



TOOLKIT

TOOLS *for* MUNICIPAL LEADERS



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Dear Municipal Leader,

The new handbook, *Toolkit, Tools for Municipal Leaders* will be an important resource to Mississippi for years to come.

Cities and towns are a major part of the infrastructure that makes Mississippi strong and vibrant. This manual can be a tool for municipal leaders to use in achieving new levels of progress in their communities.

We want to thank the *John C. Stennis Institute of Government, Mississippi State University*, for providing this great resource and for the support they give our cities and towns.

Sincerely,

A handwritten signature in blue ink, appearing to read "George E. Lewis". The signature is fluid and cursive, with a large initial "G" and "L".

George E. Lewis

Executive director



Preface

The Toolkit and the Stennis Institute, Mississippi State University

The Toolkit, Tools for Municipal Leaders, is a joint publication of the *Mississippi Municipal League* and the *Stennis Institute, Mississippi State University*. The Toolkit is a resource for municipal leaders that addresses common questions facing towns and cities. The Toolkit is a collaborative effort by the authors - all knowledgeable about municipal government. The Toolkit does not address every issue within municipal government but takes a broad approach to help leaders improve the daily operations of local government. The Toolkit will be updated and amended as needed to better serve policy makers at the municipal level.

The John C. Stennis Institute, Mississippi State University

Created as a service and research arm of Mississippi State University, the *Stennis Institute, Mississippi State University*, was established on February 9, 1976 to integrate research, service, and academic primacy for the improvement of government at all levels in Mississippi. Since that time, while remaining true to its initial charge, the Institute has expanded its role and its service capacities. The institute functions as the founding vehicle for the Stennis Montgomery Association, a bipartisan, interdisciplinary student organization focused on undergraduates who want to work in politics or policy in some capacity. Additionally, the Institute expanded to ensure that meaningful applied research is available to both local and state units of Mississippi government. Through its executive development programs, training opportunities, and technical assistance programs, the Institute provides support for today's policy-makers from the courthouse to the classroom. And, by playing an active role in the development of tomorrow's governmental leaders, the Institute is working to ensure that Mississippi's future remains strong.

The majority of the Stennis Institute staff are generalists who bring a wide range of experience and talent to bear on a diverse range of issues. From political analysis and commentary to economic development activities to applied assistance for governmental entities, the Institute's projects range in size and scope from specific work with Mississippi's smallest towns to federally-funded grants with multi-state application.

While we enjoy being referred to as "Mississippi's Think Tank", the Stennis Institute functions just as Senator Stennis perceived it over 30 years ago. We are a service and research arm that is here to serve our state and its communities, as well as provide policy analysis and application on all significant local, state, and federal issues.

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Municipal Purchasing

by W. Edward Smith and Ronald Robinson



Municipal Purchasing

by W. Edward Smith and Ronald Robinson

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1 Why Municipalities Make Purchases

State laws allow municipalities to provide certain services. This means that purchasing of commodities and services related to accomplishing the proper functions of municipal government is both necessary and legal.

2 How Municipalities Make Purchases

Except for soliciting bids for certain purchases, state law does not prescribe a purchasing system that must be used by municipalities. Therefore, municipal boards/councils must develop their own purchasing procedures and policies.

3 Municipal Purchasing Policies

Municipalities should develop purchasing policies that answer the following questions:

3.A Who May Make Purchases

Purchasing policies should specify who may make purchases and the limit of their purchasing authority. This may include the appointment of a purchasing agent or the authorization of department heads, etc. to make purchases. If a purchasing agent is appointed, a requisition procedure (ideally a written form) should be defined in order to allow designated employees to communicate purchase requirements (specifications, justifications, known vendors, etc.) to the purchase agent. Purchasing authority should be separated from requisitioning and receiving (as is practical) to reduce the opportunity for theft.

3.B Should there be Limits to a Purchasing Agent's Authority?

Section 25-1-43 (Miss. Code) prohibits municipal officers from entering contracts without board/council authorization. This means the board/council policies should establish clear guidelines defining what contracts may be entered and when board/council approval is required. For example, contracts with negotiated terms should be approved by the board/council and documented on their minutes.

3.C *How will Contracts be Documented?*

There must be an obligation for a board/council to approve a claim (Sec. 21-39-9). Sec. 66 of the Miss. Constitution and Sec. 21-17-5 prohibit donations unless specific authority granted in state law to make the donation. Purchasing and claims policies should establish a procedure to document that a purchase related obligation exist. The following procedures should be considered.

3.C.1 *Purchase Orders*

Municipal policies should require the use of written purchase orders as evidence of contract terms (specification, quantities, delivery dates, etc.) and for the control of expenditures and budgets.

3.C.2 *Receiving Reports*

Municipal policies should require the use of receiving reports to assure the board/council that goods and services were received as contracted.

3.C.3 *Alternatives to Purchase Orders / Receiving Reports*

If written purchase orders and receiving reports are not used, authorized purchasing agents or employees should provide the board/council with verification that a purchase was authorized. This may be as simple as a department head's verification by his/her signature on the invoice.

3.C.4 *Charging Budgets for Purchases*

Section 21-35-17 imposes liability upon an official responsible for exceeding the budget. Municipal policies should require a system that will provide information to the board/council to show that when a purchase is made there is money in the budget to pay for the purchase. Section 21-35-13 requires the Municipal Clerk to provide a monthly report to the board/council showing the effect that claims (payments for purchases) will have upon the budget.

3.C.5 *Accounting for Purchases*

Expenditures must be accounted for (Sec. 21-35-11 & 21-15-21) in the books of the municipality. This means purchasing policies must assure that all necessary information is obtained and recorded in the purchasing process to account for the services and goods acquired. For example, the Municipal Audit and Accounting Guide prescribed by the State Auditor (see web site: <http://www.osa.ms.gov/> under *Local Governments*) requires equipment costing over \$1,000 and real property be placed in inventory.

3.C.6 *Special Purchasing Authorities*

State laws provide for special purchasing options. Municipal policies should address when and how these opportunities may be used. References listed below are for state contracts and when local purchases may be used for less than the state contract:

1. *State Contracts - Sec. 31-7-12*
2. *Information Technology Contracts (Computers) - Sec. 31-7-13 (m)(xi)*
3. *Municipal Term Contracts - Sec. 31-7-13 (n)*
4. *Interlocal Agreement Purchasing Contracts - Sec. 17-13-9*
5. *State Surplus Property - Sec. 29-9-9*
6. *Emergency Purchases - Sec. 31-7-13 (k) and 31-7-1 (i)*

7. *Disaster Purchases - Sec. 33-15-17 and 33-15-31*
8. *Government Auctions, Bid Exemption - Sec. 31-7-13 (m) (v)*
9. *Miss. Government Negotiations, Bid Exemption - Sec. 31-7-13 (m) (vi)*
10. *Sole Source Purchases, Bid Exemption - Sec. 31-7-13 (m) (vii)*
11. *Local Motor Vehicle Purchases - Sec. 31-7-18*
12. *Minority and Other Preferences - Sec. 31-7-13 (s)*

3.C.7 *Purchase Specification Development*

Municipal policies should provide for how specifications will be developed. The purchasing agent may proceed with specifications for a purchase, upon the board/council approval, with specifications as required by Section 73-13-45, and when professionals (engineers, architects, etc.) must approve the specifications.

3.C.7 *Publication for Bids*

Municipal policies should provide for how advertisement services will be used and who authorizes said services (Sec. 21-39-3, 13-3-31, 31-7-13 c, etc.).

4 **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 under Section 31-7-13. Most important is the requirement that purchases over a specified amount will require two quotes and purchases over a specified higher amount will require advertising for bids.

See the State Auditor's web site (www.osa.ms.gov) to find the "Purchasing Section." The "Purchase Law Summary" in this section list and clarifies details of bidding requirements. This summary also includes explanations of other related legal requirements. Legally required purchasing procedures are revised by new laws almost every year. An annual review of new laws and the "Purchase Law Summary" (updated) will clarify bidding requirements for purchases.

State law does not require municipalities to bid for the purchase of real property, employment services or services not specified in Section 31-7-13. Therefore, municipal boards/councils should develop their own policies regarding how these purchases and services will be solicited.

5 **Bidder Qualifications**

Section 31-3-21 requires bidders for construction and certain public works contracts to demonstrate that 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.

6 **Purchaser Bonds and Insurance**

6.A *Required Bonds And Insurance*

Section 31-5-51 requires bidders for construction and public works contracts to have certain performance and payment bonds as well as liability insurance to protect the municipality from potential losses.

6.C *Optional Bonds and Insurance*

Other bonds and insurance (bid bonds, etc.) may be required by board policies.

7 Purchasing/Leasing Real Property

The following laws require special procedures when purchasing real property.

- 7.A *Section 21-17-1* authorizes municipalities to purchase real property, inside or outside municipal corporate limits, for all proper municipal purposes.
- 7.B *Section 31-8-1* authorizes municipalities to lease real property for listed purposes.
- 7.C *Section 43-37-3* requires an appraisal to purchase real property.
- 7.D *Section 57-1-23* (other special laws and local and private laws may provide similar authority) authorizes acquisition of real property for industrial, commercial, etc., purposes with the Mississippi Development Authority's approval.

8 Section References

Section references are to the Mississippi Code laws. This Code may be found at the Secretary of State's web site (<http://www.sos.ms.gov/>) under Education and Publications.

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Municipal Finance

by Demery Grubbs



Municipal Finance

by Demery Grubbs

Municipal finance is one of the most important aspects of municipal government. Municipalities provide a variety of municipal services and these services can't be provided without revenues. State laws give authority to municipal government to generate revenues and to expend revenues. Along with this authority comes the responsibility to manage these revenues and expenditures in a manner that accounts for all revenues as dictated by State Law and regulations of the State Auditor. The management of municipal finances not only should be taken seriously by the elected officials and City Clerk, but by all personnel involved with the finances of the municipality. It is important to understand how the financial administration must be done and additionally to keep up with changes in state laws and regulations of the State Auditor. Not following the legal procedures could result in a loss of municipal resources and personal liability on the part of the municipal officials. Listed below are the Code sections of State Law that dictates clearly what municipalities can and cannot do as it relates to the finances of a municipality.

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Economic Development

by Phil Hardwick



Economic Development

by Phil Hardwick

Content

1. What is Economic Development?
2. The Role of Local Elected Officials in Economic Development: 10 Things You Should Know
3. National League of Cities

1 What is Economic Development?

For purposes of this publication, and because it is the definition offered in the basic course for Mississippi economic developers, the following definition will be used:

Economic development is the process of creating wealth through the mobilization of human, financial, capital, physical and natural resources to generate marketable goods and services.

In the past, economic development primarily meant recruiting new industry to the community. As the activity has become more professional and diversified, it now includes efforts to assist existing businesses in their expansion efforts and, if necessary, finding ways to keep businesses from leaving the community. Economic development is often considered to be a marketing activity.

Community development, on the other hand, is an internal community activity that is, in a sense, preparation for economic development. While economic development is primarily concerned with jobs, community development is concerned with a myriad of development activities such as schools, transportation, government and infrastructure. Some would consider economic development primarily an external effort while community development is mostly an internal activity. In any sense, they each complement each other.

In communities with well-established, successful economic and community development programs there will be organizational capacity development, community development, business development, and workforce development. Organizational capacity development refers to the ability of groups and organizations to work together to meet the economic development needs of the community. Capacity development is about partnering to develop strategies, raise funds, and work in a more efficient manner than if the organizations did things by themselves. Community development is about putting the pieces together to improve the community. Investments might include, but not be limited to, infrastructure, downtown areas, gateways, business parks, speculative buildings and/or public/private partnership opportunities. Business development involves programs that encourage business growth and investment such as business attraction, retention and expansion, tourism, and start-up and emerging businesses.

2 The Role of Local Elected Officials in Economic Development: 10 Things You Should Know

1. *Local Economic Strengths and Weaknesses*

A stronger understanding of the community's economic profile will help local officials create a realistic vision and strategies for economic development.

2. *The Community's Place in the Broader Regional Economy*

With a firmer grasp of how the community fits into the broader region, local officials are better prepared to work with other jurisdictions to share responsibility for regional economic success.

3. *The Community's Economic Development Vision and Goals*

Local elected officials can play a key role in building consensus for a vision and goals that provide clear direction for local economic development.

4. *The Community's Strategy to Attain its Goals*

A strategic approach means linking economic development goals to specific activities, allocating a budget and staff to these activities and evaluating performance based on measurable outcomes.

5. *Connections Between Economic Development and Other City Policies*

When crafting economic development policies, it is essential to consider how other city policies (e.g., transportation or housing) affect economic development goals.

6. *The Regulatory Environment*

A community's regulatory process should allow for timely, reliable and transparent resolution of issues facing businesses, while still remaining true to the city's long-term economic development vision.

7. *Local Economic Development Stakeholders and Partners*

Local officials should think strategically on a project-by-project basis about who needs to be involved, the resources they bring to the table and what it will take to get them engaged.

8. *The Needs of the Local Business Community*

Local officials can help create an environment that supports the growth and expansion of local businesses, primarily by opening lines of communication.

9. *The Community's Economic Development Message*

Local officials will want a clear, accurate and compelling message that reflects the local vision and that helps ensure broad support for economic development projects undertaken by the city and its partners.

10. *Economic Development Staff*

Local elected officials will be more effective in leading economic development activities to the extent that they forge strong relationships with staff members who work on these issues on a daily basis.

3 National League of Cities

3.A *The Site Selection Process*

The odds of a community landing a big economic development project are small. In recent years there have been approximately 2,500 major projects per year that create primary jobs. That sounds like a lot of opportunity until one considers that there are some 25,000 economic development organizations in the United States. Therefore, the overall odds of success for each organization are 1 in 10.

The odds change depending on location. Seventy-five percent of those projects will locate in urban areas. Now the odds change to 3 in 40 for an urban area and 1 in 40 for a rural area. Stated another way, in an urban area a new primary jobs facility will be located in the vicinity every 13 years. In a rural area, it will occur every 40 years. Ninety percent of the projects will employ less than 100 employees. Thus the odds of a major employer (more than 100 employees) locating in a particular urban area are 3 in 400, or every 133 years, and 1 in 400, or every 400 years, in a rural area.

A community can increase its odds by doing several things. It can do research and planning on its workforce, market area and strategic advantages so that it can target companies and expanding industries likely to match the community's characteristics. For example, a community in south Mississippi is going to have an easier time recruiting a lumber mill than a snowmobile manufacturer. It has nearby forests; it does not have nearby snowmobile buyers. It can also construct appropriate speculative buildings on good sites. It is very important to an expanding company to be able to get up and running as quickly as possible. An available building shortens the start-up time.

Next, it can have financing programs in place available to the company. Relocating companies do not place much stock in a community that tells them that it will change laws to make the deal work. The laws should have already been changed and the financing incentives already in place.

The community must also market itself. It cannot expect the world to seek it out. A community that does not market itself and prospect for new companies is likely to get just what it asks for — nothing.

Community attitude must be business-friendly and welcome new industry. As someone who did site selection work for several years, this writer can personally testify that a company will not go into a community that does not want it to be there. Successful communities realize that they must overcome local turf battles, racial problems, and inept government if they are to compete in today's environment.

It is also important to know what companies that are expanding are looking for. A recent survey of corporate executives by Area Development magazine listed the following as the top ten selection factors:

- ✦ labor costs,
- ✦ highway accessibility,
- ✦ tax exemptions,
- ✦ energy availability and costs,
- ✦ corporate tax rate,
- ✦ availability skilled labor,
- ✦ occupancy or construction costs,
- ✦ state and local incentives,
- ✦ availability of advanced information and communications technology (ICT) services, and
- ✦ inbound/outbound shipping costs.

3.B *Structure of an Economic Development Organization*

Size of the local community will be the major factor in determining the type of economic development organization it might have. In small, rural areas the economic development organization might be a committee of another organization. In more populated areas, it might be a county organization set up as an authority under the umbrella of county or city government. The three major considerations regarding structure of the organization are legal entity, organizational type, and funding.

The legal entity should be tied to the overall strategy of the organization. For example, if the organization's mission is primarily industrial recruitment and maintenance of industrial parks then it might want to be a unit of government, such as an authority. Some organizations prefer to set up as a Section 501-C-3 or C-6, nonprofit organization. Therefore, it is best to determine the organization's mission first, and then consult with legal counsel about the appropriate legal structure.

The organization type refers to the structure of the organization itself. The boards of directors in public economic development organizations are usually appointed by elected officials. In public/private organizations, the board is made up of some public or publicly appointed members and some members from private industry. Some boards are all private. Some boards are set up so that there are ex-officio positions. Again, the organization type should relate to the mission. One trend in economic development is a regional organization that combines the function of the chamber of commerce, tourism, community development and industrial recruiting into a single entity. There are also ad hoc and specially created economic development structures. For example, when a major automobile manufacturer built a plant in Alabama, a group of east-central Mississippi economic developers formed an ad hoc task force to market the region to suppliers to the facility. In the Jackson metropolitan area, several public and private organizations formed an "alliance" to recruit industry to the region.

Funding is a major factor in the success of the organization. Many public organizations are funded by designated millage or special tax. Private economic development organizations rely on membership dues, grants, loans, and capital campaigns.

3.C *Economic Development Incentives*

Mississippi, like most states, offers a variety of incentives to spur economic development. These incentives range from special financing programs to tax credits. As economic development has become so competitive, incentives need to be flexible and therefore change often. For information on current statewide incentives, contact the Mississippi Development Authority.

Local officials would also benefit by reviewing Section 57-1-1 et seq. of the Code pertaining to the authority of local government to provide economic development incentives. Likewise, the federal government has a variety of grants and loan programs available. Members of Congress from Mississippi now have staff personnel assigned to economic development matters.

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- 3.D *Essential Economic Development Questions for Local Officials*
1. Does the local economic development agency have a written strategic plan?
 2. What is the community's economic development strategy?
 3. Who handles economic development in the community?
 4. Have local elected officials prepare for a visit by a site selection consultant?
 5. Does the community have a constantly updated website?
 6. What role do elected officials play in economic development?
 7. How is economic development success measured?
 8. Has the local economic development program been evaluated by an outside source?
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He received his undergraduate degree from Belhaven College and his MBA from Millsaps College. He is also a graduate of the Senior Executives in State & Local Government executive program at the John F. Kennedy School of Government at Harvard University.



Elected Officials and the Media

by Jeff Rupp



Elected Officials and the Media

by Jeff Rupp

Content

1. Overview
2. Relationships
3. Off the Record
4. Press Releases
5. Press Conferences
6. General Do's and Don'ts when Dealing with the Media
7. Conclusion

1 Overview

Many elected officials view the media with a suspicious eye. This is nothing new; the uneasy relationship between the media and public officials is based on mutual dependence and mutual distrust and goes back hundreds of years. The main author of the Declaration of Independence, Thomas Jefferson, said, “The man who reads nothing at all is better educated than the man who reads nothing but newspapers.”

The great conqueror Napoleon Bonaparte said, “I fear three newspapers more than a hundred thousand bayonets.”

And, even the peace loving Gandhi had this to say about the press, “I believe in equality for everyone, except reporters and photographers.”

For elected officials the feelings can be even stronger because the media can make or break a politician. Elected officials need the media to help disseminate important information and also, hopefully, to cast the elected officials in a positive light that gets them re-elected. On the other hand, the media needs access to elected officials to get first hand information on things important to their readers and their community. They do not want to be “scooped” by their competition so, to some extent, they need to foster working if not friendly relationships with elected officials to develop sources. It is a double-edged sword creating an uneasy alliance that breaks down from time to time.

Conflicts generally arise for the following reasons:

- An elected official feels he or she has been misrepresented in a harmful manner by the media.
- The media exposes incompetent, unethical or illegal behavior on the part of an elected official or part of his or her administration.
- The media feel they have been purposely misled by an elected official.
- The media feel they have been purposely left out of a story or denied access to people or information.

So, how can you, as an elected official effectively interact with the media so information is disseminated in an accurate, timely fashion? The following tips are by no means exhaustive but should give you an idea of the basic dynamics of working with the media.

2 Relationships

As with just about everything in life having good relationships with those around you is an important part of effective leadership. This includes the media. There is a difference between relationship and friendship and an elected official needs to understand the distinction. Reporters are interested first and foremost with getting the story. They understand that the odds of getting that story are better if they have access to you. Do not be fooled into thinking they will not run something negative about you, your administration or your community because you are friends. Their relationship with you is secondary to the job. Your relationship with them should be founded on the same principles.

3 Off the Record

Sometimes it is important to give reporters information that lends context to a story but is information about which you do not want to be quoted. When this happens, you and the reporter agree to go “off the record.” The reporter agrees not to use the information you give until you say it is okay or he verifies the information independently and does not attribute it to you.

Going “off the record” can be very helpful in cases where something is not readily apparent that impacts decisions you have to make. It may have to do with respecting the confidentiality of a prospective new business or briefing a reporter on an upcoming drug sweep that, if it were made public early, would tip off the drug dealers.

