877	Code
Bolton	423	Mayor-Aldermen	1888	Code
Booneville	8,780	Mayor-Aldermen	1871	Code
Boyle	1,053	Mayor-Aldermen	1861	Code
Brandon	22,897	Mayor-Aldermen	1895	Code
Braxton	207	Mayor-Aldermen	1831	Code
Brookhaven	12,465	Mayor-Aldermen	1901	Code
Brooksville	914	Mayor-Aldermen	1858	Code
Bruce	1,660	Mayor-Aldermen	1860	Code
Bude	905	Mayor-Aldermen	1927	Code
Burnsville	1,089	Mayor-Aldermen	1914	Code
Byhalia	1,358	Mayor-Aldermen	1858	Code
Byram	11,592	Mayor-Aldermen	2009	Code
Caledonia	1,332	Mayor-Aldermen	1873	Code
Calhoun City	1,850	Mayor-Aldermen	1904	Code
Canton	13,413	Mayor-Aldermen	1906	Code
Carrollton	146	Mayor-Aldermen	1836	Code
Carthage	4,966	Mayor-Aldermen	1836	Private
Cary	348	Mayor-Aldermen	1837	Code
Centreville	1,765	Mayor-Aldermen	1880	Code
Charleston	1,164	Mayor-Aldermen	1848	Code
Chunky	406	Mayor-Aldermen	1900	Code
Clarksdale	17,314	Commission	1882	Code
Cleveland	12,339	Mayor-Aldermen	1886	Code
Clinton	25,475	Mayor-Aldermen	1830	Code
Coahoma	390	Mayor-Aldermen	1890	Code
Coffeeville	1,044	Mayor-Aldermen	1836	Code
Coldwater	1,251	Mayor-Aldermen	1858	Code
Collins	2,557	Mayor-Aldermen	1906	Code
Columbia	6,367	Mayor-Aldermen	1812	Code
Columbus	23,360	Mayor-Council	1822	Private
Como	1,374	Mayor-Aldermen	1880	Code
Corinth	14,839	Mayor-Aldermen	1856	Private
Courtland	725	Mayor-Aldermen	1871	Code
Crawford	569	Mayor-Aldermen	1854	Code
Crenshaw	975	Mayor-Aldermen	1903	Code
Crosby	413	Mayor-Aldermen	1934	Code

Municipality	2015 Population	Form of Government	Date of Incorporation	Type of Charter
Crowder	701	Mayor-Aldermen	1917	Code
Cruger	336	Mayor-Aldermen	1890	Code
Crystal Springs	4,970	Mayor-Aldermen	1859	Code
Decatur	2,100	Mayor-Aldermen	1840	Code
DeKalb	1,082	Mayor-Aldermen	1839	Code
Derma	1,056	Mayor-Aldermen	1905	Code
Diamondhead	8,246	Council-Manager	2012	Code
D'Iberville	10,532	Council-Manager	1988	Code
D'Lo	432	Mayor-Aldermen	1901	Code
Doddsville	339	Mayor-Aldermen	1920	Code
Drew	1,941	Mayor-Aldermen	1899	Code
Duck Hill	1,000	Mayor-Aldermen	1870	Code
Dumas	470	Mayor-Aldermen	1874	Code
Duncan	435	Mayor-Aldermen	1890	Code
Durant	2,978	Mayor-Aldermen	1865	Code
Ecru	1,379	Mayor-Aldermen	1904	Code
Eden	104	Mayor-Aldermen	1890	Code
Edwards	1,177	Mayor-Aldermen	1871	Code
Ellisville	4,566	Mayor-Aldermen	1884	Code
Enterprise	716	Mayor-Aldermen	1846	Code
Ethel	505	Mayor-Aldermen	1911	Code
Eupora	2,191	Mayor-Aldermen	1890	Code
Falcon	192	Mayor-Aldermen	1971	Code
Falkner	551	Mayor-Aldermen	1874	Code
Farmington	2,333	Mayor-Aldermen	1997	Code
Fayette	1,563	Mayor-Aldermen	1830	Code
Flora	1,954	Mayor-Aldermen	1886	Code
Florence	4,279	Mayor-Aldermen	1905	Code
Flowood	8,385	Mayor-Aldermen	1950	Code
Forest	5,713	Mayor-Aldermen	1865	Code
French Camp	216	Mayor-Aldermen	1854	Code
Friars Point	870	Mayor-Aldermen	1865	Code
Fulton	4,014	Mayor-Aldermen	1837	Private
Gattman	113	Mayor-Aldermen	1829	Code
Gautier	18,563	Council-Manager	1986	Code
Georgetown	294	Mayor-Aldermen	1909	Code
Glen	461	Mayor-Aldermen	1993	Code
Glendora	78	Mayor-Aldermen	1900	Code
Gloster	972	Mayor-Aldermen	1884	Code
Golden	188	Mayor-Aldermen	1908	Code
Goodman	1,288	Mayor-Aldermen	1865	Code
Greenville	33,119	Mayor-Aldermen	1870	Private
Greenwood	15,734	Mayor-Council	1844	Code

