



City of Troy, Alabama 2025 Election

General Election Information

Qualifications Requirements

- Must be a qualified voter at least 18 years of age
- Must be a resident for 90 days by election day
- Must reside in the district in which seek to serve (councilmembers)
- File Statement of Candidacy with City Clerk
- Pay \$50 qualifying fee
- File Statement of Economic Interests form (see Ethics/Statement of Economic Interest)
- File Fair Campaign Practices Act forms and reports (see Fair Campaign Practices)

June 10: Mayor gives notice of election; Clerk opens receipt of statement of candidacy at 8:00 a.m. (second Tuesday in June preceding election). Qualifying begins

June 24: Clerk closes out receipt of statements of candidacy at 5:00 p.m. Final day to qualify.

August 26: Election Day

September 23: Run-off Election Day (if necessary)

November 3: Newly Elected Officials take Office

Where to Vote

- District 1: Troy Public Library; 500 East Walnut Street
- District 2: Collegedale Church of Christ; 701 Dr. John M. Long Avenue
- District 3: Troy Parks & Recreation Center; 601 Enzor Road
- District 4: First Baptist Church; 200 West College Street
- District 5: Pike County Courthouse; Church Street

Register to Vote

Voter registration form and instructions can be obtained at www.sos.alabama.gov, www.pikecountyboardofregistrars.com, or by contacting the Pike County Board of Registrars at (334)566-1757.



City of Troy, Alabama

2025 Election

Absentee Voting

Any person may distribute blank absentee ballot applications. Signed applications must be forwarded to the city clerk by U.S. mail (**one application per envelope**) or may be personally delivered by the voter. Applications are available in the City Clerk's office.

Forms Candidates Must File

Ethics – (Statement of Economic Interest) – File within five (5) days after filing qualifying papers, with Alabama Ethics Commission at www.ethics.alabama.gov or contact the Alabama Ethics Commission @ 334-242-2997.

Fair Campaign Practices Act (FCPA) – All filed FCPA forms must be electronically with Secretary of State. §17-5-9(a).

- Fair Campaign Practices forms are to be filed when a candidate reaches the disclosure threshold by either raising or spending the \$1000.
- Principal Campaign Committee Appointment Statement – Must be filed within five (5) days after reaching the \$1,000 threshold. The statement must show the names of from one (1) to five (5) other persons the candidate has chosen to serve as their principal campaign committee, along with a written statement showing the acceptance or consent of the committee members of their appointment.
- For more information, visit www.fcpa.alabamavotes.gov, www.sos.state.al.gov, or contact the Secretary of State at 1-888-864-8910

What Every Potential Candidate Should Know About Municipal Government

On August 26, 2025, most Alabama municipalities will hold elections for the mayor and council. While candidates cannot officially qualify to be on the ballot until June 10, 2025, many candidates have already announced their intention to run for municipal office and have started their campaigns. The Alabama League of Municipalities has prepared a manual titled *Procedures for Holding Elections in Mayor-Council Municipalities*, which covers issues related to campaigning and holding a municipal election. Included in the manual is an elections calendar outlining all of the important dates relating to the election process. This manual is available for download on the League's website; you can scan the QR code to access it.



The goal of this article is to inform potential candidates as to the structure of municipal governments in Alabama as well as to the limitations and restrictions on municipal power. It is not intended as a guide for qualifying and running for municipal office. Candidates must understand the extent of the authority a municipality may exercise before making the decision to run for office. Also, an understanding of these laws and functions can help candidates avoid future embarrassment upon discovering that a campaign promise cannot legally be fulfilled.

The provisions discussed in this article apply generally to any municipality with a mayor/council form of government. Many state laws, however, apply to only certain municipalities. It is up to the candidate to be sure that the rules and regulations set out in this article govern their municipality.

What is a Municipality?

Historians disagree regarding the reasons municipalities first came into existence. Some reasons include the promotion of commerce, protection from invading armies, convenience or even just the desire of humans to share time with

each other. Regardless of the historical reasons, municipalities today provide many services to their citizens, such as fire and police, utility services, parks and recreation, and historical preservation among others. They also help protect their citizens through these services. Municipalities provide an element of convenience by performing many services which individuals themselves may not be willing to perform, such as construction and maintenance of roads, disposal of garbage and promotion of the arts.