The most important thing to remember about going “off the record” is it has to be agreed upon before the information is given. You cannot ask a reporter, after the fact, not to use things you have already said. This is a critical mistake.

If you are not sure whether to trust a reporter with an “off the record” conversation, you may want to first float an “off the record” trial balloon with non-critical information and see if the reporter keeps his or her word.

4 Press Releases

Press releases are a good way to get out information in an organized, timely manner. They can be written ahead of time so there is less risk of something being misstated or factually wrong. Generally a press release will be one page.

A good press release will contain the following:

- ♦ A header which includes the office responsible for the release, the subject of the release (headline), date, and contact information for follow up. The headline should clearly state why the press release is newsworthy. Example: City Receives \$500,000 Grant for New Police Cars.

- ✦ The body of the press release should contain the information you wish to convey. This should be done by giving the most important information first. The first paragraph should contain the who, what, when, why and where of the story. The last paragraph should include information on who to contact for more details.
- ✦ Most press releases end with ### or -30- centered at the bottom of the page to indicate the end of the information.
- ✦ You can get more tips on writing an effective press release at: http://www.ehow.com/how_8793_write-proper-press-release.html

5 Press Conferences

Press conferences are more interactive than press releases and are held when it's anticipated that more information will be given than can be included in the confines of a press release. Rarely are press conferences conducted without taking questions from the media or other people in attendance. The following are some general guidelines for press conferences.

1. They should be held with consideration to local media deadlines. If the main newspaper in your community publishes in the afternoon then your press conference needs to be held before the news paper goes to print. This is usually several hours before the paper hits the streets. For example, your community newspaper goes to print no later than 11:30 every morning. If you hold your press conference at noon your paper cannot provide coverage until the next day. This will not only cause bad blood between City Hall and the newspaper, it could also delay your citizens getting important information. Remember, if the issue is important enough to warrant a press conference then it is important enough to disseminate to your citizens in a timely manner.
2. Choose a location for your press conference that is large enough for the anticipated audience, well lit, and matches the tone and subject matter of the press conference.
3. If more than one television station is expected consider small risers for their cameras, a common audio feed or "snake", and reserved parking for satellite or microwave trucks.
4. Have a podium for notes and radio/television microphones.
5. Consider the flow of the press conference and decided who needs to be at or near the podium to answer questions.

6 General Do's and Don'ts When Dealing with the Media

- ✦ Do Not Lie — ever. It will come back to haunt you.
- ✦ Do make eye contact when answering questions.
- ✦ Do use talking points rather than a word-for-word script whenever possible.
- ✦ Do Not lose your temper or argue publicly with the media. There's an old adage: never argue with someone who buys ink by the barrel.

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- Do use visuals and handouts to emphasize important points.
 - Do Not overwhelm your audience or media with too many facts and statistics.
 - Do prepare for interviews by asking who will be conducting it, which subjects will be covered, the context of the story, the format and duration of the interview.
 - Do Not give “no comment” as an answer. If you don’t know or can’t say the answer, state that.
 - Do offer to get information you don’t have or don’t know.

7 Conclusion

Working with the media is part of being an elected official. It will not always be pleasant, especially when the subject matter is deals with bad news, natural disaster, crime, loss of a business, or misconduct of public officials.

Your role, as an elected official, is to provide leadership in a professional manner by using the media to disseminate and convey important information. Remember, that it is not just what you say; it is also how you say it. Your dress, body language, and tone will convey as much or more than your actual words.

To the extent possible, strive to be relaxed, sincere, truthful, humble, and in command when speaking in an official capacity to the media and the community.

About the Author

Jeffrey Rupp is the former mayor of Columbus, Mississippi. As mayor he wrote a weekly column on community issues in the local Sunday paper that the newspaper was not permitted to edit. Before being elected mayor he was the Vice President of News for Imes Communications. In that capacity he reported and anchored daily newscasts at the CBS affiliate in Columbus and oversaw news operations for several other television stations around the country. Jeffrey has vast experience covering elected officials including the presidential primaries in New Hampshire as well as on the state and local level. He also produced mayoral, congressional, lieutenant governor and gubernatorial debates in Mississippi. Jeffrey has conducted seminars in working with the media for elected and appointed officials throughout Mississippi.

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Forms of Municipal Government in Mississippi

by Marty Wiseman, Ph.D. and Marianna Prather



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by Marty Wiseman, Ph.D. and Marianna Prather

Content

1. Introduction
2. History and Nature of the Municipal Corporation
3. Code Charter Form of Government
4. Mayor / Council Form of Government
5. Council Manager Form of Government
6. Changing the Form of Government

1 Introduction

All municipalities within the state are divided into three categories based upon their population. If the population is greater than or equal to 2,000, the municipality is considered a city. Municipalities with between 300 to 2,000 residents are considered towns. Any municipality with less than 300 residents is considered a village, although villages are no longer allowed to incorporate. The most recent Census governs these classifications, and the governing authorities (in the case of a category change) must pass an ordinance to that effect and file it with the Secretary of State.

The requirements for a municipality to incorporate are as follows: the municipality must have one square mile of territory, a population of at least 300, at least six streets constituting at least one mile of hard surface pavement (existing or under construction), a public utilities water system (existing or under construction), and the grant of a petition of incorporation filed in Chancery Court. All existing municipalities within three miles of the area to be incorporate must be served process as to the incorporation proceedings. Municipal corporations may annex additional territory, or may de-annex territory, based upon the determination of the appropriateness of the request in Chancery Court. Municipalities may combine if:

- (a) they are adjacent,
- (b) the governing authorities of both existing municipalities agree
- (c) a chancellor finds the petition reasonable in Chancery Court.

If the Census reveals that the population has dropped below 50 persons, the municipality is automatically abolished. A municipality can likewise be abolished if it fails to hold official meetings for twelve consecutive months, or if it fails to hold elections for two consecutive elections. If they so choose, the municipality can also be voluntarily abolished through a petition in Chancery Court.

2 History and Nature of the Municipal Corporation

The first municipalities incorporated within the state in 1803. Since that date, over 300 have been incorporated or dissolved, with approximately 296 currently in operation. Today, municipal power descends from the Mississippi Constitution of 1890, the legislature, and subsequent acts of state law.

Adams v. Kuykendall, 35 So. 830, 83 Miss. 571 (1904):

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.

This oft quoted passage from a 1904 Mississippi Supreme Court case points out a major difference between Mississippi municipalities and many of those in other states: the issue of home rule vs. Dillon's rule¹. Named for Judge John F. Dillon of the Iowa State Supreme Court, Dillon's Rule holds that municipalities are creations of the Legislature, and that the Legislature has absolute power over municipalities. A more modern approach to municipal government is the idea of home rule which states that local government units, as the primary instruments of the state directly responsible to the people, should be free to have as much freedom and flexibility in handling their own internal affairs and actions as may be necessary to fulfill their function. Many states are slowly moving more and more toward implementation of true home rule.

¹ http://www.nlc.org/about_cities/cities_101/153.aspx

The state of municipal home rule in Mississippi is constantly being explored, with no true indication of how the courts may view the limited home rule provisions already provided for in statute. No state Supreme Court case has yet directly addressed municipal home rule, although several have touched on the subject tangentially. In 1985, the Legislature implemented a municipal home rule statute, giving municipalities some expressed powers, and denying others. Additionally, since that time, hundreds of local and private acts have passed the Legislature, giving some cities powers that others do not enjoy.

The Municipal Home Rule Statute is found in MCA 21-17-5 and provides, in brief:

The governing authorities...shall have the care, management and control of the municipal affairs and its property and finances....In addition to those powers granted by specific provision of general law, the governing authorities shall have the power to adopt any orders, resolutions or ordinances with respect to such municipal affairs...which are not inconsistent with...the Constitution, the... Code, or any other statute or law of the State of Mississippi.

Municipalities are given the explicit authority to: sue and be sued; purchase and hold real estate for proper municipal purposes; acquire equipment through lease/purchase; donate surplus lands to public schools and certain not-for-profit or charitable corporations, or to donate funds to public schools; loan CDBG² funds for programs administered by federal, state and certain non-profit organizations; contract with private persons or entities for the collection of delinquent payments; make contracts or do acts in relation to property necessary to the exercise of its governmental powers; and exercise other powers as conferred by law. This same statute, in section (2), expressly prohibits municipalities without the consent of the legislature from: levying taxes of any kind or increase the levy of any authorized tax; issuing bonds of any kind; changing the requirement, practices or procedures for municipal elections or establish a new elective office; changing the procedure for annexation; changing the structure and form of municipal government; permitting the sale, manufacture, distribution, possession or transportation of alcoholic beverages; granting any donation; or regulating the amount of rent charged for leasing private residential property.

² Community Development Block Grant

³ The Mississippi Code has a provision for a municipality to seek the opinion of the serving State Attorney General. 7-5-25: “The Attorney General shall give his opinion in writing, without fee...mayor or council or board of aldermen of any municipality of this state... when requested in writing, upon any question of law relating to their respective offices.”

If the municipality follows the opinion of the Attorney General, there are some protections against liability. However, the opinions expressed by the Attorney General can be only prospective in nature and interpretations of current ordinances are “best left to local authorities.”

Municipal home rule has never been completely defined to the satisfaction of many municipal (or legislative) leaders. Over the years, many municipalities have sought opinions from the Attorney General’s office³ on the subject of what may be acceptable under the ‘home rule’ provision. Historically, the AG’s office has taken the opinion that if a state statute has addressed a subject, municipalities may not act to further refine the statement of the Legislature, unless expressly given the right to do so. The pre-emptive principle- state law outranks municipal ordinance- has substantially ‘weakened’ municipal home rule within the state.

The Supreme Court has only addressed home rule in tangential ways, and many feel that their rulings on these issues may indicate that they would favor a less restrictive application of the municipal home rule statute.

The basic power of a municipality originally rested in its charter. Historically, all municipalities were endowed by the Legislature with a special charter that defined the makeup and function of the municipality. With the adoption of the 1890 Constitution, and subsequent statutes in 1892, the Legislature implemented city charters that were outlined in state law, sometimes called “code charters.” New municipalities forming after 1892 were organized according to the code charters while existing ones were allowed to choose the new code charter or remain with their existing private charter. Twenty three municipalities have elected to retain their special charters.

The concepts of “code charter” and “private charter” have become somewhat confusing in recent years. In one sense, a city either has a private charter or a code charter (ie: a charter derived from the Mississippi Code). What is confusing is that the first type of code charter available to Cities and outlined in the Mississippi Code is indeed called code charter. Other forms of municipal government include Mayor/Council, Council/Manager, Commission, and Council.

The three forms of municipal government most relevant (i.e. still in use today) to Mississippi are Code Charter (also called Mayor/Board of Alderman form), Mayor/Council, and Council/Manager. A fourth form, the Council Form is essentially meaningless due to the fact that it was only applicable to the City of Tupelo for a short time because of a stringent population requirements based on the 1940 Census. Tupelo has since moved to the mayor/council form. Another form, the Commission Form is closest to that used in Clarksdale and Vicksburg, although both are technically “special charters”.

3 Code Charter Form Of Government

The Code Charter form is also known as the Mayor/Board of Alderman form of government and is used by approximately 95% of Mississippi Municipalities. The Code Charter form is also commonly referred to as the weak mayor form, due to the interaction between the Mayor and the members of the Board (as a group). The Mayor/Board of Alderman form is somewhat like the Board of Supervisors found at the county level in that the Mayor and individual members of the Board have limited authority by themselves, but complete control over municipal affairs when acting as a body.

The Code Charter form, while well suited for smaller municipalities, may not work well for more populated cities. As the population of a municipality increases, the code charter form becomes increasingly unwieldy. For this reason, the majority of all heavily populated municipalities in Mississippi use the Mayor/Council form.

Within the Code Charter form of the Government, the Mayor is elected from the entire municipality. If the municipality is greater than 10,000 citizens, 7 aldermen will be elected (6 from wards and 1 at large). If the municipality is less than 10,000 citizens, 5 aldermen will be elected with the option of making the 5th alderman at large. Elections are held on the first Tuesday after the first Monday of June every four years. If an alderman moves from his/her ward, or the mayor or alderman-at-large moves from the city, the office is automatically vacated.

The Mayor and the Board of Aldermen prescribe duties and fix compensation for all employees. It is understood that municipal employees hold office at the pleasure of these governing authorities and may be discharged at any time with or without cause. It is possible for employees to be appointed to two or more offices at one time.

⁴ There are many different municipal boards and commissions including the School Board, Planning and Zoning, Parks and Recreation, Public Health Authority, Elections Commission, Public Utilities Commission, etc.

⁵ Regardless of the form of government, meetings of the governing authorities concerning municipal affairs are covered by the Mississippi Public Records Act and the Mississippi Open Meetings Law. The Mississippi Public Records Act “ensures public access to public records in the possession of governmental entities in Mississippi.” However, Executive Sessions of the governing authorities may be held if they involve: discussions of personnel matters relating to personnel performance, character, competence or physical or mental health; discussions or negotiations with respect to potential litigation; the transaction of business regarding security personnel or devices; investigative

The Mayor superintends control of all the departmental officers and general affairs of the municipality. It is the responsibility of the Mayor to preside over all meetings of the Board of Aldermen and vote in the case of ties. The Board of Aldermen shall elect a Mayor Pro Tempore to serve in the absence or disability of the Mayor. The Mayor shall sign the commissions⁴ and appointments of all officers elected and appointed by the Mayor and Board of Aldermen. Commissions and Appointments are attested by the Clerk. If the Mayor or Clerk refuse or neglect their responsibilities in this regard, the validity of the acts of any such officer acting without a commission shall not be affected when the minutes show the appointment was regularly made by the Board. Ordinances, resolutions, and orders adopted by the Board of Aldermen are submitted to the Mayor who has ten days to either sign the ordinance or return it to the Board via delivery to the City Clerk with a written statement of objection. If the Mayor fails to return the ordinance by the next meeting or within (15) days, the ordinance is automatically approved. The Board may override the Mayoral veto by a two-thirds vote. Once ordinances have passed, it is the duty of the Mayor to provide that they are faithfully executed.

Meetings of the mayor and board of alderman are covered under the Open Meetings Act⁵. These governing authorities shall hold regular meetings at a time and place fixed by ordinance on the first Tuesday of each month. Should they so choose, the mayor and board may add a second monthly meeting fixed by ordinance not less than two nor more than three weeks from the regular meeting. The mayor and board may recess a meeting until a time fixed by an order of the mayor and the board. At this meeting, The mayor and board may transact any business coming before it for consideration contingent upon the presence of the majority of the aldermen. The mayor or any two aldermen may, but written notice, call a special meeting. The notice for a special meeting must contain the time and place of the meeting and must contain the specific business to be discussed. The notice must be signed by the officers calling the meeting. The notice must be served by the Police Department to any members not signing the original notice, who may be found at least three hours before the time for the fixed meeting. Business not specified in the notice of the meeting shall not be transacted at the meeting, and those in attendance shall receive no compensation for the special meeting.

The governing authorities have certain optional appointive powers. By two-thirds vote of the mayor and board, the position of the Chief Administrative Officer may be established. This action may not be adopted within 90 days of a regular general election. The position is not established until after the next regular general election. The CAO may also hold one of the other appointed positions in the municipality. A street commissioner also can be appointed under this form, who would

⁵ proceedings regarding allegations of misconduct or violations of law; cases of extraordinary emergency which cause harm or damage to persons or property; discussions related to prospective purchase, sale or leasing of lands; discussions relating to the relocation, location or expansion of an industry.

then operate under the direction of the mayor and board of aldermen. The duties of the street commissioner are to see that the streets, alleys, avenues and sidewalks of the municipality are always in proper order.

4 Mayor/Council Form of Government

The Mayor/Council form is sometimes known as the strong-mayor form; and is used by the majority of all the larger cities within the state. The Mayor/Council form separates administrative (executive) and legislative authority. The mayor is tasked with all executive duties, while the council is tasked with legislative responsibilities.

The mayor is elected from the city at large. The council may consist of five members (with the option of having one of these members at large), seven members (with the option of having 2 of these members at large), or nine members (with the option of having two of these members at large). For purposes of conducting meetings, the council will elect one member to serve as president, and one member to serve as vice-president of the council. The council will also appoint a clerk of council and deputy clerks of council in addition to an acting mayor when the mayor neglects to do so.

The mayor attends council meetings to take part in council discussions and make recommendations. The mayor **MAY NOT VOTE** on any issue other than in the case of a tie related to the filling of a council vacancy. However, the mayor does have the power to veto ordinances adopted by the council. It is the duty of the mayor to review all ordinances, resolutions, orders and other official actions of the council. Actions excluded from mayoral review include procedural actions, the appointment of the clerk or council, or actions exercising the council's investigative authority. Furthermore, the duties of the mayor include enforcing charter ordinances and all applicable general laws in addition to appointing department heads and members of municipal boards, authorities, and commissions with the consent of the council. While the appointed department heads serve at the will of the mayor, subordinate departmental employees are dismissed by their respective department head with mayoral approval. The mayor supervises all departments, requiring them to make annual reports and/or other reports as necessary.

The responsibilities of the council include: establishing a Department of Administration and all other such departments; allocating all administrative powers, functions, and duties among and within various departments; confirming mayoral appointees to the position of department heads of the various departments; adopting, at the will of the council, an ordinance creating the position of Chief Administrative Officer (CAO) and establishing the qualifications for the position; confirming mayoral nominations for the position of CAO; setting the salary of all councilmen, the mayor, and other municipal employees; redistricting the municipality after each decennial census and/or annexation; requiring the performance of an annual audit; appropriating money for the operation of the government; investigating the conduct of any department, office of agency of the municipality, and at the council's discretion, require sworn statements from any municipal officer or employee; overriding a mayoral veto of an ordinance previously approved by the council, upon a two-thirds vote; appointing a member of the council to serve as mayor in the event of the mayor's incapacitation. The council **MAY NOT** direct or dictate the appointment of any person to or his removal from office by the mayor. The council **MUST** deal with departments and personnel solely through the mayor.

5 Council Manager Form of Government

This form of government seeks to separate the political process from the process of public administration by vesting all political power within a council and all administrative control within a professional manager. Despite the fact that nearly half of the municipalities in the United States use this form, and it is widely touted by such groups as the ICMA⁶, only about six cities in Mississippi operate under this form of government. Advocates of the Council/Manager form appeal to the benefits of having a distinction between political realities and professional administration. Despite its perceived strengths, the reality is that a deadlock among a six member council is very likely in addition to the possibility that a council may rely too heavily upon the city manager's recommendations.

The council (comprised of the mayor and the five council members) has legislative, executive, and judicial authority, but cedes the executive authority to a professional city manager. The mayor, in this form of government is the ceremonial head of the city, having no administrative powers. The mayor serves as the president of the council and has authority to vote, but no power of veto.

The city manager is appointed during a regular meeting of the council and acts as the chief administrative officer of the municipality. During his/her term which is set by the council and may not exceed four years, the city manager may not engage in any other employment. The manager can be removed at any time by a majority vote of the council, assuming no policy to the contrary applies. The city manager is responsible for the entire administration of city government. He or she prepares and recommends an annual budget to the council in addition to appointing and removing all department heads and employees. However, the council is ultimately responsible for adopting the annual budget, securing an annual financial review of the municipality and requiring a surety bond for all municipal officers and employees handling public funds. The city manager administers and secures the enforcement of all laws, ordinances, franchises, and other contracts, while the council reserves the right to investigate any part of municipal government and may compel the production of evidence and/or witnesses. The manager also negotiates contracts and makes purchases, subject to council approval in addition to making reports and recommendations deemed necessary, or as directed by the council.

The council consists of five councilmen and one mayor, with the exception of any municipality that had a larger or smaller number of councilmen on September 30, 1962, in which case the municipality had the option of retaining their original number. A number of specific provisions in the code make further exception to the number and selection process of the mayor and council, mostly to conform with the provisions of the Voting Rights Act of 1965.

The council holds regular public meetings on the first Tuesday of each month. Special meetings may be called at any time by the mayor or two councilmen on at least two days' notice to the mayor and each member of the council. At all meetings of the council, a majority of the members shall constitute a quorum.

The council appoints the city manager, city attorney, auditor, municipal judge, and city clerk/treasurer. No city official or employee shall be elected by the voters except members of the council and mayor. The city manager appoints all other city employees. Both council and mayor are prohibited from directing or dictating employee's appointment or removal, other than that of the

⁶ International City / County
Management Association

city manager or positions appointed by the council. However, with the manager's recommendation, the council may create new departments, set their duties and powers and set compensation. The council can even determine their own compensation as well as the compensation of mayor and city manager. The council also sets service hours for all officers and employees, but the council members themselves are not required to maintain an office or keep regular hours.

Within a municipality there are many different municipal boards and commissions including the School Board, Planning and Zoning, Parks and Recreation, Public Health Authority, etc. Within the Council/Manager form of government, Council members are prohibited from serving on any board or commission appointed by the Council or under its jurisdiction.

6 Changing the Form of Government

It is possible to change from one form of municipal government to another. This change is contingent upon a general election, either a regular or special election, held for that purpose.