Municipality	2015 Population	Form of Government	Date of Incorporation	Type of Charter
Grenada	12,908	Council-Manager	1836	Private
Gulfport	70,642	Mayor-Council	1898	Code
Gunnison	305	Mayor-Aldermen	1892	Code
Guntown	2,412	Mayor-Aldermen	1867	Code
Hatley	494	Mayor-Aldermen	1914	Code
Hattiesburg	46,762	Mayor-Council	1884	Code
Hazlehurst	3,942	Mayor-Aldermen	1859	Code
Heidelberg	702	Mayor-Aldermen	1884	Code
Hernando	14,984	Mayor-Aldermen	1837	Code
Hickory	604	Mayor-Aldermen	1865	Code
Hickory Flat	729	Mayor-Aldermen	1874	Code
Hollandale	2,621	Mayor-Aldermen	1890	Code
Holly Springs	7,572	Mayor-Aldermen	1837	Code
Horn Lake	26,662	Mayor-Aldermen	1871	Private
Houston	3,566	Mayor-Aldermen	1837	Code
Indianola	10,281	Mayor-Aldermen	1886	Private
Inverness	934	Mayor-Aldermen	1904	Code
Isola	1,003	Mayor-Aldermen	1910	Code
Itta Bena	2,103	Mayor-Aldermen	1898	Code
Iuka	3,005	Mayor-Aldermen	1857	Code
Jackson	173,212	Mayor-Council	1840	Code
Jonestown	1,436	Mayor-Aldermen	1880	Code
Jumpertown	653	Mayor-Aldermen	1975	Code
Kilmichael	869	Mayor-Aldermen	1906	Code
Kosciusko	7,242	Mayor-Aldermen	1836	Code
Kossuth	263	Mayor-Aldermen	1870	Code
Lake	435	Mayor-Aldermen	1867	Code
Lambert	1,302	Mayor-Aldermen	1905	Code
Laurel	18,770	Mayor-Council	1886	Code
Leakesville	802	Mayor-Aldermen	1904	Code
Learned	44	Mayor-Aldermen	1884	Code
Leland	4,318	Mayor-Aldermen	1886	Code
Lena	200	Mayor-Aldermen	1912	Code
Lexington	2,106	Mayor-Aldermen	1836	Code
Liberty	771	Mayor-Aldermen	1809	Code
Long Beach	15,369	Mayor-Aldermen	1905	Code
Louin	237	Mayor-Aldermen	1904	Code
Louise	150	Mayor-Aldermen	1909	Code
Louisville	6,407	Mayor-Aldermen	1836	Private
Lucedale	2,993	Mayor-Aldermen	1901	Code
Lula	292	Mayor-Aldermen	1890	Code
Lumberton	2,080	Mayor-Aldermen	1895	Code

Municipality	2015 Population	Form of Government	Date of Incorporation	Type of Charter
Lyon	320	Mayor-Aldermen	1899	Code
Maben	677	Mayor-Aldermen	1890	Code
Macon	2,659	Mayor-Aldermen	1836	Code
Madison	25,167	Mayor-Aldermen	1944	Code
Magee	4,399	Mayor-Aldermen	1900	Code
Magnolia	2,021	Mayor-Aldermen	1859	Code
Mantachie	1,403	Mayor-Aldermen	1903	Code
Mantee	331	Mayor-Aldermen	1900	Code
Marietta	333	Mayor-Aldermen	1856	Code
Marion	1,547	Mayor-Aldermen	1838	Code
Marks	1,630	Mayor-Aldermen	1907	Code
Mathiston	760	Mayor-Aldermen	1890	Code
Mayersville	634	Mayor-Aldermen	1872	Code
McComb	12,723	Mayor-Aldermen	1872	Private
McCool	148	Mayor-Aldermen	1884	Code
McLain	428	Mayor-Aldermen	1903	Code
Meadville	454	Mayor-Aldermen	1906	Code
Mendenhall	2,511	Mayor-Aldermen	1905	Code
Meridian	40,507	Mayor-Council	1860	Code
Merigold	468	Mayor-Aldermen	1901	Code
Metcalfe	1,120	Mayor-Aldermen	1977	Code
Mize	305	Mayor-Aldermen	1902	Code
Monticello	1,559	Mayor-Aldermen	1904	Code
Montrose	108	Mayor-Aldermen	1904	Code
Moorhead	1,975	Council-Manager	1899	Code
Morgan City	264	Mayor-Aldermen	1968	Code
Morton	3,456	Mayor-Aldermen	1861	Code
Moss Point	13,685	Mayor-Aldermen	1901	Code
Mound Bayou	1,863	Mayor-Aldermen	1898	Code
Mount Olive	981	Mayor-Aldermen	1900	Code
Myrtle	493	Mayor-Aldermen	1890	Code
Natchez	15,474	Mayor-Aldermen	1803	Private
Nettleton	1,665	Mayor-Aldermen	1888	Code
New Albany	8,466	Mayor-Aldermen	1850	Code
New Augusta	835	Mayor-Aldermen	1953	Code
New Hebron	526	Mayor-Aldermen	1906	Code
New Houlka	813	Mayor-Aldermen	1905	Code
Newton	3,347	Mayor-Aldermen	1866	Code
North Carrollton	498	Mayor-Aldermen	1899	Code
Noxapater	374	Mayor-Aldermen	1906	Code
Oakland	702	Mayor-Aldermen	1848	Code
Ocean Springs	17,528	Mayor-Aldermen	1854	Code