Municipal government provides a means for citizens to have a direct say in which services are needed and how those services should be provided through the process of electing representatives. Representatives, who are chosen from the pool of willing citizens, meet and discuss how the municipality can best meet the needs and desires of their citizens.

When these elected officials meet, however, it is important for all parties to understand that in Alabama, all municipal powers flow directly from the Alabama Legislature. That is to say, Alabama's municipalities do not have "Home Rule" and therefore do not have inherent power to operate as a government independent of the Alabama Legislature. Alabama operates under what is known as the "Dillon Rule." This rule provides that municipalities have no powers beyond those that are given to them by the state Legislature. The authorization must be either explicit or clearly implied from the language of a state statute or constitutional provision. See generally *Mobile v. Moog*, 53 Ala. 561 (Ala. 1875); *Best v. Birmingham*, 79 So. 113 (Ala. 1918).

Briefly, Alabama is governed by the Alabama Constitution of 2022, and any amendments thereto.

Laws in the state constitution are passed by the Legislature, but only become effective following a vote of the public. The constitution provides a framework for the adoption of laws by the Legislature.

Legislative acts cannot conflict with constitutional provisions. If there is a conflict, a new constitutional amendment must be adopted and approved by a vote of the people.

In addition to the constitution, the



Legislature meets at least annually--more often if special sessions are needed--to pass general and local laws. Many of these laws apply directly to the operation of municipal governments. Actions taken by a municipal government cannot conflict with state legislation. Beyond that rule, however, is a further limitation on municipal powers. Not only do municipal actions have to comply with these statutes and the Alabama Constitution, under the Dillon Rule, there must be legislative authority for the municipality to take the specific action in question.

If newly elected municipal officials want to take action, they will need to examine the laws to ensure that the municipality has the power to act in the way desired. If not, authority must be obtained through the Alabama Legislature. Depending on what the official wants to do, this may require either a local act, a general act or possibly even the adoption of a constitutional amendment.

The Extent of Municipal Power

Municipalities are divided into cities and towns on the basis of population. Section 11-40-6, Code of Ala. 1975. If the municipality has less than 2,000 citizens, it is a town. Once the population reaches 2,000, however, the municipality is defined as a city.

Municipalities may exercise two types of power: legislative and corporate. Legislative powers affect the public generally. In exercising these powers, the municipality acts very much as an arm of the state. Corporate powers are more comparable to those of a private corporation and are exercised to benefit the municipality in its proprietary capacity.

Appropriations

Frequently, potential candidates for municipal office make promises to voters that will require some type of appropriation from the municipal treasury. The use of public funds is, of course, of central concern to the voters. Many taxpayers, understandably, want to have a direct say in how their tax money is spent. However, citizens must understand that municipal expenditures are limited by state law.

Perhaps the most common barrier to municipal spending is Section 94 of the Alabama Constitution of 2022. This section is commonly referred to simply as Section 94. It prohibits municipalities from giving anything of value to any private individual or group of individuals. The prohibition also bars donations to private and nonprofit corporations, even if these organizations benefit the public. Section 94 is the reason municipalities cannot pave driveways or parking lots on private property. The rule is also why government property cannot be given away, unless the use of those funds serves a recognized public purpose.

Section 94 is a frequent source of friction for elected officials, especially for those who are new to the operations of public entities. This is because often the groups requesting financial help from the municipality do provide a valid

community service, and there is an inherent desire to assist them. Many are charitable organizations. For the purposes of Section 94, though, it is crucial to distinguish between the public and private nature of the group, and many traditional entities are considered private, not public. Under Section 94, it does not matter that the group is nonprofit. If it is private (which generally means that it was not directly created by a public organization), the municipality may not donate funds to it without finding a public purpose behind the donation.

Section 94, though, does not prohibit municipalities from contracting with private companies and individuals for services. For example, although a municipality cannot give money to the Girl Scouts of America, the municipality may compensate the Girl Scouts for legitimate services they can perform for the municipality. Bear in mind that the service being performed generally must be a service that the municipality could not perform itself.

Similarly, Section 94 does not ban appropriations to public organizations which serve the municipality. For instance, municipalities may contribute funds to public schools their citizens attend. Municipalities may not, however, make donations to band booster clubs or other private clubs organized by students or parents because these are private groups.