In some cases, a petition attesting to the desire for a change in government signed by at least 10% of the qualified electors (20% of the municipality has less than 40,000 in population in regards to a move to Mayor/Council) must be filed. If the motion fails, in the case of moving to a Code Charter, it cannot be reconsidered for a period of four-years: in the case of moving to Mayor/Council or Council/Manager, for a period of two years.

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Wiseman is a sought-after speaker on state and local government, particularly in Mississippi, and rural development. Often a guest editorial writer in Mississippi daily and weekly newspapers, he can also be relied upon to evaluate federal, state and local election results for all media. Dr. Wiseman serves as a committee member on the Civil Rights Commission on Education, the Mississippi Economic Policy Center Advisory Council, and the Delta Early Learning Leadership Initiative. He also serves as Chair of the Wood Institute Board of Directors.

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**Managing Municipal Records:
Records Management 101**

by Tim Barnard



Managing Municipal Records: Records Management 101

by Tim Barnard

Records. Your office generates them and receives them from other sources. Records accumulate daily. But what do you do with all of them? The tendency is to file them, box them, store them, then forget them. You plan to straighten them out some day. But that day never seems to come. Then, one day you need to find a certain record, and have no idea where to look. Or, the piles get so high they start falling over, and there's no room to put more. Surely there's some way to deal with all these records!

Take heart, there is an entire profession dedicated to the management of records. These professionals are eager to share their knowledge with the "records-challenged." The following information will get you started in managing your municipal records.

First of all, what exactly is a record? The International Organization for Standards has defined it as "information created, received, and maintained as evidence and information by an organization or person, in pursuance of legal obligations or in the transaction of business."¹ Section 25-59-3(b) of the Mississippi Code defines "public records" as " ...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."² Just about anything you do related to your work could be creating a record. Even some email messages could be records!

Common records you may encounter in municipal government include bank statements, cancelled checks, candidate reports, claims dockets, deeds, fixed asset reports, grant files, land rolls, monthly financial reports, official minutes, ordinance books, payroll records, personnel files, petitions, privilege licenses, purchase orders, tax receipts, and voter registration applications, to name a few.

So, what is records management? ARMA International, a professional records managers' association, has defined it as "a systematic approach to the creation, use, maintenance, storage and ultimate disposition of records throughout the information life cycle."³ Simply put, records management helps answer whether, how, where, and how long to keep a record. An ongoing records management program guides an office in disposing of short-term records, unneeded beyond the end of their life cycle, freeing up resources to better maintain those records that are needed long-term. It also aids in locating specific records, addressing legal and compliance issues, and identifying essential records for Continuity of Operations (COOP) planning.

While every employee should be familiar with some basic records management concepts, one person should be identified as the one responsible for the overall records management program. In a small town, the city clerk is the most likely candidate, but in larger municipalities, this duty may be assigned to a mid-level manager. It's too important a responsibility to delegate to part-time or summer help.

¹ ISO 15489: 2001

² Section 25-59-3(b), Mississippi Code Annotated, 1972

³ Derived from ISO 15489: 2001

Where do you start? Start by determining whether to keep a document. Does it meet the definition of a record? Convenience copies, published matter from other sources, and bulk emails you receive are not YOUR records, so they can be disposed of after their usefulness has expired.

Next, determine how to keep a record, that is, in what format – paper, electronic, microfilm, or some combination. While most documents are generated electronically, they are often delivered in paper format. How you maintain it may depend on its use and how best to preserve and provide access to it.

You should also determine where to keep a record. Current records should be readily available, but once their initial administrative use diminishes, move them to a storage area for inactive records. This storage area may be elsewhere within your building, or it may be an off-site location owned by your government, a storage facility such as a mini-warehouse, or a commercial records center. Costs, security and accessibility are factors to consider in determining where you store your records.

Determining how long to keep a record is also a factor in determining where and how to keep it. Records retention schedules, approved by the Local Government Records Committee⁴, provide guidance on this issue. Retention is determined by evaluating the administrative, fiscal, legal, regulatory, and historical value of a record series. Records retention schedules designate the minimum time a record must be kept. This may vary from “dispose at your discretion” to “permanent.” A record may be kept longer than the schedule indicates, but cannot be discarded sooner. A current list of approved retention schedules may be found on the Mississippi Department of Archives and History’s Web site, under “Records Management, for Local Government Officials.”⁵ Routinely following retention schedules helps keep the volume of records under control, and offers protection from “destruction of evidence” charges in lawsuits. But be cautious about disposing of records with personally identifiable information, such as Social Security numbers; such records in paper format should be shredded, while electronic records should be “wiped” or physically destroyed.

Let’s look more closely at how and where to keep a record. By standardizing your filing system and labeling, you can better organize your records so that you – and your successors – will be able to find specific records more easily. The three most common filing arrangements are alphabetic, numeric, and subject; you may also use some combination of these, depending on the nature of a particular record series. Standardized labeling, on files, on storage boxes, and especially in electronic files, will help you find your information more quickly. You can develop a taxonomy, defined as “a structure used for classifying materials into a hierarchy of categories and subcategories,”⁶ to create a list of standardized names, so that you call a particular type of record by the same name every time. A records inventory, or at least an index, is also helpful in identifying what records you have and where they are located. There are several commercial records management software products available, many of which can manage both paper and electronic records; you can also create a simple system with index cards or an Excel® spreadsheet.

If you store inactive records away from your office, standardizing procedures will help maintain control over the records. Using a standard size storage box is the first step. Letter/legal records storage cartons, 12”x 15”x 10” in size, are the most versatile storage box available. (The preferred

⁴ Section 25-60-1, *ibid*.
The committee’s seventeen members represent state agencies, local government associations, and researchers. See MDAH Web site for details: <http://mdah.state.ms.us/recman/lgrc.php>.

⁵ Specifically, <http://mdah.state.ms.us/recman/municipalities.pdf>

⁶ Richard Pearce-Moses, *Glossary of Archival and Records Terminology* (Chicago: Society of American Archivists, 2005)

design is a double-walled box with a sturdy separate lid.) They can hold letter-size papers front-to-back or legal-size papers side-to-side, and are much easier to handle than the 24"-long top-flap boxes. Pack a box with similar records, or at least records with the same retention, and organize them by date range and record series in a logical order. Stand the files upright in the box, not flat, so they can all be viewed at once. Use spacers if the box is not full. Label the boxes consistently, using your taxonomy to identify the contents, so others will be able to find the records inside. Label the end of the box, not the lid, so the label can be seen when the boxes are stacked. Store your records in a secure location, and develop procedures for sending records to your storage area, and for retrieving them, so you can keep track of them.

Where you store your records is a major factor in their accessibility and longevity. While you can't always control conditions of your city hall, you can be selective in choosing where you store records within your building, and even more so with off-site storage. First, choose a facility that is climate-controlled. Even a facility without a central HVAC system can be enhanced with portable air conditioners, humidifiers or dehumidifiers, insulation, and sealed openings. Keep light levels low, and use UV filters on fluorescent bulbs. Although a sprinkler system is preferred, even smoke detectors and portable fire extinguishers will help; ask for advice from your fire chief. (Remember, it's easier to dry out wet records than to reassemble ashes!) Try to avoid areas with water pipes overhead, and find out where cutoff valves are. Don't put records directly on the floor; use shelving at least 4 to 6 inches above the floor, in case of a water leak. Keep the area clean and dry, and have routine pest control treatment. Use steel shelving if possible, but if you have to use wood, make sure it is painted or sealed with a protective coating. Develop a schedule to routinely monitor the storage area, to detect problems before they get out of hand.

If at all possible, avoid storing records in an attic or a basement. An attic is subject to temperature extremes, roof leaks, and often has a floor inadequate for a heavy load of records. A basement is often damp and subject to flooding, both from external sources and internal water pipes. Both are likely to attract insects, other pests, and mold that will damage your records.

By the way, don't think that "going paperless" will solve all your records storage problems! Electronic records bring a new set of challenges. Make sure you back up electronic files regularly, keeping a backup copy offsite. Develop – and follow – a migration plan for any records that you must maintain for more than a few years.⁷ The same retention schedules apply to records, whether they're paper or electronic.

Don't forget to provide for public access to your records. The Mississippi Public Records Act, covered in detail elsewhere, reminds governments that it is a duty to provide access to public records. Make sure you have a place where someone can comfortably review the records, yet monitored so that they can't alter, damage, or remove them. Provide tables, pencils, and view-only computers. Specify that your staff will make copies for them at an established fee; don't endanger your records by letting patrons make their own copies.

At some point in discussing records management, the "bottom line" issue will arise: "How much will this cost?" Actually, records management can be seen as a cost-reducing measure. Timely disposal of records limits storage costs, and following a disposal routine, as mentioned above, avoids fines

⁷ See "Imaging Standards for State and Local Offices" under "Records Management" on MDAH Web site: <http://mdah.state.ms.us> for guidance on maintaining long-term or permanent records in electronic format.

for “destruction of evidence” in lawsuits. Being able to find records more quickly saves staff time. Preserving records properly up front saves repair and restoration costs later. Having off-site back-up systems and archival copies of essential records allows a municipality to get back into business more easily after a disaster. And, there is a way to generate a little money to pay for supplies and services.

⁸ Section 25-60-5, *ibid*.

The Local Government Records Act⁸ provides for a filing fee to help defray records management expenses. For any document filed with a municipality for which a fee is charged – and this can be either a document brought in or one generated when a customer comes in – the municipality adds \$1.00 to the fee. Common sources include building permits and related items, zoning applications, special event permits, and even wage garnishment fees. The municipality keeps half of the fees collected, and the other half is submitted to a state fund set up for the Local Government Records Office, a division of the Mississippi Department of Archives and History. The money kept is to be earmarked for records management purposes, which includes supplies, services, salaries, and related travel expenses. The amount generated varies widely from one municipality to the next, depending on its governmental structure and operation, but recent collections, when viewed against population, average about 2 cents a year per resident.

⁹ <http://mdah.state.ms.us/recman/training.php>

The Local Government Records Office⁹ is available for consultation on records management issues, by phone, email, or on-site visits, and regularly provides training for local government officials and employees. An interactive online course, “Introduction to Records and Information Management,” is available on the MDAH Web site under “Records Management: Training.” Contact the Local Government Records Office at 601-576-6894, or by email at locgov@mdah.state.ms.us for information or assistance.

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Tim Barnard serves as the director of the Local Government Records Office at the Mississippi Department of Archives and History. He provides records management advice and assistance to cities, counties and other local government entities throughout the state, conducts workshops /training, and speaks at various local government officials’ meetings. He has extensive knowledge and practical experience in local government records, working as a land title researcher for a law firm and in the Harrison County Chancery Clerk’s Office, first as assistant sectional index clerk and later as supervisor of the land records vault.

Tim’s outstanding dedication to government records earned Harrison County the Mississippi Historical Society’s James T. Dawson Award for outstanding local government records program, and commendation by the Department of Archives and History. During his tenure, he created a new records management program which allowed graduate students an opportunity to assist in the management of records. Through his leadership Harrison County became the first county to fully participate in the statewide local government records program established in statute, setting a standard of excellence.

Tim received a full academic scholarship and received his bachelors of arts degree in political science from Jackson State University. He also earned a records management specialist certificate from Chippewa Valley Technical College. He was a member of ARMA International, the records managers’ professional association, from 2002 to 2009.



Performance Management

by P. Edward French, Ph.D.



Performance Management

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Content

1. Performance Management Measures
2. Approaches to Benchmarking
3. Conclusion

The challenges required to effectively manage the contemporary municipality are impressive, but so are the opportunities that may emerge to make a positive impact on residents' lives and community sustainability. Performance management evaluates several aspects of public services that local governments choose to provide including the types of services that are provided and with what frequency should the services be provided, why and how service quality should be measured, and how this information can reveal problems with service quality and performance. Municipal managers have cited difficulty in measuring the quality of services as one of their most common problems in performance management; and reaching an agreement on what service quality means may be a large part of the difficulty in measuring it. Performance management allows public officials to respond to increased public scrutiny and pressure for operational accountability by monitoring the quality of the public services their employees provide and also evaluating the results achieved with local tax dollars. This tool allows local government managers to connect high performance with specific local resources, policies, and practices.

There is a wealth of information that is available through performance management to help run a municipality both efficiently and effectively that is either all ready present or can be gathered with minimal effort. The key requires using this information to understand both the services that the municipality provides well and the services that the city could improve upon both from a budget perspective and a citizen satisfaction perspective. There are several types of measures that can be used to measure performance including inputs, outputs, efficiency, effectiveness, and quality measures. The information revealed from an in-depth analysis of these aspects of municipal performance can be evaluated from an individual city perspective or as part of a local government performance management project. These types of projects allow several municipalities that offer similar services the opportunity to utilize comparative analysis to link service performance with policies and practices. Cities are able to collect and share service performance characteristics in order to understand how their performance stacks up against that of other jurisdictions. Several successful local government benchmarking projects have been implemented in North Carolina, South Carolina, Tennessee, and by the International City/County Management Association.

1 Performance Management Measures

Defining the quality of a municipal service is like trying to define fine art – most recognize it when it is experienced, but it is difficult to agree on a common way to measure it. For example, with solid waste collection performance can be measured and managed in a number of ways. Municipalities can evaluate cost per ton to collect or the difference between cost per ton collected curbside verses cost per ton collected back door. There are also measures of tons collected per FTE, collection frequency, and tons per 1,000 population. In addition, citizen opinions can figure prominently into

a definition of service quality. However, municipal officials have to determine how to weigh the opinions of those who use the service over non-user taxpayers whose financial and political support are often important in sustaining those services.

Any analysis of municipal service performance should focus on answering two questions:

1. Is the city doing things right?
2. Is the city doing the right things?

The process looks at both specific programs and city wide provision of services. In other words, is the city providing the right mix of services for the community and are these services provided as efficiently as possible? In performance management, it is very important to know both what citizens think about the level and type of service provided and what citizens think about the different aspects of the quality of service performance. Performance management also benefits from understanding how to better measure and improve performance. Anyone with experience in measuring service performance understands that often what gets measured is what gets done. This outcome will always provide a good starting point; however, there are several different measures that can be utilized to launch, refine, or advance a successful performance management program.

Inputs can be considered resources, demands and constraints that are dedicated to or consumed by a program or service. Number of employees, amount of money or budget size, equipment, facilities, utilities, and materials consumed are considered inputs that can be measured. Cost of labor is typically the most expensive resource input for most public services. Demands include the number of requests for or the number of households receiving a service; and expectations refer to the level of input quality that recipients prefer or are willing to support for a particular service. In addition, municipalities may often have constraints such as laws, rules, regulations, and social and economic conditions that function as inputs.

Output measures indicate the amount of work performed, the volume of services provided during a specific period, or the number of calls, reports, or requests that require some response, action, or attention by municipal personnel. These measures can be utilized to evaluate how much is done or to be done and how workload may be changing over time. Examples of output measures include police calls dispatched per 1,000 population, number of tons of residential recyclables collected per 1,000 collection points, tons of refuse collected per 1,000 population, and fire code violations. Many times these measures are calculated as a ratio of work accomplished per unit of some standard such as per worker, per household, or per 1,000 population.

Efficiency measures are useful in evaluating the relationships between inputs and outputs. This measure typically determines the amount of work performed per unit of resource input. Examples of efficiency measures include cost per fire call response, tons of solid waste collected per FTE, cost per ton collected of recyclable waste, and response time from call to dispatch for police services. Efficiency measures often reveal when a service efficiency departs substantially from a standard, target, or benchmark.

ⁱ See *Managing America's Small Communities: People, Politics, and Performance*, by Folz and French, Rowman & Littlefield Publishers, Inc. 2005.

Effectiveness measures help municipal officials understand the extent to which service or program objectives are achieved. These indicators can provide the most meaningful information about service performance, but they can also be the most difficult to determine. Some services may have straightforward objectives that are easily measured, while others may have complex, multiple, or ambiguous objectives. Effectiveness measures that are more easily identified include percent of waste streams diverted from landfill by recycling, complaints per 1,000 collection points for solid waste services, percent of fire code violations cleared in 90 days, and percent of UCR part 1 cases cleared of those reported for police services.

Quality ▶	Processes ▶	Output / Workload ▶	Outcome
<p>Resources dedicated to or consumed by a program as shaped by demands, expectation, and constraints</p> <p>Input measures:</p> <ol style="list-style-type: none"> <i>Resources</i> Money, People, Technology, Faculties, Equipment, Time, <i>Examples:</i> <ul style="list-style-type: none"> - Dollars spent; cost of residential recycling program - Number of employees - Hours worked <i>Demands / Expectations</i> Needs, Wants, Service Preferences, Workload, Expectations, <i>Examples:</i> <ul style="list-style-type: none"> - Requests/calls for service per 1,000 population or collection points - Service workload - Emerging needs - Input service quality needs, expectations, and support <i>Constraints</i> Laws, Rules, Regulations, Political Feasibility, Social/Economic conditions. 	<p>What a program does with inputs and how it does it to fulfill goals and objectives; how work is performed, provided, or delivered</p> <p><i>Examples:</i></p> <ul style="list-style-type: none"> - How service requests are handled - How permit applications are processed - How law enforcement officers respond to calls - How various types of fires are fought <p><i>Analysis Techniques</i> Process Flow Charts, Work Distribution Analysis, Plotting Job Travel, Demand Analysis</p>	<p>The direct products of program/service processes and activities; the amount or quantity of work performed or services provided</p> <p><i>Workload/Output Measures:</i></p> <ul style="list-style-type: none"> - Number of arrests by patrol officers - Number of tons of refuse collected per 1,000 population - Number of fire department responses per 1,000 population - Tons of recyclables collected 	<p>The results, impacts, or benefits attained; how well and to what extent service objectives are being achieved</p> <ol style="list-style-type: none"> <i>Efficiency Measures</i> <ul style="list-style-type: none"> - Dispatched calls per patrol officer - Cost per response for all fire calls - Cost per residential collection point <i>Effectiveness Measures</i> <ul style="list-style-type: none"> - Crimes cleared of those reported - Percent of fire code violations cleared within 90 days - Complaints per 1,000 collection points - Injuries per traffic accident <i>Quality Measures</i> <ul style="list-style-type: none"> - Citizens' rating of neighborhood safety - User ratings of staff helpfulness with or knowledge about code compliance ⁱ

Quality measures are also useful in performance management as these measures indicate what citizens who receive or experience a service think about the performance of that service in terms of whether it meets or exceeds their needs or expectations. These indicators may relate to reliability, adequacy of physical facilities, interaction with municipal employees, and opinions about service policies. The most commonly used method for obtaining this information is a survey. Performance measures may include citizens' rating in opinion survey of quality of fire services, citizens' rating of safety in their neighborhoods during the day or after dark, citizens' rating of quality of garbage collection services, and citizens' response in opinion survey to questions about familiarity with city recycling services.

2 Approaches to Benchmarking

While understanding the types of measures that can be used to assess performance is very essential to performance management, it is equally important to understand how these indicators can be successfully utilized to improve the performance of local service provision. Municipal officials must have a reference point in determining how their service performance compares to other jurisdictions. Benchmarking allows for a systematic comparison of municipal performance by specifying this benchmark or target point that can be used to identify a gap in a city's performance level. This tool allows city officials to analyze service performance in a systematic way with the idea of determining what things about a local service can be or need to be changed to help improve performance so that it corresponds more closely to the desired performance level.

There are four approaches to benchmarking which depend on the local government's purpose or goal for establishing performance benchmarks in the first place and the selection of the right benchmark for comparison purposes. *Comparative performance statistics* allow municipal officials to compare the municipality's current service performance with the benchmark performance achieved by other municipalities with high levels of service efficiency or effectiveness. This type of benchmarking effort requires a cooperative effort among cities identifying common performance metrics and processes for the collection, verification, and sharing of performance data on specific services. Municipal officials may also implement a *corporate style* approach to their benchmarking efforts. This technique requires a comparison of current service performance with a top-performing comparable service counterpart with the intent of identifying best practices and policies that can improve service efficiency and effectiveness. Local officials must identify which programs and services are most likely to benefit from this approach, compare their service performance statistics to those of the appropriate counterpart, and determine how to get from where they are to where they want to be. The "best practices" of the counterpart municipality can be incorporated to close this performance gap.

Another approach to benchmarking utilizes *performance targets* to compare current performance against a pre-established internal performance target or an external target that has been derived from a similar organization or industry standard. Performance targets allow municipal officials to improve a service process or monitor the municipality's progress towards achieving a performance goal. The fourth approach to benchmarking performance is *continuous process improvement* which permits local governments to compare their own city's service performance over some period of time using the same performance measures. Continuous process improvement encourages officials to focus on changes or modifications to service that might help improve inputs, outputs, efficiencies,

and effectiveness. Improvements to the organization and training of employees may result or the need to make changes in technologies, materials, and support systems may emerge. The value of a benchmarking effort depends on local officials choosing the form of benchmarking that best matches the purpose or goal for establishing performance benchmarks in the first place and then selecting the right benchmark for comparison purposes.