Municipality	2015 Population	Form of Government	Date of Incorporation	Type of Charter
Okolona	2,658	Mayor-Aldermen	1850	Private
Olive Branch	35,018	Mayor-Aldermen	1873	Code
Osyka	425	Mayor-Aldermen	1858	Code
Oxford	20,769	Mayor-Aldermen	1837	Code
Pace	174	Mayor-Aldermen	1923	Code
Pachuta	286	Mayor-Aldermen	1890	Code
Paden	93	Mayor-Aldermen	1919	Code
Pascagoula	22,230	Council-Manager	1838	Code
Pass Christian	5,130	Mayor-Aldermen	1848	Code
Pearl	26,222	Mayor-Aldermen	1973	Code
Pelahatchie	1,340	Mayor-Aldermen	1882	Code
Petal	10,723	Mayor-Aldermen	1973	Code
Philadelphia	7,433	Mayor-Aldermen	1838	Code
Picayune	10,784	Council-Manager	1904	Code
Pickens	818	Mayor-Aldermen	1893	Code
Pittsboro	188	Mayor-Aldermen	1852	Code
Plantersville	1,010	Mayor-Aldermen	1990	Code
Polkville	820	Mayor-Aldermen	1969	Code
Pontotoc	5,808	Mayor-Aldermen	1837	Code
Pope	231	Mayor-Aldermen	1872	Code
Poplarville	2,919	Mayor-Aldermen	1884	Code
Port Gibson	1,607	Mayor-Aldermen	1803	Private
Potts Camp	525	Mayor-Aldermen	1888	Code
Prentiss	1,193	Mayor-Aldermen	1903	Code
Puckett	350	Mayor-Aldermen	1955	Code
Purvis	2,160	Mayor-Aldermen	1888	Code
Quitman	2,147	Mayor-Aldermen	1839	Code
Raleigh	1,454	Mayor-Aldermen	1935	Code
Raymond	1,995	Mayor-Aldermen	1830	Code
Renova	820	Mayor-Aldermen	1920	Code
Richland	7,055	Mayor-Aldermen	1850	Code
Richton	928	Mayor-Aldermen	1905	Code
Ridgeland	24,276	Mayor-Aldermen	1899	Code
Rienzi	343	Mayor-Aldermen	1859	Code
Ripley	5,350	Mayor-Aldermen	1837	Code
Rolling Fork	2,491	Mayor-Aldermen	1880	Code
Rosedale	1,743	Mayor-Aldermen	1882	Private
Roxie	551	Mayor-Aldermen	1911	Code
Ruleville	2,877	Mayor-Aldermen	1899	Code
Sallis	147	Mayor-Aldermen	1875	Code
Saltillo	4,958	Mayor-Aldermen	1870	Code
Sandersville	685	Mayor-Aldermen	1884	Code