Section 94.01 of the Alabama Constitution of 2022, creates a limited exception to Section 94 for economic development projects. The procedures in Section 94.01 must be followed exactly in order to spend public funds under to this provision.

Municipalities must also comply with state bid laws. Generally speaking, the bid law prohibits expenditures of more than \$30,000 (\$100,000 for public works contracts) without first soliciting competitive bids. See Article 3 of Chapter 16 of Title 50, Code of Ala. 1975 (Competitive Bid Law) and Chapter 2 of Title 39, Code of Ala. 1975 (Public Works Bid Law). Municipalities may, however, contract with other public agencies or purchase items through a state contract without first obtaining bids. AGO 2008-093. In addition, they may make purchases through a purchasing cooperative under certain conditions or off an existing Government Services Administration (GSA) contract. Section 41-16-51(a)(17).

There are other provisions governing municipal expenditures that are too numerous to discuss here. What is important is for potential candidates to understand that they must examine expenditures carefully to ensure that the expenditures are legal.

The Division of Duties Between Elected Officials

One of the most misunderstood aspects of municipal government is the separation of duties between the mayor and the council. Like government on the state and federal levels, municipal government is divided into three separate but equal branches: executive, legislative and judicial. Each of these branches has distinct duties, powers and restrictions on how far it can intrude into the affairs of the other branches.

At the municipal level, the mayor serves as the head of the executive branch. Section 11-43-81, Code of Alabama 1975. As such, the mayor is responsible for overseeing the day-to-day operations of the municipality. He or she oversees municipal employees, makes sure that bills are paid on time, executes municipal contracts and, in general, performs many of the same functions as a CEO of a private corporation.

In municipalities of less than 12,000 inhabitants, the mayor also presides over council meetings and serves as a member of the council. Section 11-43-40, Code of Alabama 1975. In these cities and towns, the mayor may vote on any issue before the council, introduce measures and participate in debates to the same extent as members of the council.

In cities with populations of more than 12,000, the mayor is not a member of the council. However, he or she has a veto over any permanent action taken by the council. The council can override the veto by a two-third votes. Section 11-43-40, Code of Alabama 1975.

The council is the legislative branch. The council has authority over the finances and property of the municipality. The council establishes policies; passes ordinances; sets tax levels; determines what sorts of services the municipality will offer; and has authority over all other legislative aspects of municipal government. Candidates must understand that individual councilmembers, acting alone, have no greater power or authority than any other citizen of the municipality. The council can only act as a body at a legally convened meeting.

Council Meetings & Public Participation

Problems frequently arise over public participation in council meetings. This is probably due to the misconception of a council meeting as a public hearing. It is not. A council meeting is intended as a gathering of elected officials brought together to conduct the affairs of the municipality. It is a business meeting. The meeting is open to the public not so much to obtain citizen input but to allow the public to observe the affairs of government to ensure appropriate and legal representation by their elected officials. Although most councils do set aside a time for public comment, Alabama law does not guarantee citizens the right to speak at a council meeting. The Open Meetings Act, found in Chapter 25A of Title 36, Code of Alabama 1975, grants citizens the right to be present at public meetings, but it does not grant them an absolute right to express their views at the meeting. Furthermore, the municipality may establish reasonable guidelines governing public participation in the meeting. AGO 98-00134.

Public Records

Potential candidates must also be aware that problems often arise over public records. Controversies over what is public and what is not public are common. It is probably best

to assume as a starting point that all records a municipality keeps are public. Section 36-12-40 and 36-12-41, Code of Alabama 1975, guarantee every citizen the right to inspect and make copies of all public writings, unless otherwise expressly provided by statute. While most records maintained by a municipality are public, some are not available for public inspection even by elected officials. For example, sensitive tax information is protected by state law, and employee withholding information cannot be released. Municipalities are encouraged to establish reasonable procedures governing access to public records. Citizens who wish to view public records must follow these procedures. The custodian of records may ask for a reason for viewing the records and must be convinced that the reason is legitimate. Also, the municipality may charge for making copies. AGO 2008-073.