3 Conclusion

Successful performance management requires the actual use of performance results to identify the service dimensions that need improvement and benchmarking to bridge the gap between existing performance and performance aspirations. The potential benefits of learning what practices and policies promote sustained high performance among cities can outweigh the costs associated with measuring performance or any perceived political risks of doing so. Public service is about serving the public by doing the right things the right way. Performance management allows municipal officials to integrate changes at the organizational and program levels that support this mission.

About the Author

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P. Edward French, Ph.D. is an Assistant Professor and Graduate Coordinator in the Department of Political Science and Public Administration at Mississippi State University where he primarily teaches graduate classes in the Ph.D. and MPPA programs. Dr. French also holds the title of Stennis Scholar for Local Government with the John C. Stennis Institute of Government. He has authored or co-authored over 35 refereed journal articles, books, and book chapters focusing mainly on local government administration, human resource management, emergency management, and education policy. His research has appeared in several notable academic journals including: *Public Administration Review*, *American Review of Public Administration*, *State and Local Government Review*, *Review of Public Personnel Administration*, *Public Integrity*, as well as others. Dr. French holds a Ph.D. in public policy and administration from Mississippi State University, a master's in education from the University of Virginia, a master's in city management from East Tennessee State University, and a bachelor's in political science from the University of Tennessee. Prior to entering academia, he was a local government manager and public administration specialist in the state of Virginia. Dr. French was awarded the 2010 Arts and Sciences Researcher of the Year for Social and Behavioral Sciences at Mississippi State University and students also awarded him the Outstanding Political Science/Public Administration Graduate Professor Award for 2009.



Municipal Borrowing

by Demery Grubbs and Troy Johnston



¹ All such references throughout this chapter are to sections of the Mississippi Code of 1972, as amended.

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Content

1. Common Types of Bonds
2. Short Term Notes and Bonds
3. Alphabetical Reference for Projects and Authority

There is a common belief throughout Mississippi that municipalities can simply authorize the Mayor or City Clerk to obtain a loan at the local bank to pave streets, build city hall, etc. However, this is not true. Municipalities, being creatures of statute, can only borrow interest-bearing indebtedness as authorized by Mississippi law. See §21-33-327, Mississippi Code of 1972, as amended.¹ The Home Rule Statute (§21-17-5) does not grant such authority. Consequently, municipalities must identify a project and then seek specific authority under Mississippi law to finance that project. Issuing bonds is the most common method, and frequently the only method, available under Mississippi law to finance municipal projects.

Bonds are nothing more than a written promise to re-pay a specific sum of money, with interest, on a specific date over a specific period of time in return for a loan from a lender. They are issued, or sold, to a lender, called an underwriter, in return for its loan. The underwriter may hold the bonds or offer them on the public market. Bonds may be sold either publically via a public bid or privately through negotiation depending on which Mississippi law applies.

Outside experts, such as bond counsel and/or financial advisors, are typically employed to assist municipal officials with the bond issuance process. The consequences of making mistakes in the bond issuance process can be significant. Utilizing outside experts will greatly reduce potential problems.

1 Common Types of Bonds

The following types of bonds are most commonly used by municipalities to construct projects:

1.A General Obligation Bonds

1. *Statute* §21-33-301 et seq.
2. *Purposes*
 - Airports for colleges or universities [§21-33-301(n)]
 - Armories [§21-33-301(a)]
 - Art centers [§21-33-301(a)]
 - Athletic buildings and land [§21-33-301(a)]
 - Athletic fields [§21-33-301(a)]
 - Athletic stadiums [§21-33-301(a)]
 - Auditoriums [§21-33-301(a)]
 - Books for public libraries [§21-33-301(c)]
 - Bridges [§21-33-301(h)]
 - Cemeteries, including land therefor, equipment, and adornments [§21-33-301(g)]
 - Channelization of streams and water courses to control, deflect, or guide the current thereof [§21-33-301(k)]

- ◆ Community centers [§21-33-301(a)]*
- ◆ Culverts [§21-33-301(h)]
- ◆ Docks, including land and improvements therefor [§21-33-301(i)]
- ◆ Drainage systems [§21-33-301(d)]
- ◆ Driveways and land therefor [§21-33-301(f)]
- ◆ Economic development [§21-33-301(q)]
- ◆ Election equipment [§21-33-301(m)]
- ◆ Electric plants, distribution systems, or franchises [§21-33-301(b)]*
- ◆ Equipment with a useful life in excess of ten (10) years [§21-33-301(p)]
- ◆ Fire-fighting equipment and apparatus, including housing and land therefor [§21-33-301(t)]
- ◆ Gas plants, distribution systems, or franchises [§21-33-301(b)]*
- ◆ Gymnasiums [§21-33-301(a)]*
- ◆ Harbors and appurtenant facilities, including land and improvements therefor [§21-33-301(i)]*
- ◆ Hospitals (public) and health facilities, including land and improvements therefor [§21-33-301(j)]*
- ◆ Houses of correction (public), including land and improvements therefor [§21-33-301(j)]
- ◆ Jails (public), including land and improvements therefor [§21-33-301(j)]*
- ◆ Library buildings, land, equipment, and books [§21-33-301(c)]*
- ◆ Markets (public), including land and improvements therefor [§21-33-301(j)]
- ◆ Mass transit systems (existing), subject to special election [§21-33-301(o)]
- ◆ Municipal buildings [§21-33-301(a)]
- ◆ Parking (public) facilities and land therefor [§21-33-301(f)]
- ◆ Parks, including land therefor, equipment, improvements, and adornments [§21-33-301(g)]*
- ◆ Parkways and land therefor [§21-33-301(f)]
- ◆ Pest houses (public), including land and improvements therefor [§21-33-301(j)]
- ◆ Playgrounds (public), including land therefor, equipment, and adornment [§21-33-301(g)]
- ◆ Protection of a municipality, its streets and sidewalks, from overflow, caving banks, and other like dangers [§21-33-301(e)]
- ◆ Public utility plants, distribution systems, or franchises other than those mentioned elsewhere in this listing [§21-33-301(b)]*
- ◆ Recreational facilities, including land and equipment therefor [§21-33-301(g)]*
- ◆ Reformatories (public), including land and improvements therefor [§21-33-301(j)]
- ◆ Sanitary systems [§21-33-301(d)]
- ◆ Sewerage systems [§21-33-301(d)]*
- ◆ Sidewalks and land therefor [§21-33-301(f)]
- ◆ Slaughterhouses (public), including land and improvements therefor [§21-33-301(j)]
- ◆ Storm systems [§21-33-301(d)]
- ◆ Streets and land therefor [§21-33-301(f)]*
- ◆ Swimming pools, including land and equipment [§21-33-301(g)]
- ◆ Voting machines [§21-33-301(m)]
- ◆ Walkways and land therefor [§21-33-301(f)]

- ◆ Waterworks plants, distribution systems, or franchises [§21-33-301(b) and §21-27-23]*
- ◆ Wharves, including land and improvements therefor [§21-33-301(i)]
- ◆ Workhouses (public), including land and improvements therefor [§21-33-301(j)]
- * *Other authority exists to construct project*

3. *Security* General obligation bonds are secured by the taxing power and full faith and credit of a municipality. The principal and interest payments on the bonds can be paid from any available sources of revenues, but the ultimate source of payment for the bonds is a pledge of ad valorem taxes levied in an amount sufficient to pay the principal and interest on the bonds.

4. *Debt Limits* General obligation bond indebtedness that can be outstanding is limited to 15% of the assessed value of the taxable property in the municipality based on the last completed assessment for taxation. Bonds for school, water, sewerage systems, gas, light, and power purposes and for the construction of special improvements primarily chargeable to the property benefitted, for the purpose of paying the municipality’s portion of any betterment program, a portion of which is primarily chargeable to the property benefitted, are excluded from the calculation of indebtedness. However, the total indebtedness of a municipality cannot exceed 20% when added to all general obligation indebtedness, both bonded and floating (revenue producing projects such as public utilities and hospitals).

5. *Max. Term* 20 years

1.B Revenue Bonds

1. *Statute* §21-27-1 et seq.

2. *Purpose* Revenue bonds may be issued by a municipality to build, acquire, or improve any (or any combination of) public utilities (and occasionally healthcare facilities) that include:
 - ◆ Waterworks systems
 - ◆ Water supply systems
 - ◆ Sewerage systems
 - ◆ Sewage disposal systems
 - ◆ Garbage disposal systems
 - ◆ Rubbish disposal systems or incinerators
 - ◆ Gas producing, generating, transmission, or distribution systems
 - ◆ Electric generating, transmission, or distribution systems
 - ◆ Railroad transportation system for passengers and freights
 - ◆ Motor vehicle transportation systems
 - ◆ See §21-27-23

3. *Security* Revenue bonds are secured by the revenue derived from the enterprise for which project was construct. For instance, revenue bonds issued for water and sewer projects are re-paid from water and sewer charges to customers. Further,

municipalities may be required to meet an earnings test or be required to maintain a certain debt coverage ratio (income : bond payment).

4. *Debt Limits* Revenue bonds are not subject to any statutory debt limitations.
5. *Max. Term* 30 years

1.C Special Assessment Bonds

1. *Statute* §21-41-1 et seq.
2. *Purpose* Special assessment bonds are issued to provide funds to acquire and construct, reconstruct, and expand improvements (generally road and utilities) benefitting the residents and owners of a specified designation area land, i.e., a subdivision. The following types of improvements may be constructed with 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)]; or
 - ♦ 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)].
3. *Security* Special assessment bonds are secured by additional taxes (special assessments) upon the property benefited by the project and are generally secured by the full faith and credit and taxing power of the municipality.
4. *Debt Limits* Special assessment bonds are not subject to any statutory debt limits.
5. *Max. Term* 20 years

1.D Mississippi Development Bank Bonds

1. *Statute* §31-25-1 et seq.
2. *Purpose* Mississippi Development Bank bonds are issued by the Mississippi Development Bank and the proceeds loaned to municipalities to be used to acquire and construct, reconstruct and expand public facilities (generally revenue producing facilities) like solid waste facilities, public health facilities, economic development projects and other projects available for the use and benefit of the general public.
3. *Security* Mississippi Development Bank bonds are secured by a pledge of the revenues of the municipality and by sales tax rebates and homestead exemption revenues owed to the municipality from the State.

4. *Debt Limits* Mississippi Development Bank bonds are not subject to any statutory debt limits.

5. *Max. Term* 40 years

1.D Tax Increment Financing Bonds

1. *Statute* §21-45-1 et seq.

2. *Purpose* Tax increment financing (TIF) bonds may be used for a wide variety of public infrastructure projects usually associated with economic development projects including, but not limited to, land acquisition, infrastructure and site improvements, street construction and improvements, and building construction and/or renovation.

3. *TIF Plan* TIF bonds can only be issued after the municipality has adopted a Redevelopment plan and a TIF plan that establishes a TIF district from which the incremental increase in tax revenue (ad valorem and/or sales tax) will be used to pay the principal and interest payments on the bonds.

4. *Security* TIF bonds are secured by the incremental increase in the taxes received by the municipality from the TIF district.

5. *Debt Limits* TIF bonds are not subject to any statutory debt limits.

6. *Max. Term* 30 years

1.E Urban Renewal Bonds

1. *Statute* §43-35-1 et seq.

2. *Purpose* Urban renewal bonds can be issued to secure funds necessary to acquire, through eminent domain if necessary, property in a slum or blighted area, to demolish, and remove buildings and improvements, to install, construct, reconstruct streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the urban renewal district to the objectives of the urban renewal plan.

3. *Urban Renewal Plan* Prior to issuing bonds, the municipality must have in place a comprehensive plan and then prepare, or cause to be prepared, an urban renewal plan that may be prepared and submitted by either a public or private entity. A public hearing is required before the urban renewal plan can be adopted by the municipality. Municipalities that are within a declared “disaster area” may waive certain procedural requirements regarding the adoption of an urban renewal plan.

4. *Security* Urban renewal bonds may be secured from the income, revenues and funds of the municipality derived from the urban renewal project; by any loan, grant or contribution from the federal government or other source, in aid of the urban renewal project; and by a deed of trust of any such urban renewal project, or any part thereof title to which is in the local government.
5. *Debt Limits* Urban renewal bonds are not subject to any statutory debt limits.
6. *Max. Term* 30 years

1.F **USDA Rural Utility Loans/Bond Issues**

1. *Statute* §21-27-45
2. *Purpose* USDA Rural Utility bonds are issued to secure funds to construct water and sewer projects approved by the USDA in rural areas and smaller municipalities.
3. *USDA Purchase:* The USDA approves a project for a loan. The USDA loan is used to purchase the municipality's revenue bonds issued pursuant to 21-27-1 et seq.
4. *Security:* The revenue bonds issued by the municipality to the USDA are secured by the revenue derived from the enterprise for which project was construct. For instance, revenue bonds issued for water and sewer projects are re-paid from water and sewer charges to customers. Further, municipalities may be required to meet an earnings test or be required to maintain a certain debt coverage ratio (income : bond payment).
5. *Debt Limit* Revenue bonds are not subject to any statutory debt limitations.
6. *Max. Term* 35 years

1.G **Mississippi Department of Environmental Quality Loan (SRF)**

1. *Purpose* Mississippi Department of Environmental Quality provides loan programs for municipalities for water and sewer projects at attractive interest rates.

1.H **Lease Financing**

1. *Statute* §21-17-1 and §17-5-15 (concerning equipment) and §31-8-1 et seq. (concerning municipal buildings and machinery and equipment therefore).
2. *Purpose* Lease financing provides funds necessary to acquire equipment – police, fire, computers, etc. – or construct public buildings (§31-8-3) without the necessity of incurring long term debt.

3. *Security* The lease can be secured by an annual appropriation by the municipality, or it can be secured by the full, faith and credit of the municipality.
4. *Debt Limits* Lease financing is not subject to any debt limits unless the lease is secured by the full, faith and credit and taxing power of the municipality.
5. *Max. Term* 20 years

2 Short Term Notes & Bonds

2.A Short Term Notes

1. *Statute* §17-21-51 through 17-21-55
2. *Purpose* Short term notes are issued to provide funds to acquire and construct public facilities when the amount of funds required for such purposes would not justify issuing bonds – generally, projects that are \$500,000 or less.
3. *Security* Short term notes are secured by the taxing power and the full faith and credit of the municipality, but they can be repaid from any available source of revenue.
4. *Debt Limit* The municipality's ability to issue short term notes is limited to 1% of the assessed value of all taxable property in the municipality or \$250,000. Additionally, the notes are included in the general obligation 15% debt limit.
5. *Max. Term* 5 years

2.B Tax/Grant/Loan Anticipation Borrowing

1. *Statute* §21-33-325
2. *Purpose* Municipalities can issue notes to fund operating costs of the municipality pending the receipt of taxes or a federal or state grant/loan.
3. *Debt Limit* With respect to tax anticipation notes, the municipality can only borrow up to 50% of the anticipated tax revenue to be collected. With respect to grant/loan anticipation notes, the municipality must have a binding commitment to receive the grant/loan, and the loan is limited to the amount of the commitment.
4. *Max. Term* Must be repaid by March 15 out of first money collected.

2.C Refunding Bonds

1. *Statute* §31-27-1 et seq.; There are also other limited statutes that allow refunding, i.e., §31-15-1 et seq., but §31-27-1 et seq. is the statute most commonly used and is addressed here.

2. *Purpose* Refunding bonds are issued to refinance outstanding debt of the municipality to decrease the cost of borrowing, i.e., lower interests rates, and/or to change, relax, reduce or eliminate existing bond covenants.
3. *Savings Requirement* Refunding bonds must save municipalities at least 2% (net present value) to be issued.
4. *Security* Refunding bonds are secured by the same security as the bonds they refund.
5. *Max. Term* Varies

3 Alphabetical Reference for Projects & Authority

State law authorizes a municipality to issue bonds to construct, improve, erect, repair, adorn, equip, establish, protect, pave, purchase, acquire, operate, maintain, replace, enlarge, expand, improve, build, remodel, add to, furnish, prepare, etc. – whichever is specified in a particular section of the law – over seventy types of public facilities, public works, or items of public machinery and equipment. Some of these 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(l)]
18. Drainage systems [§21-33-301(d)]
19. Driveways and land therefor [§21-33-301(f)]
20. Economic development [§21-33-301(q)]
21. Economic regional development act bonds [§57-64-1 et seq.]
22. Election equipment [§21-33-301(m)]
23. Electric plants, distribution systems, or franchises [§21-33-301(b) and §21-27- 23]
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(i)]

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(l) 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. Industrial development revenue bonds [§57-3-1 et seq.]
35. Jails (public), including land and improvements therefor [§21-33-301(j), §17-5-1 (in cooperation with counties), and §31-8-3 (lease financing)]
36. Lakes [§55-9-1]
37. Library buildings, land, equipment, and books [§21-33-301(c) and §31-8-3 (lease financing)]
38. Machinery with a useful life of over ten years [§21-33-301(p)]
39. Markets (public), including land and improvements therefor [§21-33-301(j)]
40. Mass transit systems (existing), subject to special election [§21-33-301(o)]
41. Motor vehicle transportation system [§21-27-23(a)]
42. Municipal buildings [§21-33-301(a)]
43. Parking (public) facilities and land therefor [§21-33-301(f)]
44. Parks, including land therefor, equipment, improvements, and adornments [§21-33-301(g) and §55-9-1]
45. Parkways and land therefor [§21-33-301(f)]
46. Pest houses (public), including land and improvements therefor [§21-33-301(j)]
47. Piers, pavilions, bath houses, and other like appropriate structures [§21-37-13]
48. Playgrounds (public), including land therefor, equipment, and adornment [§21-33-301(g)]
49. Pollution control facilities [§49-17-103(c)]
50. Ports, harbors, docks and wharves [§59-3-1 et seq. and Chapter 7 of Title 59]
51. Protection of a municipality, its streets and sidewalks, from overflow, caving banks, and other like dangers [§21-33-301(e)]
52. Public buildings [§31-8-3 et seq. (lease financing)]
53. Public improvement district bonds [§19-31-1 et seq.]
54. 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.]
55. Railroad transportation system for passengers and freight [§21-27-23(a)]
56. Redevelopment projects [§21-45-9 and §43-35-21]
57. Recreational facilities, including land and equipment therefor [§21-33-301(g) and §55-9-1]
58. Retirement system funding [§21-29-27]
59. Reformatories (public), including land and improvements therefor [§21-33-301(j)]
60. Refunding or refinancing outstanding bonds [§31-27-1 and §31-15-1 et seq.]
61. Regional Economic Development [§57-64-11]
62. Rubbish disposal system or incinerators [§21-27-23]
63. Sanitary systems [§21-33-301(d)]
64. Sewage disposal systems [§21-27-23]

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65. Sewerage systems [§21-33-301(d) and §21-27-23]
 66. Sidewalks and land therefor [§21-33-301(f)]
 67. Slaughterhouses (public), including land and improvements therefor [§21-33-301(j)]
 68. Solid waste facilities [§17-7-101 et seq. and §17-17-335 (closure, post closure maintenance and corrective actions)]
 69. Stadiums [§55-9-1]
 70. Storm systems [§21-33-301(d)]
 71. Streets and land therefor [§21-33-301(f) and §21-41-1 et seq.]
 72. Swimming pools, including land and equipment [§21-33-301(g)]
 73. Urban renew project [§43-35-1 et seq.]
 74. Voting machines [§21-33-301(m)]
 75. Walkways and land therefor [§21-33-301(f)]
 76. Waterworks plants, distribution systems, or franchises [§21-33-301(b) and §21-27-23]
 77. Wharves, including land and improvements therefor [§21-33-301(I)]
 78. Workhouses (public), including land and improvements therefor [§21-33-301(j)]

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Municipal Annexation

by Jerry Mills



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Content

1. Statutory Overview
2. Conclusions

Section 88 of the Mississippi Constitution of 1890 directs the legislature to pass general laws related to municipal boundary changes. The most recent general laws were adopted in 1950 and are found in Title 21, Chapter 1 of the Mississippi Code of 1972.

1 Statutory Overview

The statutory process for annexation is set out in Section 21-1-31 et seq. Strict compliance with the requirements of the statute is required. More than one annexation has failed because of the failure to fully follow the requirements of the statute. The following is an overview of the statutory requirements to annex.

The Ordinance

The first step that must be taken in an annexation proceeding is the adoption of an ordinance by the municipal governing authority. The ordinance must meet all statutory requirements.¹ Unlike normal ordinances, it should not be included in the ordinance book and need not be published.

The Petition

Once the ordinance is approved, a petition seeking ratification and approval by the Chancery Court must be filed. The statute has several requirements:

1. Petition shall recite the fact of the adoption of such ordinance,
2. Petition shall pray that the enlargement or contraction of the municipal boundaries, as the case may be, shall be ratified, approved and confirmed by the Court,
3. There shall be attached to such petition, as exhibits thereto,
 - a certified copy of the ordinance adopted by the municipal authorities and
 - a map or plat of the municipal boundaries as they will exist in the event that such enlargement or contraction becomes effective.