Municipality	2015 Population	Form of Government	Date of Incorporation	Type of Charter
Sardis	1,953	Mayor-Aldermen	1866	Code
Satartia	11	Mayor-Aldermen	1875	Code
Schlater	374	Mayor-Aldermen	1968	Code
Scooba	1,052	Mayor-Aldermen	1873	Code
Sebastopol	314	Mayor-Aldermen	1926	Code
Seminary	447	Mayor-Aldermen	1899	Code
Senatobia	8,017	Mayor-Aldermen	1860	Code
Shannon	1,780	Mayor-Aldermen	1870	Code
Shaw	1,672	Mayor-Aldermen	1886	Code
Shelby	2,381	Mayor-Aldermen	1890	Code
Sherman	784	Mayor-Aldermen	1888	Code
Shubuta	342	Mayor-Aldermen	1865	Code
Shuqualak	453	Mayor-Aldermen	1859	Code
Sidon	489	Mayor-Aldermen	1872	Code
Silver City	343	Mayor-Aldermen	1904	Code
Silver Creek	206	Mayor-Aldermen	1904	Code
Slate Springs	101	Mayor-Aldermen	1882	Code
Sledge	476	Mayor-Aldermen	1913	Code
Smithville	695	Mayor-Aldermen	1852	Code
Snow Lake Shores	354	Mayor-Aldermen	1996	Code
Soso	472	Mayor-Aldermen	1901	Code
Southaven	51,090	Mayor-Aldermen	1980	Code
Starkville	24,754	Mayor-Aldermen	1837	Code
State Line	677	Mayor-Aldermen	1875	Code
Stonewall	1,315	Mayor-Aldermen	1965	Code
Sturgis	438	Mayor-Aldermen	1886	Code
Summit	2,307	Mayor-Aldermen	1858	Code
Sumner	252	Mayor-Aldermen	1900	Code
Sumrall	1,714	Mayor-Aldermen	1903	Code
Sunflower	1,047	Mayor-Aldermen	1914	Code
Sylvarena	101	Mayor-Aldermen	1969	Code
Taylor	304	Mayor-Aldermen	1907	Code
Taylorsville	1,348	Mayor-Aldermen	1900	Code
Tchula	1,885	Mayor-Aldermen	1836	Code
Terry	1,477	Mayor-Aldermen	1867	Code
Thaxton	996	Mayor-Aldermen	1973	Code
Tishomingo	489	Mayor-Aldermen	1908	Code
Toccopola	219	Mayor-Aldermen	1873	Code
Tremont	477	Mayor-Aldermen	1974	Code
Tunica	1,233	Mayor-Aldermen	1888	Code
Tupelo	35,561	Mayor-Council	1870	Code
Tutwiler	3,516	Mayor-Aldermen	1899	Code

Municipality	2015 Population	Form of Government	Date of Incorporation	Type of Charter
Tylertown	1,641	Mayor-Aldermen	1907	Code
Union	1,826	Mayor-Aldermen	1905	Code
Utica	830	Mayor-Aldermen	1880	Code
Vaiden	802	Mayor-Aldermen	1860	Code
Vardaman	1,316	Mayor-Aldermen	1904	Code
Verona	3,062	Mayor-Aldermen	1860	Code
Vicksburg	23,439	Commission	1839	Private
Walls	1,247	Mayor-Aldermen	1972	Code
Walnut	827	Mayor-Aldermen	1912	Code
Walnut Grove	913	Mayor-Aldermen	1884	Code
Walthall	133	Mayor-Aldermen	1877	Code
Water Valley	3,344	Mayor-Aldermen	1858	Private
Waveland	6,449	Mayor-Aldermen	1888	Private
Waynesboro	4,974	Mayor-Aldermen	1876	Code
Webb	250	Mayor-Aldermen	1896	Code
Weir	507	Mayor-Aldermen	1884	Code
Wesson	2,134	Mayor-Aldermen	1864	Code
West	177	Mayor-Aldermen	1865	Code
West Point	11,122	Mayor-Aldermen	1858	Private
Wiggins	4,487	Mayor-Aldermen	1904	Code
Winona	4,704	Mayor-Aldermen	1861	Code
Winstonville	223	Mayor-Aldermen	1917	Code
Woodland	170	Mayor-Aldermen	1908	Code
Woodville	1,245	Mayor-Aldermen	1811	Code
Yazoo City	11,421	Mayor-Aldermen	1884	Private