Additionally, not all records are public. Some records, such as ongoing police investigation files, some material in personnel records, confidential tax information and similar records containing information not for public consumption, are not open to the public.

For potential candidates, it is important to note that individual councilmembers and the mayor generally have no greater right to inspect municipal records than do any other members of the public. See AGO 2000-053.

Conclusion

This article does not answer every conceivable question regarding municipal government, nor could it. Municipal government is multifaceted. It is difficult to even list all the functions performed by municipalities and even harder to explain the laws which govern their operation. Multi-volume sets of books have been written which provide only a brief overview.

What is often overlooked, however, is the community nature of a municipality. Although municipal governments are legally recognized entities with a certain amount of control over the affairs of their citizens, municipalities are still communities. They are organized by citizens who feel a need for the services and protection the government provides. In order to make the government effective, elected officials, and the citizens they represent, must work together in a spirit of cooperation, cooperation based on an understanding of what the municipality is permitted to do under state law. The League hopes this article will help foster this spirit of cooperation. ■

The League encourages municipal clerks to make copies of this article to make potential candidates aware of the regulations that will govern their actions as municipal officials. This article should also serve as a refresher for elected officials who are presently in office.



A SELECTED READING

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Duties of the Mayor and Council

One of the most misunderstood aspects of municipal government is the separation of powers between the mayor and the council. Like government on the state and federal levels, municipal government is divided into three separate but equal branches: executive, legislative and judicial. Each of these branches has distinct duties and powers and restrictions on how far it can intrude into the affairs of the other branches.

At the municipal level, the mayor serves as the head of the executive branch. As such, the mayor is responsible for overseeing the day-to-day operations of the municipality. He or she oversees municipal employees, makes sure that bills are paid on time, executes municipal contracts and, in general, performs many of the same functions as a CEO of a private corporation. Section 11-43-81, Code of Alabama 1975.

In municipalities of less than 12,000 inhabitants, the mayor also presides over council meetings and serves as a member of the council. In these cities and towns, the mayor may vote on any issue before the council, introduce measures and participate in debates to the same extent as members of the council. Section 11-43-2, Code of Alabama 1975.

In cities with populations of more than 12,000, the mayor is not a voting member of the council. While not a voting member of the council, he or she does have a veto over any permanent action taken by the council. Section 11-43-2, Code of Alabama 1975. The council can override the mayor's veto by a two-thirds vote. Section 11-45-4, Code of Alabama 1975.

The council is the legislative branch. The council has authority over the finances and property of the municipality. The council establishes policies, passes ordinances, sets tax levels, determines what sorts of services the municipality will offer and has authority over all other legislative aspects of municipal government. Sections 11-43-43, 11-43-56, Code of Alabama 1975.

Perhaps the best way to sum it up is that the mayor is the chief executive officer of the city and is charged with the duty of supervision of the affairs of the city under policies fixed by the council. AGO to Hon. A.J. Cooper, August 15, 1973.

Citizens and councilmembers must understand that individual councilmembers, acting alone, have no greater power or authority than any other citizen of the municipality. The council can only act as a body at a legally convened meeting. No official action may be taken by any individual council member. All official action must be taken by the council acting as the governing body. For instance, the Attorney General has ruled that individual councilmembers cannot direct the activities of a municipal fire department, even pursuant to a properly enacted ordinance. AGO 1988-0262. Other similar rulings include:

- Individual city councilmembers may not supervise and control municipal departments. The city council must approve expenditures of municipal funds. AGO 1991-0147.
- A town council may not delegate its authority to appoint recreational board members to individual councilmembers. AGO 1991-0402.

It is clear, then, that the primary factor in the success of a municipal government lies in the working relationship between the mayor and the city council. Elected city officials must recognize that they have dedicated themselves for the next four years to accomplishing a common goal – providing the city or town with the best municipal government possible. To achieve this goal, the mayor and the council must maintain a harmonious working relationship.

At times the mayor and the council will disagree over the best solution to a problem. Disagreement is not only inevitable; it can be healthy. Negotiating opposing viewpoints can often lead to unexpected solutions. City officials must learn that when an opposing view is taken by someone else in government, it is merely a different opinion on the best way to represent the citizens of the municipality.