Notice of Hearing

Once the petition is filed, an application is made to the Court for a hearing date. That date must be obtained so that notice can be given as required by statute. Notice must be given at least 30 days before the hearing date. As a result, the hearing date needs to be set early enough to allow for publication. The notice must indicate 1) the hearing date, and 2) that all such persons will have the right to appear and enter their objections, if any, to the proposed annexation. Notice must be published once a week for three consecutive weeks in a newspaper having general circulation in the area sought to be annexed. Additionally, notice must be posted in at least three public places in the area sought to be annexed at least 30 days prior to the hearing. Any municipality within three miles of the area sought to be annexed must be served with a summons at least 30 days prior to the hearing.

¹ Ordinance required to be passed by municipality under § 21-1-27. must

- A. Defines with certainty proposed annexation area (PAA).
- B. Defines with certainty new city boundaries, if PAA granted in whole.
- C. Shall in general terms describe the proposed improvements to be made in the annexed territory, the manner and extent of such improvements, and the approximate time within which such improvements are to be made.
- D. Shall also contain a statement of the municipal or public services which such municipality proposes to render in such annexed territory.

2. 1. the municipality's need for expansion;
2. whether the area sought to be annexed is reasonably within a path of growth of the city;
3. the potential health hazards from sewage and waste disposal in the annexed areas;
4. the municipality's financial ability to make the improvements and furnish municipal services promised;
5. the need for zoning and overall planning in the area;
6. the need for municipal services in the area sought to be annexed;
7. whether there are natural barriers between the city and the proposed annexation area;
8. the past performance and time element involved in the city's provision of services to its present residents;
9. the impact (economic or otherwise) of the annexation upon those who live in or own property in the area proposed for annexation;
10. the impact of the annexation upon the voting strength of protected minority groups;
11. 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

The Hearing

The actual hearing of the matter may or may not occur on the date initially set. If the case is contested, it is highly likely that the hearing will be continued to a later date. If there is no opposition, the Chancellor may hear the matter on the original date. It is important, that even in uncontested cases, the municipality put before the Court a case which will support the Chancellor's decision in the matter. Annexation is in a special class of cases where an appeal may be taken by parties who did not actively participate in the case. If this happens, the record must be sufficient to support the Court's hearing.

At the hearing, the municipality has the burden of proof. After hearing the evidence, the Court has the option of granting the area sought in full, granting part of the area and denying part of the area, or denying the area entirely. The Court may not add territory even if someone shows up at the hearing requesting to be included.

Over the years a number of Mississippi Supreme Court cases have developed around two issues:

1. Is the annexation required by the public convenience and necessity?
2. Is the annexation reasonable?

In an early case following the adoption of annexation legislation, the Mississippi Supreme Court declared the portion of the ordinance requiring the Chancery Court to find that the annexation worked to the public convenience and necessity of the areas in question was un-constitutional. The Court reasoned that the determination of "public convenience and necessity" was a legislative decision to be decided by the municipality's governing body. As a result, it is strongly recommended that the ordinance of annexation always contain a finding that the annexation is required by the public convenience and necessity.

Following the decision of the Supreme Court, the only question now considered by the Court is whether the annexation is reasonable. Over the years, the Mississippi Supreme Court has set forth a list of indicators of reasonableness.² These are not separate and independent tests. While the Chancellor must consider all of these factors, reasonableness is to be determined under the totality of the circumstances.

The Decree

Once a matter is decided, a decree or judgment is entered. As with all matters related to annexation, care must be taken to make certain that the decree meets all the requirements of the statute. The statute provides that the annexation becomes effective 10 days after the entry of the decree or the mandate of the Supreme Court if there is an appeal. In most cases this will not be an issue. However, as noted below, a conflict in the time for appeal can create real problems.

A frequently asked question is "when does the City have to start providing services and making improvements?" The answer generally will be controlled by the provisions of the annexation ordinance. For example, basic services generally start immediately on the effective date of annexation. The ordinance usually sets a time frame for the provision of water and sewer.³

² 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

12 any other factors that may suggest reasonableness vel non..

See *City of Jackson v. Byram Incorporators*, 16 So. 3d 662, 683 (Miss. 2009) (quoting *In re Extension of the Boundaries of Winona v. City of Winona*, 879 So. 2d 966, 972 (Miss. 2004));

³ We frequently hear that the City has five years to provide water and sewer. While this is a common time frame set in ordinances it not a state law requirement. A number of ordinances use a 3 year promise. Others promise such services in 6 or 7 years.

⁴ Annexation appeals are always directly to the Supreme Court.

Appeal

The statute provides that an appeal must be taken 10 days from the date of the decree. However, the Mississippi Rules of Appellate Procedure appear to allow 30 days. The matter has never been definitively addressed by the Mississippi Supreme Court.

Major problems can occur for a city if an appeal is taken more than 10 days but less than 30 days from the decree. Under the statute, the annexation is automatically stayed if the appeal is taken and a \$500.00 bond is posted within 10 days of the decree. There is no automatic stay if the appeal is taken between day 11 and day 30. This can and has resulted in annexations becoming effective with services provided and taxes collected pending an appeal and then being set aside by the Supreme Court.⁴

Tax Liability

The question often arises as to when taxes are imposed. There are conflicting statutes on this issue. The consensus (supported by practice and attorney general’s opinions) is that if an annexation is final on June 30, the municipality has the option of taxing the property for the entire year. If the annexation is after June 30, the tax lien date will be January 1 of the next year.

Preclearance

Mississippi municipalities are covered by Section 5 of the Voting Rights Act of 1965. As a result, all voting changes must be precleared. This includes the annexation itself as well as any changes to wards. One common misconception is that the annexation is not effective for any purpose prior to preclearance. Only changes related to voting are impacted. For example, taxation may commence prior to preclearance.

Impact on Schools

A great deal of confusion has existed in the past over the impact of annexation on schools. Prior to 1986, statute provided that when a city with a municipal school district annexed, the boundaries of the municipal school district also expanded. That statute was repealed in 1986, but the repeal was not precleared. After years of litigation, including three trips to the United States Supreme Court, the repeal was precleared. Today, annexation does not automatically impact school district lines.

Race to the Courthouse

For many years, Mississippi followed the “prior jurisdiction rule.” Under that rule, the first municipality to file an annexation had the right to be heard first. The “prior jurisdiction rule” was abolished in 2005, and cases involving competing annexations can be consolidated.

May Annexations be Discussed in Executive Session

This matter has been specifically addressed by the Supreme Court. The Court held that since all annexations involve litigation, they may be dealt with in a properly closed executive session.

How Long Does Annexation Take

The answer to this question is almost totally dependent upon the level of opposition to the annexation. While an untested annexation could be effective in 60 days, a strongly opposed annexation could take years.

Impact of Special Purpose Districts

On the borders of many municipalities, limited service districts (fire districts, sewer districts etc.) have been created. Most are created under the provision of Code Section 19-5-151et seq. This statute provides that so long as these districts continue to provide service, they retain the exclusive right to provide those services. Another set of districts are created by local and private legislation. These districts often contain a “poison pill” provision which requires a municipality to annex all or nothing.

Utility Certificates

The Mississippi Public Service Commission has authority to grant certificates of public convenience and necessity for the provision of utilities. When a municipality annexes into such an area, the certificate is not impacted.

2 Conclusions

Very often municipalities will be considering the annexation of relatively small areas. In those cases, the personal knowledge of the city officials and employees will likely provide sufficient information to go forward with the annexation. On the other hand, municipalities often find themselves in the position of considering annexation but unable to determine without outside assistance on important issues such as financial impact, demographic properties and general feasibility. In such cases, the municipality will do well to contract with a qualified urban planning expert to examine the issues related to the decision to annex. The planner can assist with the determination of feasibility in regard to annexation. Not only will an experienced planner provide the reliable data that city officials need in evaluating the issue, he/she will be of great assistance in providing factual data to the Court related to the reasonableness of a proposed annexation. Do to space limitations, the foregoing discussion must of necessity, be general. In an unopposed annexation, not many additional details are required. However, if opposition is anticipated, a great deal of attention to details will be necessary.

About the Author

Jerry L. Mills, born Mobile, Alabama; admitted to bar, 1973, all state and us District Court in Mississippi; us Court of Appeals, Fifth Circuit. Education: University of Southern Mississippi (BS, 1970); University of Mississippi (JD, 1973). Delta Theta Phi. Law Clerk to Chief Justice, Mississippi Supreme Court, 1973–1974. Municipal Court Judge Pro-Tem for City of Clinton, 1975–1981. Attorney, City of Clinton, 1981–1988; Attorney, City of Ridgeland, 1989–present; Attorney, City of Carthage, 2006. Attorney for the City of Byram, 2009–present.; Mississippi Municipal Association City Attorney’s Section (Vice President, 1984–1985; President, 1985–1986); National Institute of Municipal Law Officers (Chairman, Annexation Committee, 1988).

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Personnel Administration

by Gary E. Friedman



Personnel Administration

by Gary E. Friedman

Content

1. Federal Laws
2. Mississippi Statutes

1 Federal Laws

1.A Title VII

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 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.²

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.³

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. If no cause to believe the charge is true is found, the EEOC investigation ends and the charging party has 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.

1.B Americans with Disabilities Act

Title I of the Americans With Disabilities Act (ADA) 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 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.”⁴ A “qualified individual with a disability” means an individual with a disability who satisfies the requisite skill, experience, education, and other job-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.⁵ 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.”⁶

¹ 42 USC §2000E(B).

² 42 USC §2000E-2(A).

³ 29 CFR §1604.11(A).

⁴ 42 USC 12112(A).

⁵ 42 USC §2000E(B).

⁶ 42 USC 12102(2).

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.”⁷

⁷ 29 CFR 1630.13.

However, the Act does allow limited preemployment 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.⁸

⁸ 42 USC 12112(D)(3).

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.⁹

⁹ 42 USC 12112(D)(4).

1.C *Family and Medical Leave Act*

Municipalities are covered employers under the Family and Medical Leave Act (FMLA) regardless of the number of employees employed.¹⁰ However, although all municipalities are considered to be FMLA covered employers, an employee is not eligible for FMLA benefits unless the municipality employs 50 or more workers. Furthermore, employees of municipalities must meet all FMLA requirements before they will be considered FMLA eligible. For an employee to be eligible for FMLA 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.¹¹

¹⁰ 29 CFR 825.104(A).

¹¹ 29 CFR 825.110(D).

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.¹² 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.¹³

¹² 29 USC 2612(A)(1).

¹³ 29 USC 2612(A)(2).

On October 27, 2009, FMLA Amendments were signed into law. 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.

The leave required by the FMLA is unpaid leave. 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.

1.D *Age Discrimination in Employment Act*

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.¹⁴ 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.¹⁵ 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.¹⁶

¹⁴ 29 USC §630(B).

¹⁵ 29 USC §623(A);
29 USC §631(A).

¹⁶ 29 USC §623(D).

1.E *Fair Labor Standards Act*

The FLSA applies to employees of municipalities,¹⁷ but the FLSA definition of “employee” does not include the following:

- ◆ Independent contractors;
- ◆ Volunteers;
- ◆ Apprentices;
- ◆ 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.

Executive, administrative and professional employees are exempt from the minimum wage and overtime provisions of the FLSA¹⁸ and therefore can be paid a salary for all hours worked in a seven-day workweek. An employee meets one of these “white-collar” exemptions by meeting specific requirements established by the Labor Department.

¹⁸ 29 USC §213(A)(1).

The FLSA provides two special exemptions for employees engaged in fire protection and law enforcement activities. 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. Section 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.¹⁹

¹⁹ 29 USC §207(k).

Under Section 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.²⁰ 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.²¹

²⁰ 29 CFR §553.230(C).

²¹ 29 CFR §553.230(B).

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

²² 29 CFR §785.17.
²³ Wage-Hour Opinion Letter No. 995 (May 28, 1969).
²⁴ Wage-Hour Opinion Letter No. 777 (March 18, 1968).

²⁵ 29 USC §206(b)(1).

²⁶ *Brennan v. City Stores, Inc.*, 479 F.2D. 235, 238 (5th Cir. 1973).

²⁷ 38 U.S.C. 4311.

²⁸ 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.

²⁹ 38 USC 4316(A).

³⁰ *Code*, §33-1-21(A).

³¹ 15 USC 1671 et seq.

³² 15 USC Section 1671 et seq.

to leave work at his home or with municipal officials where he may be reached is not working while on call.²² 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.²³ However, all time spent by an employee called to perform work is considered to be compensable time.²⁴

1.F *Equal Pay Act*

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.²⁵ Jobs do not need to be identical to be covered by the Equal Pay Act but only substantially equal.²⁶

1.G *Uniformed Services Employment and Reemployment Rights Act of 1994*

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) 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.²⁷ 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;²⁸
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.

USERRA prohibits employment discrimination against military personnel based on their past, current, or future military obligations. 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.

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.²⁹ A reemployed veteran is also protected from discharge without cause for a specified period of time based on length of service.

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.³⁰

1.H *Consumer Credit Protection Act and the Bankruptcy Act Amendments of 1984*

The Consumer Credit Protection Act³¹ applies to all employees. 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.”³²

1.J *The Immigration Reform and Control Act*

The Immigration Reform and Control Act (IRCA) makes it illegal to hire, to recruit, or refer for a fee any person known to be an unauthorized alien.³³ 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.³⁴

³³ 8 USC § 1324A(1).

³⁴ 8 USC 1324A(H)(3).

The Act requires a municipality to verify all applicants for employment within three (3) days of hire. Verification includes the establishment of both the individual’s employment authorization and identity.

1.J *Consolidated Omnibus Budget Reconciliation Act (COBRA)*

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.³⁵

³⁵ 29 USC § 1167(3).

A qualifying event is considered one of the following:

- Death of a covered employee;
- Termination other than for gross misconduct³⁶ 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.

³⁶ 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.³⁷ 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.

³⁷ 29 USC §1162(2)(A)(ii).

1.K *First Amendment*

The First Amendment restricts the municipality’s endorsement or disapproval of religion,³⁸ its ability to discharge an employee for political affiliations,³⁹ its ability to discharge an employee for exercising freedom of speech,⁴⁰ and its regulation of citizens’ rights to use a public forum when expressing their views.⁴¹

³⁸ *Lynch v. Donnelly*, 465 US 668 (1984).

³⁹ *Branti v. Finkel*, 445 US 507 (1980).

⁴⁰ *Connick v. Myers*, 461 US 138 (1983);
Davis v. West Comm. Hospital, 755 F.2D 455 (5th CIR. 1985);
Jones v. Dodson, 727 F.2D 1329 (4th CIR. 1984).

1.L *Fourth Amendment*

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.”⁴² A regulation placing employees on notice of the employers’ right to search their lockers or desks renders the Fourth Amendment inapplicable.⁴³ In the absence of notice, courts have recognized that employees have a reasonable expectation of privacy in their lockers,⁴⁴ offices⁴⁵ or their body.⁴⁶ Once the employee shows that he had a reasonable expectation of privacy in the place searched or the object seized, courts will balance the employee’s interests with the needs of the employer.⁴⁷

⁴¹ *Heffron v. Intl. Soc. for Krishna Consc.*,
452 US 640 (1981).

⁴² *O'Connor v. Ortega*,
480 U.S. 709 (1987);
United States v. Sanders,
568 F.2D 1175 (5TH CIR. 1978)
(per curiam).

⁴³ *United States v. Speights*,
557 F.2D 362, 365 (3RD CIR. 1977).

⁴⁴ *Gillard v. Schmidt*,
579 F.2D 825 (3RD CIR. 1978)
(holding search of employee's
desk and locker violated
Fourth Amendment).

⁴⁵ *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 US 709 (1987).

⁴⁶ *Compare Capua v. City of Plainfield*,
643 F. SUPP. 1507 (DNJ 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 F2D 1005 (DC CT APP. 1985)
(urinalysis testing of police officers
did not violate Fourth Amendment)
with *Allen v. City of Marietta*,
601 F. SUPP. 482 (ND GA. 1985)
(holding that urinalysis testing did
not violate Fourth Amendment
since they were not conducted as
part of a criminal investigation).

⁴⁷ *Camara v. Municipal Court*,
387 US 523 (1967).

⁴⁸ 49 CFR PART 199

⁴⁹ 49 CFR PART 383.

⁵⁰ *Washington v. Davis*,
426 US 229 (1976).

⁵¹ *The Bd. of Regents of State
College v. Roth*,
408 US 564, 573 (1972).

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;⁴⁸ and employees who operate commercial motor vehicles in interstate or intrastate commerce and are subject to the commercial driver's license requirements.⁴⁹

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.

1.M Fourteenth Amendment

The Fourteenth Amendment gives rise to four distinct types of legal rights:

1. equal protection of law;
2. liberty;
3. property; and
4. life.

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.⁵⁰

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.⁵¹

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 public employment under state law, he enjoys a "property interest" in his job.⁵² 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.⁵³ 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.⁵⁴ 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."⁵⁵

⁵² *Roth*, 408 US at 577.

⁵³ *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 US 953 (1980); *Kelly v. Mississippi Valley Gas Company*, 397 SO.2D 874 (MISS. 1981).

⁵⁴ *Sartin v. City of Columbus Utilities Commission*, 421 F. SUPP. 393, 396 (ND MISS. 1976); AFF'D MEM. 573 F.2D 84 (5TH CIR. 1978).

⁵⁵ *Bishop v. Wood*, 426 US 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).

⁵⁶ 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 () of any reimbursement paid to the Employment Security Commission for the next preceding quarter. Code, §71-5-359(2)(F).

⁵⁷ CODE, § 71-5-359(2)(J).

⁵⁸ CODE, § 71-5-359(2)(E).

⁵⁹ CODE, § 71-5-359(2)(F).

⁶⁰ CODE, § 71-5-359(2)(J).

⁶¹ CODE, § 71-3-7.

2 Mississippi Statutes

2.A Mississippi Unemployment Compensation Law

Municipalities are required either to keep a revolving fund,⁵⁶ make contributions to the unemployment fund,⁵⁷ or reimburse the state's unemployment fund.⁵⁸ 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.⁵⁹ If it elects to make contributions, the contributions must equal two percent (2%) of wages paid by it during each calendar quarter.⁶⁰

2.B Workers' Compensation

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.⁶¹ 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.

About the Author

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**Fundamentals of Planning
and Zoning in Mississippi**

by Robert L. Barber, Sr., FAICP



Fundamentals of Planning and Zoning in Mississippi

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Content

1. The Comprehensive Plan
2. Zoning
3. Final Plat Review

In any realm of human endeavor, planning links desires with reality, what is hoped for with actual outcomes. When sound planning occurs, it will not only be properly prepared for change, but it can better accomplish what it desires, successfully navigate challenges and avoid unwanted change. Sound planning dramatically enhances the ability of a municipality to determine its future, creating a path to achieve goals.¹

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

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. A comprehensive plan is the general framework by which development controls (zoning, subdivision codes, historic preservation plans, hazard mitigation, community health, economic development, design review, etc.) is created and interfaced with existing conditions and community goals. To pass legal muster, all planning programs must be based on the protection and advancement of general health, safety, welfare of a community.

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

1.A 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.

1.A.1 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.

1.A.2 *Role in Guiding Development*

Both public and private initiatives may be guided by a plan for the achievement of broad based community goals. Planning commissions use the document as a guide to specific project proposals. Because it provides a broad view of the municipality, the plan may help separate and distill long range development issues.

1.A.3 *The Coordination Role*

A plan helps coordinate the activities of various municipal departments, public utilities, and other jurisdictions. Transportation, utility infrastructure, schools, parks, public facilities and the like can all benefit from coordinated direction.

1.A.4 *The Role in Planning*

A broad plan is a framework for more detailed planning by a municipality such as a closer study of a neighborhood or small redevelopment area.

1.B **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 Mississippi Code.² The responsibility for creating a comprehensive plan may be granted to a municipal planning commission that has been created by the municipal governing authority.

² Code, '17-1-1 through '17-1-39.

Once a plan is drafted, usually with considerable public input and the aid of qualified planning professionals,³ the planning commission will conduct public hearings as required by statute.⁴ 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.

³ Professional planners are certified by the American Institute of Certified Planners and carry the designation AICP

⁴ Code, '17-1-15.

Municipal authorities must 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.⁵

⁵ Code, '17-1-15 and '17-1-17.

1.C **Implementation of the Plan**

Once an 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 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 a 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 may indicate a need to update the plan.

2 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.

2.A 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.

2.B 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 is preserved. Such zoning is particularly common for industrial uses.

2.C 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.

2.D 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.

2.E Rezoning

The method and procedures for amending the zoning ordinance are set by state law.⁶ 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.

⁶ Code, '17-I-15 and '17-I-17.

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.

2.F Two-Thirds Requirement

By statute, an additional super-majority vote requirement exists when the rezoning is protested by the owners of twenty percent (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.

2.G 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.