Mississippi Municipalities

listed by population

Municipality	2015 Population	Form of Government	Date of Incorporation	Type of Charter
Jackson	173,212	Mayor-Council	1840	Code
Gulfport	70,642	Mayor-Council	1898	Code
Southaven	51,090	Mayor-Aldermen	1980	Code
Hattiesburg	46,762	Mayor-Council	1884	Code
Biloxi	44,825	Mayor-Council	1907	Code
Meridian	40,507	Mayor-Council	1860	Code
Tupelo	35,561	Mayor-Council	1870	Code
Olive Branch	35,018	Mayor-Aldermen	1873	Code
Greenville	33,119	Mayor-Aldermen	1870	Private
Horn Lake	26,662	Mayor-Aldermen	1871	Private
Pearl	26,222	Mayor-Aldermen	1973	Code
Clinton	25,475	Mayor-Aldermen	1830	Code
Madison	25,167	Mayor-Aldermen	1944	Code
Starkville	24,754	Mayor-Aldermen	1837	Code
Ridgeland	24,276	Mayor-Aldermen	1899	Code
Vicksburg	23,439	Commission	1839	Private
Columbus	23,360	Mayor-Council	1822	Private
Brandon	22,897	Mayor-Aldermen	1895	Code
Pascagoula	22,230	Council-Manager	1838	Code
Oxford	20,769	Mayor-Aldermen	1837	Code
Laurel	18,770	Mayor-Council	1886	Code
Gautier	18,563	Council-Manager	1986	Code
Ocean Springs	17,528	Mayor-Aldermen	1854	Code
Clarksdale	17,314	Commission	1882	Code
Greenwood	15,734	Mayor-Council	1844	Code
Natchez	15,474	Mayor-Aldermen	1803	Private
Long Beach	15,369	Mayor-Aldermen	1905	Code
Hernando	14,984	Mayor-Aldermen	1837	Code
Corinth	14,839	Mayor-Aldermen	1856	Private
Moss Point	13,685	Mayor-Aldermen	1901	Code
Canton	13,413	Mayor-Aldermen	1906	Code
Grenada	12,908	Council-Manager	1836	Private
McComb	12,723	Mayor-Aldermen	1872	Private
Brookhaven	12,465	Mayor-Aldermen	1901	Code
Cleveland	12,339	Mayor-Aldermen	1886	Code
Byram	11,592	Mayor-Aldermen	2009	Code
Yazoo City	11,421	Mayor-Aldermen	1884	Private
West Point	11,122	Mayor-Aldermen	1858	Private
Bay St. Louis	10,861	Mayor-Council	1882	Code
Picayune	10,784	Council-Manager	1904	Code

Municipality	2015 Population	Form of Government	Date of Incorporation	Type of Charter
Petal	10,723	Mayor-Aldermen	1973	Code
D'Iberville	10,532	Council-Manager	1988	Code
Indianola	10,281	Mayor-Aldermen	1886	Private
Booneville	8,780	Mayor-Aldermen	1871	Code
New Albany	8,466	Mayor-Aldermen	1850	Code
Flowood	8,385	Mayor-Aldermen	1950	Code
Diamondhead	8,246	Council-Manager	2012	Code
Senatobia	8,017	Mayor-Aldermen	1860	Code
Holly Springs	7,572	Mayor-Aldermen	1837	Code
Philadelphia	7,433	Mayor-Aldermen	1838	Code
Batesville	7,413	Mayor-Aldermen	1860	Code
Kosciusko	7,242	Mayor-Aldermen	1836	Code
Amory	7,151	Mayor-Aldermen	1888	Code
Richland	7,055	Mayor-Aldermen	1850	Code
Waveland	6,449	Mayor-Aldermen	1888	Private
Louisville	6,407	Mayor-Aldermen	1836	Private
Columbia	6,367	Mayor-Aldermen	1812	Code
Pontotoc	5,808	Mayor-Aldermen	1837	Code
Forest	5,713	Mayor-Aldermen	1865	Code
Aberdeen	5,466	Mayor-Aldermen	1837	Private
Ripley	5,350	Mayor-Aldermen	1837	Code
Pass Christian	5,130	Mayor-Aldermen	1848	Code
Waynesboro	4,974	Mayor-Aldermen	1876	Code
Crystal Springs	4,970	Mayor-Aldermen	1859	Code
Carthage	4,966	Mayor-Aldermen	1836	Private
Saltillo	4,958	Mayor-Aldermen	1870	Code
Winona	4,704	Mayor-Aldermen	1861	Code
Ellisville	4,566	Mayor-Aldermen	1884	Code
Wiggins	4,487	Mayor-Aldermen	1904	Code
Magee	4,399	Mayor-Aldermen	1900	Code
Leland	4,318	Mayor-Aldermen	1886	Code
Florence	4,279	Mayor-Aldermen	1905	Code
Fulton	4,014	Mayor-Aldermen	1837	Private
Hazlehurst	3,942	Mayor-Aldermen	1859	Code
Houston	3,566	Mayor-Aldermen	1837	Code
Tutwiler	3,516	Mayor-Aldermen	1899	Code
Morton	3,456	Mayor-Aldermen	1861	Code
Newton	3,347	Mayor-Aldermen	1866	Code
Water Valley	3,344	Mayor-Aldermen	1858	Private
Baldwyn	3,139	Mayor-Aldermen	1861	Code
Verona	3,062	Mayor-Aldermen	1860	Code
Iuka	3,005	Mayor-Aldermen	1857	Code

Municipality	2015 Population	Form of Government	Date of Incorporation	Type of Charter
Lucedale	2,993	Mayor-Aldermen	1901	Code
Durant	2,978	Mayor-Aldermen	1865	Code
Poplarville	2,919	Mayor-Aldermen	1884	Code
Ruleville	2,877	Mayor-Aldermen	1899	Code
Macon	2,659	Mayor-Aldermen	1836	Code
Okolona	2,658	Mayor-Aldermen	1850	Private
Hollandale	2,621	Mayor-Aldermen	1890	Code
Collins	2,557	Mayor-Aldermen	1906	Code
Mendenhall	2,511	Mayor-Aldermen	1905	Code
Rolling Fork	2,491	Mayor-Aldermen	1880	Code
Guntown	2,412	Mayor-Aldermen	1867	Code
Shelby	2,381	Mayor-Aldermen	1890	Code
Farmington	2,333	Mayor-Aldermen	1997	Code
Belzoni	2,325	Mayor-Aldermen	1895	Code
Summit	2,307	Mayor-Aldermen	1858	Code
Eupora	2,191	Mayor-Aldermen	1890	Code
Purvis	2,160	Mayor-Aldermen	1888	Code
Quitman	2,147	Mayor-Aldermen	1839	Code
Wesson	2,134	Mayor-Aldermen	1864	Code
Belmont	2,119	Mayor-Aldermen	1908	Code
Lexington	2,106	Mayor-Aldermen	1836	Code
Itta Bena	2,103	Mayor-Aldermen	1898	Code
Decatur	2,100	Mayor-Aldermen	1840	Code
Lumberton	2,080	Mayor-Aldermen	1895	Code
Magnolia	2,021	Mayor-Aldermen	1859	Code
Raymond	1,995	Mayor-Aldermen	1830	Code
Moorhead	1,975	Council-Manager	1899	Code
Flora	1,954	Mayor-Aldermen	1886	Code
Sardis	1,953	Mayor-Aldermen	1866	Code
Drew	1,941	Mayor-Aldermen	1899	Code
Tchula	1,885	Mayor-Aldermen	1836	Code
Mound Bayou	1,863	Mayor-Aldermen	1898	Code
Ackerman	1,861	Mayor-Aldermen	1884	Code
Calhoun City	1,850	Mayor-Aldermen	1904	Code
Union	1,826	Mayor-Aldermen	1905	Code
Shannon	1,780	Mayor-Aldermen	1870	Code
Centreville	1,765	Mayor-Aldermen	1880	Code
Rosedale	1,743	Mayor-Aldermen	1882	Private
Bay Springs	1,738	Mayor-Aldermen	1904	Code
Sumrall	1,714	Mayor-Aldermen	1903	Code
Shaw	1,672	Mayor-Aldermen	1886	Code
Nettleton	1,665	Mayor-Aldermen	1888	Code

Municipality	2015 Population	Form of Government	Date of Incorporation	Type of Charter
Bruce	1,660	Mayor-Aldermen	1860	Code
Tylertown	1,641	Mayor-Aldermen	1907	Code
Marks	1,630	Mayor-Aldermen	1907	Code
Port Gibson	1,607	Mayor-Aldermen	1803	Private
Fayette	1,563	Mayor-Aldermen	1830	Code
Monticello	1,559	Mayor-Aldermen	1904	Code
Marion	1,547	Mayor-Aldermen	1838	Code
Terry	1,477	Mayor-Aldermen	1867	Code
Raleigh	1,454	Mayor-Aldermen	1935	Code
Jonestown	1,436	Mayor-Aldermen	1880	Code
Mantachie	1,403	Mayor-Aldermen	1903	Code
Ecru	1,379	Mayor-Aldermen	1904	Code
Como	1,374	Mayor-Aldermen	1880	Code
Byhalia	1,358	Mayor-Aldermen	1858	Code
Taylorsville	1,348	Mayor-Aldermen	1900	Code
Pelahatchie	1,340	Mayor-Aldermen	1882	Code
Caledonia	1,332	Mayor-Aldermen	1873	Code
Vardaman	1,316	Mayor-Aldermen	1904	Code
Stonewall	1,315	Mayor-Aldermen	1965	Code
Lambert	1,302	Mayor-Aldermen	1905	Code
Goodman	1,288	Mayor-Aldermen	1865	Code
Coldwater	1,251	Mayor-Aldermen	1858	Code
Walls	1,247	Mayor-Aldermen	1972	Code
Woodville	1,245	Mayor-Aldermen	1811	Code
Tunica	1,233	Mayor-Aldermen	1888	Code
Prentiss	1,193	Mayor-Aldermen	1903	Code
Edwards	1,177	Mayor-Aldermen	1871	Code
Charleston	1,164	Mayor-Aldermen	1848	Code
Metcalfe	1,120	Mayor-Aldermen	1977	Code
Beaumont	1110	Mayor-Aldermen	1955	Code
Burnsville	1,089	Mayor-Aldermen	1914	Code
DeKalb	1,082	Mayor-Aldermen	1839	Code
Derma	1,056	Mayor-Aldermen	1905	Code
Boyle	1,053	Mayor-Aldermen	1861	Code
Scooba	1,052	Mayor-Aldermen	1873	Code
Sunflower	1,047	Mayor-Aldermen	1914	Code
Coffeeville	1,044	Mayor-Aldermen	1836	Code
Plantersville	1,010	Mayor-Aldermen	1990	Code
Isola	1,003	Mayor-Aldermen	1910	Code
Duck Hill	1,000	Mayor-Aldermen	1870	Code
Thaxton	996	Mayor-Aldermen	1973	Code
Mount Olive	981	Mayor-Aldermen	1900	Code