2.H Checklist Analysis for Zoning Amendment Decisions

As a guide to determining the appropriateness of a rezoning, the following twenty (20)-item checklist might be used to evaluate potential zoning decisions:

1. Would change be contrary to the general welfare?
2. Is an administrative procedure available and preferable to rezoning?
3. Would the original purpose of the regulation be thwarted?
4. Have procedural requirements been met?
5. Are there sites for the proposed use in existing districts permitting such use?
6. Is the proposed change contrary to the established land use pattern and the adopted plan?
7. Would change create an isolated, unrelated district, i.e., is it spot zoning?
8. Have major land uses changed since the zoning was applied, e.g., new expressway, new dam, and so forth?
9. Is existing development of the area contrary to existing zoning ordinance, i.e., are there special uses or violations?
10. Can the owner of the property realize an economic benefit from uses in accord with existing zoning?
11. Would change of present district boundaries be inconsistent with existing uses?
12. Would the proposed change conflict with existing commitments or planned public improvements?
13. Will change contribute to traffic congestion or dangerous traffic patterns?
14. 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?
15. Would change combat economic segregation?
16. Would change adversely influence living conditions in the vicinity due to any type of pollution?
17. Would property values in the vicinity be inflated by the change?
18. Would property values in the vicinity be decreased by the change?

19. 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?
20. Would change result in private investment which would be beneficial to the redevelopment of a deteriorated area?

2.I **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.

2.J **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 lot 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.

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.

3 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.

3.1 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 Plan Commission, a thorough understanding of the types of issues which must be considered and addressed when submitting an application for subdivision approval.

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About the Author

Robert L. Barber, AICP, has served as the Director of Planning for Hernando, Mississippi since 1996, focusing planning and development policy on preservation, design, place making and smart growth principles. He is also a consultant in private practice, advising small towns throughout Mississippi on planning and development matters. He is past president of the Mississippi Chapter of the American Planning Association, Chairman of the Chapter Presidents Council for the American Planning Association, and national board advisor of APA. He is a Fellow of the American Institute of Certified Planners. He is an executive committee member of the Memphis District Council of the Urban Land Institute and Executive Board Member of the Mid-South Regional Design Center.

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Management of Police Departments

by Gary Friedman



Management of Police Departments

by Gary Friedman

Content

1. Role of Mayor and Board of Alderman (City Council) with respect to Police Department Affairs
2. Police Certification

1 Role of Mayor and Board of Aldermen (City Council) with respect to Police Department Affairs

The Mayor or Board may not dictate the daily activities of the police department, including the assignment of work shifts and duties and the issuance or non-issuance of tickets and warnings.¹ A Police Chief has ultimate control and supervision.² Accordingly, the Mayor or Board has no authority to interfere in daily operations.³ To do otherwise would present the risk of violating the separation of powers doctrine included in Article I, Sections 1 and 2 of the Mississippi Constitution.⁴

Mayors or Board Members may, however, observe activities of the police department.⁵ This may be done for the purpose of reporting back to the Board.⁶

Also, “the authority to appoint officers and employees, fix their compensation, and prescribe their duties rests with the board of alderman, subject to the mayor’s veto.”⁷ Thus, the Board may consider a hiring recommendation from a Chief, but they are not required to do so.⁸

Ultimately, Chiefs hold their “office at the pleasure of the governing authorities and may be discharged by such governing authorities at any time, either with or without cause[,]” unless a Chief enjoys coverage under a municipal civil service commission or the governing authority has adopted a formal personnel manual which addresses dismissal procedures that apply to Chiefs.⁹

2 Police Certification

The Mississippi Code provides, in pertinent part, the following definition for “law enforcement officer:”

any person appointed or employed full time by the state or any political subdivision thereof, who is duly sworn and vested with authority to bear arms and make arrests, and whose primary responsibility is the prevention and detection of crime, the apprehension of criminals and the enforcement of the criminal and traffic laws of this state and/or the ordinances of any political subdivision thereof. . . . As used in this paragraph “appointed or employed full time” means any person who is receiving gross compensation for his duties as a law enforcement officer of One Hundred Twenty-five Dollars (\$125.00) or more per week or Five Hundred Dollars (\$500.00) or more per month.¹⁰

Mississippi law distinguishes between law enforcement officers who have received their police training certification and those who have not. Any person who is not a certified law enforcement officer but is employed by a municipal police department is classified as a “law enforcement trainee.”¹¹ Section 45-6-11(B) of the Mississippi Code provides that “no person shall be appointed or employed as a law enforcement trainee by any law enforcement unit for a period to exceed two (2) years....”

¹ MS AG OP., Gorrell (September 26, 1990).

² *Id.*

³ MS AG OP., Stewart (February 16, 1990).

⁴ MS AG OP., Scott (June 7, 1996).

⁵ MS AG OP., Lee (January 3, 2003).

⁶ *Id.*

⁷ MS AG OP., Parker (February 29, 2008).

⁸ *Id.*

⁹ MS AG OP., Donald (July 25, 1997).

¹⁰ Miss. Code §45-6-3

¹¹ MS AG OP., Atkinson (October 26, 2007)

A “law enforcement trainee” does not have the same authority as a certified law enforcement officer. In particular, a trainee “shall not have the authority to use force, bear arms, make arrests or exercise any of the powers of a peace officer unless:

1. The trainee is under the direct control and supervision of a law enforcement officer;
2. The trainee was previously certified under this chapter; or
3. The trainee is a certified law enforcement officer in a reciprocating state.”¹²

¹² Miss. Code §45-6-3(E); see also MS AG OP, Sullivan (December 9, 2005).

Given this statutory provision, it is clear that “a non-certified law enforcement trainee has the same power and authority as a law enforcement officer while they are under the direct control and supervision of a certified law enforcement officer.”¹³

¹³ MS AG OP, Sullivan (December 9, 2005).

A municipality may employ part-time, reserve, or auxiliary law enforcement officers. Certification exists for these officers, which “meets the same or similar content as the programs approved by the board for full-time law enforcement officers....”¹⁴ If a part-time, reserve, or auxiliary officer receives the “part time certification,” the officer may exercise the powers of a peace officer without being under the direct control and supervision of a law enforcement officer.¹⁵ There also is no requirement that a certified part-time officer receive additional training prior to being hired or reassigned to full-time status.¹⁶ If, however, a part-time, reserve, or auxiliary officer is not certified, he remains a “law enforcement trainee” and has the authority discussed above.¹⁷

¹⁴ Miss. Code §45-6-11(4).

¹⁵ MS AG OP, Davis (July 3, 2008).

¹⁶ *Id.*

¹⁷ *Id.*

Whether an officer is certified also can be important for liability purposes. To hold a municipality liable in a federal civil rights suit, a plaintiff is required to demonstrate that he (1) suffered a constitutional injury as a (2) direct result of a municipal policy or custom.¹⁸ One way to establish a policy is to prove that a municipality failed to adequately train an officer.¹⁹ Although not an absolute defense to liability, the Fifth Circuit Court of Appeals has held that, if the training of police officers meets state standards, there can be no cause of action under a failure to train theory of liability absent a showing that the “legal minimum of training was inadequate to enable [the officers] to deal with the ‘usual and recurring situations faced by...officers.’”²⁰ It is no defense at all that an officer has not been certified because he has been on the force less than two years.

¹⁸ *City of Canton v. Harris*, 489 US 378, 109 S. CT. 1197, 1203 (1989)

¹⁹ *Id.* at 388-89.

²⁰ *O’Neal v. City of San Antonio*, 2009 WL 2734735, *2 (5TH CIR. AUG. 31, 2009);

see also

Benavides v. County of Wilson, 955 F.2D 968, 973 (5TH CIR. 1992).

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Municipal Courts

by Cynthia D. Davis and Bill Charlton



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Content

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1 Establishment of Municipal Court

“There shall be a municipal court in all municipalities of this state. Wherever the words “police court” or “police justice” appear in the laws of this state, they shall mean municipal court or municipal judge, respectively.” Miss. Code Ann. §21-23-1.

2 Municipal Court Judge

2.A Oath

Municipal court judges must take an oath or affirmation to faithfully and impartially discharge and perform their duties in accordance with the Constitution of the United States and the Constitution and laws of the state of Mississippi. Miss. Const. Art. 6 §155.

2.B Appointment and Qualifications of Municipal Judges

Municipal judges are appointed by the governing authorities and receive a salary paid by the municipality. Unless otherwise provided by law, a municipal judge must be a qualified elector of the county in which the municipality is located and an attorney at law. Miss. Code Ann. §21-23-3. A municipal judge may not receive any of the fees or costs. Miss. Code Ann. §21-23-15. In municipalities with a population under ten thousand (10,000), the governing authorities may choose not to appoint a municipal judge. Miss. Code Ann. §21-23-3. In municipalities with a population under twenty thousand (20,000), the governing authorities may appoint a licensed attorney or a justice court judge to serve as municipal court judge. Miss. Code Ann. §21-23-5. Temporary judges, who serve in the absence of the municipal court judge, are appointed and compensated pursuant to Miss. Code Ann. §21-23-9.

2.C Powers and Duties of the Municipal Judge

Municipal court judges have the following powers and duties:

- Hearing violations of municipal ordinances and misdemeanor offenses. Miss. Code Ann. §21-23-7(1).
- Sitting as a committing court in all felonies committed within the municipality—which includes conducting initial appearances and preliminary hearings. Miss. Code Ann. §21-23-7(1).
- Conservator of the peace for crimes occurring within the municipality, which includes setting bail. Miss. Code Ann. §21-23-7(1) and 99-5-11.
- Issuing arrest warrants and search warrants. Miss. Code Ann. §21-23-7(1).

- Civil jurisdiction in actions filed pursuant to the Protection from Domestic Abuse Act. Miss. Code Ann. §21-23-7(1).
- Solemnizing marriages, taking oaths, affidavits and acknowledgments, and issuing orders, subpoenas, summonses citations, warrants for search and arrest. Miss. Code Ann. §21-23-7(3).
- Making rules for the administration of the court's business. Miss. Code Ann. §21-23-7(10).
- Expunging records if certain criteria are met. Miss. Code Ann. §21-23-7(13) and 99-19-71.
- Appointing deputy clerks when authorized to do so by the governing authorities. Miss. Code Ann. §21-23-11.

Municipal court judges should disqualify themselves in proceedings in which their impartiality might be questioned by a reasonable person knowing all the circumstances. Canon 3E of the Code of Judicial Conduct. Transfers to justice court in such cases is pursuant to Miss. Code Ann. §21-23-7(12).

A municipal court judge is a member of the judicial branch of government and, therefore, would be prohibited from serving as:

- A commission member within the executive branch of government.
Belk, Op. Att'y Gen. (June 30, 2006).
- A youth court prosecutor.
Littleton, Op. Att'y Gen. (March 14, 2003).
- A state representative or senator.
Reeves, Op. Att'y Gen. (January 18, 1989).
- A county attorney.
McLean, Op. Att'y Gen. (November 3, 1987).

3 Municipal Clerks and Deputy Clerks

3.A Oath

Municipal clerks and deputy clerks must take an oath or affirmation to faithfully and impartially discharge and perform their duties in accordance with the Constitution of the United States and the Constitution and laws of the state of Mississippi. Miss. Const. Art. 14, §268.

3.B Appointment of Clerk

The chosen form of government determines how clerks are appointed. Municipal forms of governments include:

- Code charters (Miss. Code Ann. §21-3-1 et seq.).
- Commission form of government (Miss. Code Ann. §21-5-1 et seq.).
- Council form of government (Miss. Code Ann. §21-7-1 et seq.).
- Mayor-council form of government (Miss. Code Ann. §21-8-1 et seq.).
- Council-manager plan of government (Miss. Code Ann. §21-9-1 et seq.).

3.C Appointment of Deputy Clerks of the Court

“The governing authorities may authorize the municipal judge to appoint other municipal employees as deputy clerks of the court to assist the clerk of the court in the conduct of the court's responsibilities or the governing authorities may appoint deputy clerks of the court. The authorization to appoint and/or appointment of deputy clerks of the court shall be entered in the

minutes of the municipality. A police officer of the municipality may be the clerk of the court or a deputy clerk of the court. The governing authorities shall provide for the training of court personnel.” Miss. Code Ann. §21-23-11

3.D *Bonds of Municipal Clerks and Deputy Clerks*

Municipal clerks and deputy clerks are required to give bond, with sufficient surety, to be payable, conditioned and approved as provided by law, for an amount not less than Fifty Thousand Dollars (\$50,000.00). Miss. Code Ann. §21-3-5 , 21-8-23(6), 21-15-23, and 21-15-38.

3.E *Continuing Education Requirements of Clerks of the Municipal Court*

“(1) Every person appointed as clerk of the municipal court shall be required annually 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. Attendance shall be required beginning with the first training seminar conducted after said clerk is appointed.

...

(3) Upon the failure of any person appointed as clerk of the municipal court to file the certificate of completion as provided in subsection (2) of this section, within the first year of appointment, such person shall then not be 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 such certificate remains unfiled.” Miss. Code Ann. §21-23-12

3.F *Municipal Clerk to Serve as Clerk of the Court*

The municipal clerk must serve as clerk of the court, unless the governing authorities elect otherwise. The clerk is under the direction of the municipal judge. Any rules issued by the judge for the administration of the court’s business must be in writing and filed with the clerk. Duties of the clerk of the court include:

- attending court in person,
- keeping permanent dockets,
- issuing all process from the court, including subpoenas, *but not* arrest warrants or process for the seizure of persons or property,
- administering the collection of all fines, penalties, fees and costs imposed by the court and depositing these with the municipal treasurer or equivalent officer,
- purchasing all dockets, minute record, stationery and other supplies,
- taking acknowledgments, administering oaths, and taking affidavits charging crimes, and
- conducting initial appearances for misdemeanor violations *but only if* the municipal judge is unavailable, the clerk has completed a training course on this subject conducted by the Mississippi Judicial College of the University of Mississippi Law Center, and the municipal judge has established written guidelines and procedures which are entered in the minutes of the court.

Also, pursuant to procedures established by the State Auditor, the municipal clerk must make a monthly lump-sum deposit of all state assessments collected each month with the State Treasurer. The total number of violations under each subsection for which the state assessments were collected must be reported to the Dept. of Finance and Administration. Miss. Code Ann. §21-23-7, 21-23-11, and 99-19-73.

3.G *Clerk's Duties in Keeping Records*

The municipal clerk must keep certain records, as provided by statute, including:

- Municipal court docket, which contains the style of the case and the nature of the charge against an accused, and the names of witnesses for the prosecution and defendant. Miss. Code Ann. §21-23-11.
- Minute record, which contains all orders and judgments. Miss. Code Ann. §21-15-17.
- Municipal docket, which contains each subject, other than claims and accounts, to be acted upon by the governing authorities at the next meeting. Miss. Code Ann. §21-15-19.
- Claims docket, which contains all monthly demands, claims and accounts against the municipality. Miss. Code Ann. §21-39-7.
- Ordinance records. Miss. Code Ann. §21-13-13 and -17.
- Budgetary records, which contains accounts and expenditures of the municipality. Miss. Code Ann. §21-35-11, -13, and -17.
- Records of accounts of claims against the municipality. Miss. Code Ann. §21-39-5.
- Records of payments on assessments. Miss. Code Ann. §21-41-21.

“All official actions of the governing authorities of a municipality shall be evidenced only by official entries duly recorded on such minute record. The clerk shall be the custodian of the municipal seal, and each municipality shall adopt and provide a seal.” Miss. Code Ann. §21-15-17. Traffic ticket cases that merely involve an advanced payment of fine or a default on an appearance bond need not be entered on the docket, but these convictions must still be reported to the Commissioner of Public Safety.” Miss. Code Ann. §99-19-3.

3.H *Other Duties of the Municipal Clerk*

The municipal clerk also has the following responsibilities:

- Municipal auditor. Miss. Code Ann. §21-15-21.
- Registrar of voters of the municipality. Miss. Code Ann. §23-15-35.
- Deputy registrar of elections. Miss. Code Ann. §23-15-223.
- Ex-officio treasurer where there is no depository of the municipality. Miss. Code Ann. §21-39-19.
- Giving notice by publication of assessment roll. Miss. Code Ann. §21-41-13.
- Giving notice of redemption from sale of taxes. Miss. Code Ann. §21-41-31.
- Issuing permits for closing-out sale. Miss. Code Ann. §75-65-3(1).
- Entering assessments of property escaping taxation. Miss. Code Ann. §27-3-39.
- Receiving filing for appointment of commission for urban renewal agency. Miss. Code Ann. §43-35-33(c).
- Certifying appointments to fill vacancies. Miss. Code Ann. §23-15-857(1).
- Depositing excess receipts for revenues. Miss. Code Ann. §27-39-323.
- Receiving and investigating applications on redemptions from municipal tax sales. Miss. Code Ann. §27-45-11.
- Performing certain duties as to objections to motor vehicle assessments. Miss. Code Ann. §27-51-23.
- Performing certain duties as to taxation of lands under contract for sale. Miss. Code Ann. §29-1-43.
- Performing certain duties when contract for sale of lands is cancelled for delinquency in the payment of taxes. Miss. Code Ann. §29-1-45.
- Demanding repayment of funds for bonds into the municipal depository. Miss. Code Ann. §31-17-59.

3.I *Clerk's Duties in Providing Access to Public Records*

“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.” Miss. Code Ann. §25-61-2.

The Mississippi Supreme Court adopted by Administrative Order on August 27, 2008 a “Statement of Policy Regarding Openness and Availability of Public Records.” This administrative order can be accessed on the State of Mississippi Judiciary website at www.mssc.state.ms.us/ and clicking “Public Records Policy.”

Miss. Code Ann. §25-61-7 provides fees incident to providing records. Miss. Code Ann. §25-61-15 provides penalties for wrongful denial of access to records.

3.J *Records Exempted or Privileged from Public Access*

Certain records are exempted or privileged from public access. Miss. Code Ann. §25-61-11.

These include:

- Judicial records in the possession of a public body developed among judges and their aides. Miss. Code Ann. §9-1-38.
- Jury records in the possession of a public body developed among juries concerning judicial decisions. Miss. Code Ann. §13-5-97.
- Personnel files such as personnel records, applications for employment, test questions and answers used in employment examinations, letters of recommendation, and documents relating to contract authorization. Miss. Code Ann. §25-1-100.
- Attorney’s work products which includes all attorney-client communications. Miss. Code Ann. §25-1-102.
- Personal information of law enforcement or court personnel and officers. Miss. Code Ann. §25-61-12(1).
- Investigative reports when in the possession of a law enforcement agency, however a law enforcement agency may choose to make public all or any part of any investigative report. Miss. Code Ann. §25-61-3(f), -12(2).
- Personal information of victims, including victim impact statements and letters of support on behalf of victims that are contained in records on file with the Mississippi Department of Corrections and State Parole Board. Miss. Code Ann. §25-61-12(2)(d) and (3).
- Youth court records may not be disclosed except in limited instances. U.R.Y.C.P. 5; Miss. Code Ann. §43-21-261.

4 Municipal Court Proceedings

4.A Court Terms

“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 so requires; provided, however, 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.” Miss. Code Ann. §21-23-7(1)

4.B Courtroom Decorum and Security

To properly administer justice it is essential that the court is held with dignity, order and decorum. Any person who commits a contemptuous act against the dignity and authority of the court tending to embarrass or prevent the orderly administration of justice may be punished for criminal contempt. Earwiggling the judge is prohibited. Uniform Rules of Procedure for Justice Court, Rules 1.02, 1.03 and 1.07. Use of cameras, recording, and broadcasting equipment is governed by the Code of Judicial Conduct, Canon 3B(12).

4.C Criminal Proceedings Brought by Sworn Complaint

Criminal proceedings are brought by filing in municipal court a sworn complaint that states the essential elements of the offense charged and the statute or ordinance relied upon. Miss. Code Ann. §21-23-7(1). The accused has a right to a free copy of the affidavit. Miss. Code Ann. §99-15-28.

4.D Initial Appearances

The municipal judge as a conservator of the peace may conduct initial appearances for criminal violations within the municipality. Miss. Code Ann. §21-23-7(1). If the municipal judge is unavailable, the clerk of the court may conduct initial appearances of misdemeanor violations occurring within the municipality if:

- the clerk of the court has satisfactorily completed a course of training and education on this subject conducted by the Mississippi Judicial College, and
- the municipal judge has established written guidelines and procedures for the clerk of the court to discharge this function.

Such guidelines must be entered in the minutes of the court and be deemed a public record and made available to defendant or counsel. Miss. Code Ann. §21-23-11.

At the initial appearance, the judge must:

- ascertain defendant’s true name and address, inform defendant of charges, and provide defendant a copy of the complaint.
- make probable cause determination if arrest made without a warrant.
- advise the defendant of his or her constitutional rights—e.g., the right to remain silent, the right to an attorney, etc.
- advise of the conditions under which the defendant may obtain release, if any.

The Mississippi Rules of Evidence do not apply to initial appearances. Closed circuit television or web cam is allowed if the defendant waives the right to be physically present and two-way audio-visual and other criteria are met. An initial appearance is not required if the defendant has posted bond and is released from custody, or is allowed release on his or her own recognizance, or has been indicted by a grand jury. Uniform Rules for Circuit and County Courts, Rules 6.03 and 6.05; Mississippi Rules of Evidence, Rule 1101(b); Miss. Code Ann. §99-1-23 and 99-3-17.