Municipality	2015 Population	Form of Government	Date of Incorporation	Type of Charter
Crenshaw	975	Mayor-Aldermen	1903	Code
Gloster	972	Mayor-Aldermen	1884	Code
Blue Mountain	937	Mayor-Aldermen	1838	Code
Inverness	934	Mayor-Aldermen	1904	Code
Richton	928	Mayor-Aldermen	1905	Code
Brooksville	914	Mayor-Aldermen	1858	Code
Walnut Grove	913	Mayor-Aldermen	1884	Code
Bude	905	Mayor-Aldermen	1927	Code
Friars Point	870	Mayor-Aldermen	1865	Code
Kilmichael	869	Mayor-Aldermen	1906	Code
New Augusta	835	Mayor-Aldermen	1953	Code
Utica	830	Mayor-Aldermen	1880	Code
Walnut	827	Mayor-Aldermen	1912	Code
Polkville	820	Mayor-Aldermen	1969	Code
Renova	820	Mayor-Aldermen	1920	Code
Pickens	818	Mayor-Aldermen	1893	Code
New Houlka	813	Mayor-Aldermen	1905	Code
Leakesville	802	Mayor-Aldermen	1904	Code
Vaiden	802	Mayor-Aldermen	1860	Code
Sherman	784	Mayor-Aldermen	1888	Code
Liberty	771	Mayor-Aldermen	1809	Code
Mathiston	760	Mayor-Aldermen	1890	Code
Hickory Flat	729	Mayor-Aldermen	1874	Code
Courtland	725	Mayor-Aldermen	1871	Code
Enterprise	716	Mayor-Aldermen	1846	Code
Heidelberg	702	Mayor-Aldermen	1884	Code
Oakland	702	Mayor-Aldermen	1848	Code
Crowder	701	Mayor-Aldermen	1917	Code
Smithville	695	Mayor-Aldermen	1852	Code
Sandersville	685	Mayor-Aldermen	1884	Code
Algoma	677	Mayor-Aldermen	1987	Code
Maben	677	Mayor-Aldermen	1890	Code
State Line	677	Mayor-Aldermen	1875	Code
Jumpertown	653	Mayor-Aldermen	1975	Code
Mayersville	634	Mayor-Aldermen	1872	Code
Hickory	604	Mayor-Aldermen	1865	Code
Crawford	569	Mayor-Aldermen	1854	Code
Falkner	551	Mayor-Aldermen	1874	Code
Roxie	551	Mayor-Aldermen	1911	Code
Anguilla	542	Mayor-Aldermen	1913	Code
New Hebron	526	Mayor-Aldermen	1906	Code
Potts Camp	525	Mayor-Aldermen	1888	Code

Municipality	2015 Population	Form of Government	Date of Incorporation	Type of Charter
Ashland	524	Mayor-Aldermen	1871	Code
Bentonia	521	Mayor-Aldermen	1884	Code
Weir	507	Mayor-Aldermen	1884	Code
Ethel	505	Mayor-Aldermen	1911	Code
North Carrollton	498	Mayor-Aldermen	1899	Code
Hatley	494	Mayor-Aldermen	1914	Code
Myrtle	493	Mayor-Aldermen	1890	Code
Sidon	489	Mayor-Aldermen	1872	Code
Tishomingo	489	Mayor-Aldermen	1908	Code
Tremont	477	Mayor-Aldermen	1974	Code
Sledge	476	Mayor-Aldermen	1913	Code
Soso	472	Mayor-Aldermen	1901	Code
Dumas	470	Mayor-Aldermen	1874	Code
Merigold	468	Mayor-Aldermen	1901	Code
Benoit	462	Mayor-Aldermen	1890	Code
Glen	461	Mayor-Aldermen	1993	Code
Meadville	454	Mayor-Aldermen	1906	Code
Shuqualak	453	Mayor-Aldermen	1859	Code
Abbeville	447	Mayor-Aldermen	1870	Code
Seminary	447	Mayor-Aldermen	1899	Code
Sturgis	438	Mayor-Aldermen	1886	Code
Duncan	435	Mayor-Aldermen	1890	Code
Lake	435	Mayor-Aldermen	1867	Code
D'Lo	432	Mayor-Aldermen	1901	Code
McLain	428	Mayor-Aldermen	1903	Code
Osyka	425	Mayor-Aldermen	1858	Code
Bolton	423	Mayor-Aldermen	1888	Code
Crosby	413	Mayor-Aldermen	1934	Code
Chunky	406	Mayor-Aldermen	1900	Code
Coahoma	390	Mayor-Aldermen	1890	Code
Artesia	380	Mayor-Aldermen	1875	Code
Noxapater	374	Mayor-Aldermen	1906	Code
Schlater	374	Mayor-Aldermen	1968	Code
Beulah	359	Mayor-Aldermen	1882	Code
Snow Lake Shores	354	Mayor-Aldermen	1996	Code
Puckett	350	Mayor-Aldermen	1955	Code
Cary	348	Mayor-Aldermen	1837	Code
Rienzi	343	Mayor-Aldermen	1859	Code
Silver City	343	Mayor-Aldermen	1904	Code
Shubuta	342	Mayor-Aldermen	1865	Code
Doddsville	339	Mayor-Aldermen	1920	Code
Cruger	336	Mayor-Aldermen	1890	Code

Municipality	2015 Population	Form of Government	Date of Incorporation	Type of Charter
Marietta	333	Mayor-Aldermen	1856	Code
Mantee	331	Mayor-Aldermen	1900	Code
Alligator	328	Mayor-Aldermen	1927	Code
Beauregard	328	Mayor-Aldermen	1865	Code
Lyon	320	Mayor-Aldermen	1899	Code
Sebastopol	314	Mayor-Aldermen	1926	Code
Gunnison	305	Mayor-Aldermen	1892	Code
Mize	305	Mayor-Aldermen	1902	Code
Taylor	304	Mayor-Aldermen	1907	Code
Georgetown	294	Mayor-Aldermen	1909	Code
Lula	292	Mayor-Aldermen	1890	Code
Pachuta	286	Mayor-Aldermen	1890	Code
Blue Springs	282	Mayor-Aldermen	1877	Code
Arcola	274	Mayor-Aldermen	1904	Code
Bassfield	272	Mayor-Aldermen	1903	Code
Big Creek	265	Mayor-Aldermen	1905	Code
Morgan City	264	Mayor-Aldermen	1968	Code
Kossuth	263	Mayor-Aldermen	1870	Code
Sumner	252	Mayor-Aldermen	1900	Code
Webb	250	Mayor-Aldermen	1896	Code
Louin	237	Mayor-Aldermen	1904	Code
Pope	231	Mayor-Aldermen	1872	Code
Winstonville	223	Mayor-Aldermen	1917	Code
Toccopola	219	Mayor-Aldermen	1873	Code
French Camp	216	Mayor-Aldermen	1854	Code
Braxton	207	Mayor-Aldermen	1831	Code
Silver Creek	206	Mayor-Aldermen	1904	Code
Lena	200	Mayor-Aldermen	1912	Code
Falcon	192	Mayor-Aldermen	1971	Code
Golden	188	Mayor-Aldermen	1908	Code
Pittsboro	188	Mayor-Aldermen	1852	Code
West	177	Mayor-Aldermen	1865	Code
Pace	174	Mayor-Aldermen	1923	Code
Woodland	170	Mayor-Aldermen	1908	Code
Louise	150	Mayor-Aldermen	1909	Code
McCool	148	Mayor-Aldermen	1884	Code
Sallis	147	Mayor-Aldermen	1875	Code
Carrollton	146	Mayor-Aldermen	1836	Code
Walthall	133	Mayor-Aldermen	1877	Code
Gattman	113	Mayor-Aldermen	1829	Code
Montrose	108	Mayor-Aldermen	1904	Code
Eden	104	Mayor-Aldermen	1890	Code

Municipality	2015 Population	Form of Government	Date of Incorporation	Type of Charter
Slate Springs	101	Mayor-Aldermen	1882	Code
Sylvarena	101	Mayor-Aldermen	1969	Code
Paden	93	Mayor-Aldermen	1919	Code
Glendora	78	Mayor-Aldermen	1900	Code
Learned	44	Mayor-Aldermen	1884	Code
Satartia	11	Mayor-Aldermen	1875	Code

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