4.E *Rights of Accused to Representation by Counsel*

“In all criminal prosecutions the accused shall have a right to be heard by himself or counsel, or both,” Miss. Const. art. III 26. The municipal court may appoint counsel for indigent persons, but the maximum compensation may not exceed Two Hundred Dollars (\$200.00) for any one case. Alternatively, the municipality may appoint a salaried public defender to hear these cases. Miss. Code Ann. §21-23-7(4).

4.F *Pleas*

A defendant may plea guilty or not guilty or, with permission of the municipal court judge, nolo contendere. Before accepting a plea, the court must ascertain that the plea is voluntarily and intelligently made and with a factual basis.

4.G *Appointing Interpreters for Deaf or Hearing Impaired*

The municipal court must appoint a qualified interpreter of the deaf sign language to interpret for persons who are deaf or hearing impaired. Any interpreter so appointed must take an oath or affirmation to make a true translation. Rule 6.04 of the Mississippi Rules of Evidence; Mississippi Code Ann. §13-1-303. The interpreter’s fee in criminal cases is paid out of the general fund of the municipality. Miss. Code Ann. §13-1-315.

4.H *Appointing Interpreters for Non-English Speaking Persons*

The municipal court may appoint a certified interpreter for a criminal defendant who is indigent. Miss. Code Ann. §99-17-7. “Non-English speaker” means any party or witness who cannot readily understand or communicate in spoken English and who consequently cannot equally participate in or benefit from the proceedings unless an interpreter is available to assist the individual. Miss. Code Ann. §9-21-71. Any interpreter so appointed must take an oath or affirmation to make a true translation. Rule 6.04 of the Mississippi Rules of Evidence; Miss. Code Ann. §9-21-77. The interpreter’s fee is payable out of the county treasury. Miss. Code Ann. §9-21-81.

4.I *Burden of Proof in Criminal Proceedings*

In criminal cases, the State must prove all the elements of the crime and the defendant’s connection to them beyond a reasonable doubt. *McVeay v. State*, 355 So. 2D 1389, 1391 (Miss. 1978). A defendant may only be tried in absentia pursuant to Miss. Code Ann. §99-17-9.

4.J Sentencing

A defendant adjudged guilty must be sentenced without unreasonable delay. Offenses for which a penalty is not provided elsewhere by statute are punished by fine of not more than one thousand dollars (\$1,000.00) and imprisonment in the county jail not more than six (6) months, or either. Miss. Code Ann. §99-19-31. Traffic violations for which another penalty is not provided by law are punished pursuant to Miss. Code Ann. §63-9-11(2). Credit for jail time served in the municipal or county jail while awaiting trial is applied to the sentence. Miss. Code Ann. §99-19-23. The municipal judge may also order restitution for pecuniary damages. Miss. Code Ann. §99-37-3. Traffic fines may be paid by personal check. Miss. Code Ann. §63-9-12.

When imposing a jail sentence, the municipal judge may order:

- two or more convictions to run concurrently or consecutively;
- the jail time to be served on weekends;
- other periods of time during the week for work related reasons;
- split periods of incarceration; or
- jail time be suspended upon specified terms of probation.

Miss. Code Ann. §21-23-7(5), 21-23-20, 99-19-21(1), and 99-37-5(2).

Additionally, the municipal judge may order the defendant to enter into bond in a reasonable sum, with or without sureties, to keep the peace and to be of good behavior. Miss. Code Ann. §99-23-27. Conditional sentencing is available under Miss. Code Ann. §99-15-26. But this option doesn't apply to crimes against the person or Implied Consent violations.

When imposing a fine, the municipal judge may order:

- the fine be paid immediately;
- the fine be paid in installments;
- the payment of the fine be a condition of probation;
- the defendant to work on public property for public benefit under the direction of the sheriff for
- a specific number of hours; or
- any combination of the above.

Miss. Code Ann. §99-19-20(1).

When ordering restitution, the court must take into account:

- the financial resources of the defendant and the burden that payment of restitution will impose, with due regard to the other obligations of the defendant;
- the ability of the defendant to pay restitution on an installment basis or on other conditions to be fixed by the court; and
- the rehabilitative effect on the defendant of the payment of restitution and the method of payment.

A defendant has a right to be heard on the imposition, amount or distribution of the restitution. The judge may order restitution to be paid immediately or in installments within a specified period of time. Miss. Code Ann. §99-37-3 and -5. As an alternative to imposition or payment of fine or incarceration, the municipal court judge may order, that the offender work on a public service project pursuant to Miss. Code Ann. §21-23-7(2).

5 State Assessments

In addition to any fines or jail time, the municipal court must also impose and collect any applicable state assessments. These may not be paid by personal check. Miss. Code Ann. §99-19-73.

6 Municipal Court Costs And Fees

Miss. Code Ann. §21-23-7(11) provides:

“The municipal court shall have the power to impose punishment of a fine of not more than One Thousand Dollars (\$1,000.00) or six (6) months’ imprisonment, or both, for contempt of court. The municipal court may have the power to impose reasonable costs of court, not in excess of the following:

- Dismissal of any affidavit, complaint or charge in municipal court \$50.00
- Suspension of a minor’s driver’s license in lieu of conviction \$50.00
- Service of scire facias or return “not found” \$20.00
- Causing search warrant to issue or causing prosecution without reasonable cause or refusing to cooperate after initiating action \$100.00
- Certified copy of the court record \$5.00
- Service of arrest warrant for failure to answer citation or traffic summons \$25.00
- Jail cost per day \$10.00
- Service of court documents related to the filing of a petition or issuance of a protection from domestic abuse order under Title 93, Chapter 21, Mississippi Code of 1972 \$25.00
- Any other item of court cost \$50.00
- No filing fee or such cost shall be imposed for the bringing of an action in municipal court.”

“Judgments for fines, costs, forfeitures and other penalties imposed by municipal courts may be enrolled by filing a certified copy of the record with the clerk of any circuit court and execution may be had thereon as provided by law for other judgments.” Miss. Code Ann. §21-13-19.

6.A Enforcement of Judgments

The municipal judge may enforce its judgment by:

- revoking probation and applying the statutory credit toward the unpaid fine or restitution—but indigent defendants may not be imprisoned simply because their inability to pay a fine;
- requiring a show cause hearing on why the default should not be treated as contempt of court for nonpayment of the fine or restitution;
- placing an offender has been held in contempt of court for failure to pay fines or restitution in pretrial intervention for the purpose of collecting unpaid fines and restitution; or
- allowing a defendant who is not in contempt additional time for payment or reducing the amount owed.

Miss. Code Ann. §21-23-7, 99-15-109, 99-19-20, 99-37-5 to -11.

Additionally, the municipality may use its own employees or contract with a private attorney or private collection agency to collect past due amounts. Miss. Code Ann. §21-17-1(6). Statute of limitation in civil cases do not run against any subdivision of the state, but may not operate as a lien on the defendant’s property for more than seven (7) years unless the notice of lien has been refiled before the expiration period. Miss. Code Ann. §15-1-51. Municipal courts are authorized to purge judgment rolls of all fines and fees owed by any deceased person upon presentation of proof that the person liable for such fines or fees is deceased. Miss. Code Ann. §9-1-47.

7 Appeals from Municipal Court

Appeals from municipal court, which are by trial de novo, are pursuant to Rules 5.01, 5.07 and 12.02 of the Uniform Rules of Circuit and County Courts. A defendant may appeal without a bond pursuant to Miss. Code Ann. 99-35-7.

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Municipal Elections

by Reese Partridge and Matt Grubbs



Municipal Elections

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Content

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9. Special Elections to Fill Vacancies
10. Certifying and Election
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12. Statewide Election Management System (SEMS)

The cornerstone of our democracy is the fair and impartial conduct of elections in accordance with law. Elections administration and politics are not synonymous. Citizens have a right to demand that public elections be administered with integrity and free of bias. Showing partisanship in the administration of elections undermines the public's confidence in our entire system of government.

This chapter is a capsule summary of how municipal elections work. Space does not allow this short survey to cover all the necessary topics in complete detail. The Secretary of State's Office on its website (www.sos.state.ms.us) has numerous publications on elections administration and sponsors throughout the state its annual elections certification training sessions as well as other elections workshops. Attorney General's Opinions on elections are available through the Attorney General's website (www.ago.state.ms.us).

Documents such as the 2013 Elections Calendar, Municipal Election Handbook, and Qualifying Guide will be available in 2012 for the 2013 election cycle on the Secretary of State's website. There are, however, documents from previous Municipal elections still available for review online which can aid in preparing for upcoming elections.

1 Initial Considerations

Upon taking office, and at the beginning of each term of office, one of the first duties of the mayor and board of alderman is to appoint the members of the municipal election commission. Miss. Code Ann. Section 23-15-221(1972). The municipal election commission is in charge of all general elections and conduct special elections to fill vacancies, as well as any referenda elections or bond elections called by the municipality. The municipal clerk is responsible for assisting the election commission in the performance of its duties.

2 Municipal Clerk's Voter Registration and Election Duties

The municipal clerk is both the municipal voter registrar and a deputy county voter registrar. Miss. Code Ann. Section 23-15-35 (1972). As such, the clerk must conduct voter registration in the clerk's office during office hours and extended hours prior to voter registration deadlines. Miss. Code Ann. Section 23-15-37 (1972). Voter registration rolls for municipalities are now a part of the Statewide Election Management System (SEMS) developed by the Secretary of State. Municipal voter rolls are now required to be maintained (purged) by the county election commission. Miss. Code Ann. Section 23-15-35 (1972).

The municipal clerk is required to assist the election commissioners (and party executive committees, if the city has them). The municipal clerk is also responsible for the administration of absentee balloting in municipal elections. When petitions are presented to the governing authorities, such as for bonds or tax increases, the municipal clerk certifies the signatures on the petitions before presenting them to the governing authorities for adjudication. In municipalities where the clerk is appointed, this is one of your most crucial appointments.

3 Municipal Election Commission

Municipal election commissioners serve a term of office that coincides with the term of the mayor and board of alderman. Municipal election commissioners are not subject to removal for cause by the governing authorities, so special care must be made to appoint individuals who are capable of performing the work and willing to devote sufficient time to perform their duties. The number of election commissioners to appoint is set by statute. Miss. Code Ann. Section 23-15-221(1972). Their compensation is not set in statute; the governing authorities establish their compensation.

The municipal election commission is responsible for preparing for and conducting general and special elections, with the assistance of the municipal clerk. They are required to attend an annual elections training seminar conducted by the Secretary of State. The election commission is required to appoint and train poll managers (pollworkers) who man the polling places in general and special elections. In smaller municipalities where there is only one polling place and there are no precincts, the election commissioners act as the poll managers; otherwise, poll managers must be appointed to work the polls. The rate of compensation for poll managers is set in statute. Miss. Code Ann. Section 23-15-227 (1972).

4 Municipal Executive Committees

In a large percentage of Mississippi's smaller municipalities, all candidates run as independent candidates in the general election. This practice avoids the additional expenses the municipality must pay to conduct primaries. Additionally, while all municipalities are required by statute to have election commissions, only those municipalities that wish to have candidates running with party labels must have municipal political party executive committees who are responsible for qualifying municipal party candidates and conducting municipal primary elections. A candidate cannot run as a party candidate in a municipality unless there is a lawfully formed municipal executive committee in place.

Unlike county political party executive committees which are formed in accordance with rules adopted by the state political parties, municipal party executive committees must be formed in accordance with Miss. Code Ann. Sections 23-15-313 and -315 (1972). Where there is no municipal executive committee currently in place, a temporary executive committee must first be formed. Thereafter, municipal executive members must qualify and run as candidates in the primary election for the office of municipal executive committee member for their respective party. Municipal executive committee members receive no compensation.

5 Poll Managers

Poll managers (poll workers) in the general election are appointed by the municipal election commission. Poll managers in the primary election are appointed by the appropriate municipal executive committees. Municipal election commissions and executive committees, with the assistance of the municipal clerk, are responsible for the training of the poll managers they have appointed. Miss. Code Ann. Section 23-15-239. The compensation paid to poll managers is set by statute. Miss. Code Ann. Section 23-15-227.

6 US Department of Justice Preclearance under the Voting Rights Act of 1965

All municipalities in Mississippi are subject to the preclearance requirements of the Voting Rights Act. Any orders or discretionary acts by the municipal governing authorities affecting voting must first be submitted to the US Department of Justice (DOJ) before they may go into effect. These preclearance submissions are normally prepared by the municipal attorney. DOJ typically takes approximately 60 days to preclear election matters, although expedited consideration may be requested. Examples of matters which must be submitted include:

- ✦ The date of any special election, such as to fill a vacancy, a bond election, or an alcohol referendum.
- ✦ Changing ward or precinct lines, redistricting, or changing polling place locations
- ✦ Annexation
- ✦ Changing an administrative position from elected to appointed (police chief, city clerk)

7 Dates of Regularly Scheduled Elections

In Code Charter Municipalities, the general election is held on the first Tuesday after the first Monday in 2013, and every four years thereafter. Miss. Code Ann. Section 23-15-173. Primary elections in Code Charter Municipalities with executive committees are conducted the first Tuesday in May of those years, with runoffs held two weeks later.

The qualifying deadline for code charter municipalities is 60 days prior to the scheduled date of the first primary.

8 Candidate Qualifying in Regularly Scheduled Elections

Party candidates qualifying for a primary election qualify by filing a qualifying statement of intent, along with the requisite fee, with the municipal clerk by 5PM on the qualifying deadline. The appropriate municipal executive committee makes the determination of whether a party candidate meets the statutory qualifications. Miss. Code Ann. Section 23-15-309.

Independent candidates qualify by filing a petition with the municipal clerk by 5PM on the qualifying deadline. The election commission makes determinations of statutory candidate qualifications for all candidates running in the general election. Miss. Code Ann. Section 23-15-361.

9 Special Elections to Fill Vacancies

When a vacancy occurs in one of the municipal elective positions, the board must meet and take action in accordance with Miss. Code Ann. Section 23-15-857 (1972). Unless the vacancy takes place in the last six months of the term, the governing authority must meet within 10 working days of the vacancy occurring and issue an order for a special election to fill the vacancy. The date of the special election must be on a day that is within 30 to 45 calendar days of the order. If, however, the vacancy occurs within the last six months of the term, the board must instead make an appointment for the remainder of the term and no special election will be held.

Because the special election must be called and conducted in a short time frame, it is critical that preparations be made and immediate action taken to publish and post notice of the special election in accordance with Section Miss. Code Ann. Section 23-15-857 (1972).

Additionally, as soon as the date for the special election has been established and ordered, the date must be submitted for preclearance with the US Department of Justice.

Candidates qualify by petition for special elections to fill vacancies. The qualifying deadline is 20 days before the election at 5PM. To be elected in a special election, a candidate must receive a majority of the votes cast. If no one receives a majority, then a runoff is held two weeks later between the two highest vote-getters. Miss. Code Ann. Section 23-15-857 (1972).

If only one candidate qualifies for a special election to fill a vacancy, then the election is dispensed with and that candidate is appointed in lieu of an election. If no candidate qualifies for a special election, the position is filled by appointment of the municipal governing authorities. Miss. Code Ann. Section 23-15-857 (1972).

10 Certifying an Election

Municipal election commissions are required to certify General and Special Elections pursuant to Miss. Code Ann. Section 23-15-601, 603. Additionally, pursuant to Miss. Code Ann. Section 23-15-597, municipal party executive committees are required to certify Primary Elections. Elections commissions are required to certify results within ten (10) days of the election and party executive committees are required to certify results within thirty-six (36) hours of the primary or runoff election. The commission's certified results are sent to the Secretary of State's office and the party executive committee's results are sent to the State Executive Committee.

11 Resolution Boards

The purpose of the Resolution Board is to manually review all damaged, defective, blank or overvoted ballots that have been rejected by tabulating equipment and to determine the intent of the voter and record the vote intended by the voter. Members of this board are appointed by the municipal election commission and are required to be:

1. qualified electors of the county,
2. an odd number of not less than three (3) members, and
3. trained in the same manner as election managers. Resolution board members cannot be election commissioners, candidates who are on the ballot, or parents, siblings, or children of candidates on the ballot. Miss. Code Ann. Section 23-15-483 and 23-15-523 (1972).

12 Statewide Election Management System (SEMS)

Miss. Code Ann. Section 23-15-35 (1972), as amended by the Mississippi Legislature in 2008, requires all municipalities integrate their voter rolls into the Statewide Elections Management System (SEMS) by providing address and range information for every address inside a municipality to their respective circuit clerk for entry into the system. This integration is required for all municipalities, regardless of size, location, or election cycle. The deadline established by the Legislature for municipal compliance with this statute was January 1, 2010. There are still several Municipalities that have not provided the needed information to the Circuit Clerk's Office.

About the Authors

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(601) 359-3680

Reese Partridge is an Assistant Attorney General in the Opinions and Local Government Division of the Attorney General's Office with more than 20 years experience in elections law and administration. Prior to joining the Attorney General's Office, he was a senior attorney in the Secretary of State's Office where, in addition to working in the area of elections, he was involved extensively in campaign finance law and lobbying regulation. He has provided training seminars to local election officials for many years. He also worked for the State Personnel Board as staff attorney, division director, and acting State Personnel Director. While on active duty with the US Navy he served on destroyers and is now retired from the Navy Reserve.

Matt Grubbs
matt.grubbs@sos.ms.gov
(601) 359-6582

Matt Grubbs began serving at the Secretary of State's Office as Director of Marketing and Training in the Education and Publications Division in 2003. He was responsible for the marketing and promotion of programs/services offered by the Secretary of State's Office and the development and coordination of training for election officials, agency's programs, and initiatives.

In 2006, Mr. Grubbs was appointed to serve in the Secretary of State's Elections Division as the HAVA Administrator. The HAVA Act was passed in 2002 and is what gave us the touch screen voting system and Statewide Election Management System (SEMS) which is the centralized voter registration management system. He also serves as Director of Elections Administration for the Secretary of State's Office. He is a Graduate of the University of Southern Mississippi.



Open Meetings and Public Records Law in Mississippi

by Whit Waide, J.D.



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Content

1. Open Meetings
2. Public Records

This article will provide you with a basic overview of Open Meetings and Public Records Laws, as relevant to municipalities in Mississippi. These laws are sometimes collectively referred to as “Sunshine Laws”. The laws are in place to ensure transparency in state and local government action. The laws provide certain limited exceptions to open meetings and public records and provide punishment to those who do not comply with them.

1 Open Meetings

The Mississippi Open Meetings Act may be found in Mississippi Code §25-41-1 through §25-41-17. The Legislative purpose of the Act states as follows:

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.

Miss. Code Ann. §25-41-1

A municipality is expressly defined as a “public body” by the law. Miss. Code Ann. §25-41-3(A). However, law enforcement officials are among those exempted from the definition of “public body”. Miss. Code Ann. §25-41-3(A)(III).

“Meetings” are defined as follows:

...an assemblage of members of a public body at which official acts may be taken upon a matter over which the public body has supervision, control, jurisdiction or advisory power; “meeting” also means any such assemblage through the use of video or teleconference devices.”

Miss. Code Ann. §25-41-3(B)

Thus, all official meetings of any public body are declared by law to be public meetings. An exception to this rule is that a public meeting can be declared an “executive session”. A public body may enter into an “executive session” provided that the meeting first convenes as an open meeting. A meeting may then be taken into an executive session by vote of 3/5ths of all members present. Miss. Code Ann. §25-41-7(I).

The procedure in declaring an executive session is as follows:

- (a) Any member shall have the right to request by motion a closed determination upon the issue of whether or not to declare an executive session;
- (b) Such motion, by majority vote, shall require the meeting to be closed for a preliminary determination of the necessity for executive session;
- (c) No other business shall be transacted until the discussion of the nature of the matter requiring executive session has been completed and a vote of 3/5ths of all members present has been taken on the issue. Miss. Code Ann. §25-41-7(2).

There is no requirement in the law that that any particular type of meeting be closed to the public. However, with regard to municipalities, the law provides that a public meeting may be taken into executive session only for the following reasons:

- (1) Transaction of business and discussion of personnel matters relating to the job performance, character, professional competence, or physical or mental health of a person holding a specific position.
- (2) Strategy sessions or negotiations with respect to prospective litigation, litigation or issuance of an appealable order when an open meeting would have a detrimental effect on the litigating position of the public body.
- (3) Transaction of business and discussion regarding the report, development or course of action regarding security personnel, plans, or devices.
- (4) Investigative proceedings by any public body regarding allegations of misconduct or violation of law.
- (5) Cases of extraordinary emergency which would pose immediate or irrevocable harm or damage to persons and/or property within the jurisdiction of the public body.
- (6) Transactions of business and discussion regarding the prospective purchase, sale or leasing of lands.
- (7) Transactions of business and discussions or negotiations regarding the location, relocation, or expansion of a business or industry.
- (8) Transactions of business and discussions regarding employment or job performance of a person in a specific position or termination of an employee holding a specific position, including the right to enter into executive session concerning a line item in a budget which might affect the termination of an employee or employees. All other budget items shall be considered in open meetings and final budgetary adoption shall not be taken in executive session. Miss. Code Ann. §25-41-7(4).

Public bodies are enabled by the Open Meetings Act to make and enforce reasonable rules and regulations with regard to the conduct of persons attending its meetings. Miss. Code Ann. §25-41-9. The Act also requires that minutes be kept of all meetings of the public body, whether in open or executive session. The minutes must include:

- the members present
- the members absent
- the date, time, and place of the meeting
- an accurate recording of any final actions taken at the meeting
- a record by individual member of any votes taken
- any other information that the public body requests be included or reflected in the minutes.

Minutes must be recorded within a reasonable time not to exceed 30 days after recess or adjournment of the meeting and must be open to public inspection during regular business hours. Meetings by teleconference or video must also comply with these rules. Miss. Code Ann. §25-41-7-11.

Public bodies must give proper notice of the date, times, and places that its meetings are to be held. Municipalities must continually comply with the regularly scheduled meeting times for which notice has been given. No additional notice of meetings are required unless there is to be a special meeting scheduled outside of the regularly scheduled meeting. Proper notice of such special meetings must include the place, date, hour, and subject matter of the special meeting posted within one hour after such meeting is called. This notice must be given in a prominent place available for examination by the general public in the building in which the municipality normally meets. A copy of this notice must be made part of the minutes and/or other permanent official records of the municipality. Miss. Code Ann. §25-41-13.

In its 2011 Regular Session, the Mississippi Legislature changed the enforcement provisions of the Open Meetings Act to require greater punishment for officials who do not comply with the law. This change is called the “Meetings Accountability Act”.

The Meetings Accountability Act, codified at Miss. Code Ann. §25-41-15, states that the Mississippi Ethics Commission has the authority to enforce the provisions of the Open Meetings Act upon filing of a complaint by any person. Upon receipt of a complaint, the Ethics Commission is to forward a copy of the complaint to the municipality involved. The municipality has 14 days from receipt of the complaint to file a response with the Ethics Commission. After receipt of the response or if no response is received within 14 days by the Ethics Commission, it may dismiss the complaint or proceed by setting a hearing in accordance with its rules.

After a hearing, if the Ethics Commission may order the municipality to comply with the Open Meetings Act. Additionally, if the Ethics Commission finds that a member or members of the municipal body has willfully and knowingly violated the provisions of the Open Meetings Act, it may impose a civil penalty upon individual members of the municipal body found to be in violation of the Open Meetings Act a sum not to exceed \$500.00 for a first offense. For second or subsequent violations of the Open Meetings Act, the Ethics Commission may impose a \$1,000.00 fine to a relevant member or members of the municipal body.

Finally, the Open Meetings Act exempts from compliance with its provisions “chance meetings or social gatherings of members of a public body.” Miss. Code Ann. §25-41-17.

2 Public Records

The Mississippi Public Records Act of 1983 may be found at Miss. Code Ann. §25-61-1 through §25-61-17. In basic terms, it requires that records of a public body must be available for inspection by any person, subject to limited exceptions. The Legislative purpose of the Act is stated as follows:

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. Miss. Code Ann. §25-61-2.

As with the Open Meetings Act, a municipality is expressly defined as a “public body” by the Public Records Act. Miss. Code Ann. §25-61-3(A). The Public Records Act defines a “public record” as:

...all books, records, papers, accounts, letters, maps, photographs, films, cards, tapes, recordings or reproductions thereof, and any other documentary materials, regardless of physical form or characteristics, having been used, being in use, or prepared, possessed or retained for use in the conduct, transaction or performance of any business, transaction, work, duty or function of any public body, or required to be maintained by any public body.

Miss. Code Ann. §25-61-3(B).

The Public Records Act declares that all public records are public property and that any person has the right to inspect, copy or mechanically reproduce or obtain a reproduction of any public record of a public body as long as reasonable procedures adopted by the public body are followed. In the absence of reasonable procedures being provided by a respective municipality, the law states that the right to access and reproduce a public record shall be provided within one working day after a written request for such is made. Further, no public body shall adopt procedures authorizing it to produce or deny production of a public record later than seven working days from the date of the receipt of the request for the documents.

In the event a municipality cannot produce a record by the seventh working day following a request, it must provide written explanation to the person making such request stating that the record will be produced. The explanation must provide a particular reason why the records cannot be timely produced. Barring other agreement by the parties, the time for production of the requested record cannot exceed 14 days.

If a public record contains materials that are exempt from production, the public body must provide the non-exempt documentation, having redacted the exempted materials.

Reasonable fees for production of the materials may be charged, not to exceed the public body’s actual cost in producing the records.

Denial of any request must be in writing and must contain a statement of the specific exemption relevant to the denial of the request. Municipalities must preserve denials of requests on file for three years from the time they are made. [Miss. Code Ann. §25-61-5].

Records are exempt from compliance with the statute if any constitutional or statutory law or decision of a state or federal court specifically declares a public record to be confidential, privileged, or exempt from the Public Records Act. Miss. Code Ann. §25-61-11. Further, the law provides for the following exemptions, which may be relevant to municipalities:

- (1) The home address, telephone number, or private information of any law enforcement officer, criminal investigator, judge, or district attorney, or their spouse or child.
- (2) Investigative reports by a law enforcement agency, though subject to its discretion, the agency may make public all or any part of the report. Law enforcement incident reports, however, are by law public record.
- (3) Any disclosure of information that would reveal the identity of a victim of a crime. Miss Code. Ann §25-61-12.

A person who makes a lawful request of a public record may compel access to the record should the municipality failure to produce records subject to the Public Records Act. This may be achieved by filing a suit in the chancery court of the county in which the municipality is located. However, before initiating a lawsuit, the person denied the record may first request an opinion of the Ethics Commission as to whether the municipality is obligated to produce the requested record. Miss. Code Ann. §25-61-13.

Finally, any person denying access to public records not exempt from the Public Records Act may be fined up to \$100.00 per violation of the Act. Miss. Code Ann. §25-61-15.

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About the Authors

Whit Waide is an instructor in the Political Science and Public Administration Department, Mississippi State University. Professor Waide is a graduate of Millsaps College and Ole Miss Law School. He practiced law in Jackson for a number of years as a commercial litigator before becoming a full-time professor at MSU. He also has served as an adviser and speechwriter to a number of statewide political campaigns. Professor Waide is especially proud of the role he played in the 2003 campaign of Tate Reeves for Mississippi's State Treasurer. Reeves's election, at age 29, made him the youngest person ever elected to statewide office in Mississippi history.

Among Waide's course offerings are Administrative Law, American Government, Constitutional Law, and Introduction to the American Legal System. He also serves as the university pre-law adviser.

Professor Waide is a native of West Point, Miss., and attended the West Point Public Schools. During his senior year, he served as president of the student body of West Point High School.



Mississippi Municipal League



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Mississippi Municipal League

The *Mississippi Municipal League (MML)* is a private, non-profit, non-partisan association representing 289 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 lead by the president, first vice president and second vice president. Board members represent cities & towns from each of the three MS 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 eight-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 full-time governmental affairs coordinator and 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. The MML Legislative Committee meets regularly during the session to provide guidance to the MML staff regarding any legislation of municipal interest.

- *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 (LETS) gives cities and towns with a population of 5,000 or under the opportunity to apply for 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.

Mississippi Municipal League

The MML Annual High School Scholarship program awards two scholarships to high school students with an interest in pursuing a career in municipal government. The program is co-sponsored by Mississippi Power Company and Phelps Dunbar LLP.

- *Publications*

The MML distributes timely information and news to its members through publication of the quarterly Mississippi Municipalities magazine, the email updates (weekly during the Legislative Session), 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 2009 – 2012 MML Directory will be available on CD-ROM.

- *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 trainings, 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 annual legislative session
- The MML 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 involved in working with a number of affiliate organizations who represent and interest in municipal government. By forming partnerships with these organizations, the MML is able to improve advocacy in many policy areas. The MML Affiliates Organizations are:

- Mississippi Association of Clerks and Collectors
- Mississippi Municipal Court Clerks' Association
- Mississippi City Attorneys' Association
- Mississippi Police Chiefs' Association
- Mississippi Fire Chiefs' Association
- Mississippi Chapter of American Public Works Association
- Mississippi Tax Collectors/Assessors
- Mississippi Chapter of American Planning Association
- Mississippi Parks & Recreation Association
- Caucus Groups
- Mississippi Black Caucus of Local Elected Officials



Appendix

Resource List



Appendix

Resource List

United States Government		Telephone / Fax	E-mail / Web
Executive Branch			
President Barack Obama	1600 Pennsylvania Avenue Washington, DC 20500	T (202) 456-1414 F (202) 456-2461	<i>president@whitehouse.gov</i> <i>www.whitehouse.gov</i>
Vice-President Joe Biden	1600 Pennsylvania Avenue Washington, DC 20500	T (202) 456-1414 F (202) 456-2461	<i>vice.president@whitehouse.gov</i> <i>www.whitehouse.gov</i>
Legislative Branch			
<i>Congressional Official and District</i>			
Alan Nunnelee (1st)	1432 Longworth House Office Building Washington, DC 20515	T (202) 225-4306 F (202) 225-3549	<i>www.nunnelee.house.gov</i>
Bennie Thompson (2nd)	2432 Rayburn House Office Building Washington, DC 20515	T (202) 225-5876 F (202) 225-5898	<i>www.benniethompson.house.gov</i>
Gregg Harper (3rd)	307 Cannon Building Washington, DC 20515	T (202) 225-5031 F (202) 225-5797	<i>www.harper.house.gov</i>
Steven Palazzo (4th)	331 Cannon House Office Building Washington, DC 20515	T (202) 225-5772 F (202) 225-7074	<i>www.palazzo.house.gov</i>
<i>Senators</i>			
Senator Thad Cochran	113 Dirksen Senate Office Building Washington, DC 20515	T (202) 224-5054 F (202) 224-9450	<i>www.cochran.senate.gov</i>
Senator Roger Wicker	555 Dirksen Senate Office Building Washington, DC 20515	T (202) 224-6253 F (202) 224-4639	<i>www.wicker.senate.gov</i>
<i>US Government Departments / Agencies</i>			
Agency for International Development (AID)		T (202) 712-0000	<i>www.usaid.org</i>
Bureau of the Census		T (301) 763-4636	<i>www.census.gov</i>
Bureau of Indian Affairs		T (202) 208-3100	<i>www.bia.gov</i>
Bureau of Land Management		T (202) 208-3801	<i>www.blm.gov</i>
Centers for Disease Control		T (800) 232-4636	<i>www.cdc.gov</i>
Central Intelligence Agency		T (703) 482-0623	<i>www.cia.gov</i>

United States Government	Telephone / Fax	E-mail / Web
Commission on Civil Rights	T (202) 376-8582	www.usccr.gov
Commodity Futures Trading Commission	T (202) 418-5000	www.cftc.gov
Consumer Product Safety Commission	T (202) 504-7929	www.cpsc.gov
Copyright Office	T (202) 702-3000	www.copyright.gov
Council on Environmental Quality	T (202) 456-6224	www.whitehouse.gov/ceq/index.html
Customs and Border Protection, US	T (202) 344-1770	www.cbp.gov
Department of Agriculture	T (202) 720-2791	www.usda.gov
Department of Commerce	T (202) 482-2000	www.commerce.gov
Department of Defense ADD	T (703) 545-6700	www.defenselink.mil
Air Force (USAF)		www.af.mil
Army (USA)		www.army.mil
Marine Corps (USMC)		www.usmc.mil
Navy (USN)		www.navy.mil
Department of Education	T (202) 401-2000	www.ed.gov
Department of Energy	T (202) 586-5000	www.energy.gov
Department of Health and Human Services	T (202) 690-7000	www.hhs.gov
Department of Homeland Security	T (202) 690-7000	www.dhs.gov
Department of Housing and Urban Development	T (202) 708-1112	www.hud.gov
Department of Justice	T (202) 514-2000	www.justice.gov
Department of Labor	T (202) 693-4600	www.dol.gov
Department of the Interior	T (202) 208-3100	www.doi.gov
Department of State	T (202) 647-4000	www.state.gov
Department of Transportation	T (202) 366-4000	www.dot.gov
Department of Veterans' Affairs	T (202) 273-5400	www.va.gov
Environmental Protection Agency	T (202) 272-0167	www.epa.gov

United States Government	Telephone / Fax	E-mail / Web
Equal Employment Opportunity Commission	T (202) 663-4900	www.eeoc.gov
Farm Credit Administration	T (703)883-4000	www.fca.gov
Federal Aviation Administration	T (202) 267-3484	www.faa.gov
Federal Bureau of Investigation	T (202) 324-3000	www.fbi.gov
Federal Communications Commission	T (202) 418-1400	www.fcc.gov
Federal Deposit Insurance Corporation	T (877) 275-3342	www.fdic.gov
Federal Election Commission	T (202) 694-1000	www.fec.gov
Federal Emergency Management Agency	T (202) 646-2500	www.fema.gov
Federal Highway Administration	T (202) 219-3536	www.fhwa.dot.gov
Federal Reserve System	T (202) 452-3000	www.federalreserve.gov
Federal Trade Commission	T (202) 326-2000	www.ftc.gov
Fish and Wildlife Service	T (202) 208-5634	www.fws.gov
Food and Drug Administration	T (888) 463-6332	www.fda.gov
General Services Administration	T (202) 501-0800	www.gsa.gov
Government Accountability Office	T (202) 512-3000	www.gao.gov
Government Printing Office	T (202) 512-0000	www.access.gov
Immigration and Customs Enforcement Agency	T (202) 514-1900	www.ice.gov
Internal Revenue Service	T (202) 622-5000	www.irs.gov
Labor Statistics	T (202) 691-5200	www.bls.gov
Library of Congress	T (202) 707-5700	www.loc.gov/index/html
Minority Business Development Agency	T (888) 324-1551	www.mbda.gov
Mint	T (800) 872-6468	www.usmint.gov
NASA	T (202) 358-0000	www.nasa.gov

United States Government	Telephone / Fax	E-mail / Web
National Archives & Records Administration	T (866) 272-6272	www.archives.gov
National Credit Union Administration	T (703) 518-6300	www.ncua.gov
National Endowment for the Arts	T (202) 682-5400	www.arts.gov
National Endowment for the Humanities	T (202) 606-8400	www.humanities.gov
National Highway Traffic Safety Administration	T (202) 366-2111	www.nhtsa.gov
National Institutes of Health	T (301) 496-4000	www.nih.gov
National Institute of Standards and Technology	T (301) 975-6478	www.nist.gov
National Labor Relations Board	T (202) 273-1000	www.nlrb.gov
National Oceanic and Atmospheric Administration	T (301) 713-4000	www.noaa.gov
National Park Service	T (202) 713-4000	www.nps.gov
National Science Foundation	T (703) 292-5111	www.nsf.gov
National Security Agency	T (301) 688-6524	www.nsa.gov
National Weather Service	T (301) 713-0675	www.nws.noaa.gov
Nuclear Regulatory Commission	T (301) 415-7000	www.nrc.gov
Occupational Safety and Health Administration	T (800) 356-4674	www.osha.gov
Patent and Trademark Office	T (800) 786-9199	www.uspto.gov
Peace Corps	T (800) 424-8580	www.peacecorps.gov
Pension Benefit Guaranty Corporation	T (202) 326-4000	www.pbgc.gov
Secret Service	T (202) 406-5800	www.secretservice.gov
Securities and Exchange Commission	T (202) 942-8088	www.sec.gov
Small Business Administration	T (800) 827-5722	www.sba.gov
Smithsonian Institution	T (202) 633-1000	www.si.edu
Treasury	T (202) 622-2000	www.treasury.gov

United States Government		Telephone / Fax	E-mail / Web
U.S. Postal Service		T (202) 268-2000	www.usps.com
U.S. Citizenship and Immigration Services		T (800) 375-5253	www.uscis.gov
U.S. Trade Representative		T (202) 395-3230	www.ustr.gov
White House		T (202) 456-1414	www.whitehouse.gov

Mississippi Government		Telephone / Fax	E-mail / Web
Executive Branch			
<i>Governor</i>			
Haley Barbour	PO Box 139 Jackson, MS 39205-0139	T (601) 359-3150 F (601) 359-3741	governor@governor.state.ms.us
<i>Lt. Governor</i>			
Phil Bryant	PO Box 1018 Jackson, MS 39215-1019	T (601) 359-3200 F (601) 359-4054	www.ltgobryant.com
<i>Secretary of State</i>			
Delbert Hosemann	PO Box 136 Jackson, MS 39205-0136	T (601) 359-1350 F (601) 359-1499	www.sos.ms.us.gov
<i>Attorney General</i>			
Jim Hood	PO Box 220 Jackson, MS 39205-0220	T (601) 359-3680 F (601) 359-3680	www.ago.state.ms.us
<i>State Auditor</i>			
Stacey Pickering	PO Box 956 Jackson, MS 39205	T (601) 576-2641 F (601) 576-2650	www.osa.state.ms.us auditor@osa.state.ms.us
<i>State Treasurer</i>			
Tate Reeves	PO Box 138 Jackson, MS 39205	T (601) 359-2001 F (601) 359-2001	www.treasury.state.ms.us
<i>Commissioner of Agriculture and Commerce</i>			
Lester Spell	121 North Jefferson Street Jackson, MS 39201	T (601) 359-1100 F (601) 354-6290	www.mdac.state.ms.us
<i>Insurance Commissioner</i>			
Mike Chaney	PO Box 79 Jackson, MS 39205	T (601) 359-3569 F (601) 359-2474	www.mid.state.ms.us

Mississippi Government		Telephone / Fax	E-mail / Web
House of Representatives	PO Box 1018 Jackson, MS 39215-1018	T (601) 359-3323 F (601) 359-3728	<i>www.billstatus.ls.state.ms.us</i>
Senate	PO Box 1018 Jackson, MS 39215-1208	T (601) 359-3202 F (601) 359-3935	<i>www.billstatus.ls.state.ms.us</i>
Joint Committee of Performance Evaluation and Expenditures Review (PEER)	PO Box 1204 Jackson, MS 39215-1204	T (601) 359-1226 F (601) 359-1420	<i>www.peer.state.ms.us</i>
Judicial Branch			
Mississippi Supreme Court	PO Box 249 Jackson, MS 39205	T (601) 359-3694 F (601) 359-2407	<i>sctclerk@mssc.state.ms.us</i> <i>www.mssc.state.ms.us</i>
State Agencies / Departments / Offices			
Department of Archives and History	PO Box 571 Jackson, MS 39205-0571	T (601) 359-6850 F (601) 359-6975	<i>www.mdah.state.ms.us</i>
Mississippi Development Authority	PO Box 849 Jackson, MS 39205	T (601) 359-3449 F (601) 359-2832	<i>www.mda.state.ms.us</i>
Department of Environmental Quality	PO Box 20305 Jackson, MS 38289-1305	T (601) 961-5171 F (601) 961-5349	<i>www.deq.state.ms.us</i>
Department of Education	PO Box 771 Jackson, MS 39205-0771	T (601) 359-3513 F (601) 359-3033	<i>www.med.k12.ms.us</i>
Department of Finance and Administration	PO Box 267 Jackson, MS 39205	T (601) 359-3402 F (601) 359-2405	<i>www.dfa.state.ms.us</i>
Department of Health	PO Box 1700 Jackson, MS 39215-1700	T (601) 576-7400 F (601) 576-7364	<i>www.msdb.state.ms.us</i>
Department of Human Services	PO Box 352 Jackson, MS 39202-0352	T (601) 359-4500 F (601) 359-4510	<i>www.mdhs.state.ms.us</i>
Department of Information Technology Services	301 North Lamar Street, Suite 508 Jackson, MS 39201-1495	T (601) 359-1396 F (601) 354-6016	<i>www.its.state.ms.us</i>
Department of Public Safety	PO Box 958 Jackson, MS 39205	T (601) 987-1212 F (601) 987-1498	<i>www.dps.state.ms.us</i>

Mississippi Government		Telephone / Fax	E-mail / Web
Department of Transportation	PO Box 1850 Jackson, MS 39215-1850	T (601) 359-7001 F (601) 359-7110	www.mdot.state.ms.us
Department of Medicaid	239 North Lamar Street Suite 801, Robert E. Lee Building Jackson, MS 39201-1399	T (601) 359-6050 F (601) 359-6048	www.dom.state.ms.us
Mississippi Ethics Commission	PO Box 79 Jackson, MS 39225-2746	T (601) 359-1285 F (601) 354-6253	www.ethics.state.ms.us
Mississippi Insurance Department	PO Box 79 Jackson, MS 39205	T (601) 359-3569 F (601) 359-2474	www.doi.state.ms.us

Disclaimer

** A sincere effort has been made to ensure that the information presented in this Appendix is accurate. However, because everything you see is entered by a human being at one point or another, there is the possibility that an error exists.*



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