The success of municipal government also depends upon the willingness of each individual councilmember to cooperate with other councilmembers in granting time, knowledge and experience toward representing the citizens of the municipality. Under the mayor-council form of government, the council is granted legislative powers to determine the policies that will be followed in the administration of the municipal government. In exercising these powers, the council determines the extent of the governmental and corporate functions of the municipal government.

Equally vital is the willingness of the mayor to properly administer the ordinances passed by the council. The mayor is charged with the general supervision and control of municipal departments, programs, and facilities. Section 11-43-81, Code of Alabama 1975. The advice, recommendations and viewpoints of the mayor generally reflect the thoughts of the voters who elected him or her and are worthy of careful consideration by the council.

The laws of Alabama necessitate a close working relationship between the council and the mayor. Without that spirit of cooperation, a municipal government will not function properly. Open communications between the mayor and the council should be maintained at all times. Before acting on any proposal, the council should carefully consider the advice, views and recommendations of the mayor. Similarly, the mayor should also listen to council discussions in order to understand the reasoning behind council actions and the intent of the council as it passes ordinances and resolutions.

Powers of Appointment

In *Scott v. Coachman*, 73 So.3d 607 (Ala. 2011), the Supreme Court of Alabama held that the mayor has the authority to hire most municipal employees. The Court in *Coachman* interpreted Section 11-43-81, Code of Alabama 1975, which provides that the mayor has the “power to appoint all officers whose appointment is not otherwise provided for by law.” The Court ruled that the council cannot remove the mayor’s appointment authority under Section 11-43-81 by ordinance. Since at least 1957, the Attorney General had interpreted the phrase “otherwise provided by law” to mean that the council could pass an ordinance - a law - to assume the power to appoint employees and officers. *Coachman* overturned this interpretation and stated that unless a state statute authorized a different appointment method, the mayor had the power to appoint all officers and, presumably, employees.

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

In cities having a population of less than 6,000 and in towns, the council shall elect a clerk and fix the salary and term of office and may determine by ordinance the other officers of the city or town, their salary, the manner of their election and the terms of office. The clerk and such other officers elected by the council shall serve until their successor or successors are elected and qualified. Section 11-43-4, Code of Alabama 1975. While worded differently than §11-43-3, this section also gives the council, in municipalities of under 6,000 population, the authority to identify officers of the city by ordinance and to elect those officers or provide for another “manner of appointment” by ordinance. The council may provide for a tax assessor, tax collector, chief of police, and chief of the fire department and shall specifically prescribe their duties. The council shall designate the persons who shall administer oaths and issue warrants of arrest for violations of law and the ordinances of the city or town and the persons authorized to approve appearance bonds of persons arrested. Section 11-43-5, Code of Alabama 1975. This section identifies specific officers of a municipality and gives the council the authority to provide for these officers should it choose to.

In combination with Section 11-43-3 and Section 11-43-4 of the Code of Alabama 1975, the council, in providing for these “officers” could, by ordinance, provide for their manner of appointment, including appointment by the council rather than the mayor. In addition to the above listed code sections, Section 12-14-30 of the Code of Alabama 1975, specifically gives the council the authority to appoint, by vote of a majority of its members, the judges of the municipal court. Also, Section 11-43-20 of the Code of Alabama 1975, authorizes the city council to provide for, by ordinance, a city manager. The council is authorized to establish a police force under the general supervision of a police chief. Section 11-43-55, Code of Alabama 1975.

Where a municipality has created, *by ordinance*, the office of city attorney and the ordinance fails to designate the appointing authority, the mayor is the appointing authority for the city attorney. AGO 2009-0054. **NOTE:** Where a municipality contracts with an attorney to provide legal services for the municipality, the council must approve the contract and its terms.

The Attorney General, in Opinion 2012-0039, held that the specific language of Sections 11-43-3 and 11-43-4 don’t limit the council’s appointment power only to listed “offices.” Instead, the Attorney General noted that “Section 11-43-3 authorizes a city council to elect any officer whose election is required by ordinance, to prescribe the duties, to fix salaries and to set the terms of office for these officers.” Therefore, the Attorney General concluded that the legislature has created a method for the council to appoint other positions than those listed above and designate them as “officers.” The Attorney General, though, stated that there are limitations on the council’s power to designate certain positions as officers. Using the definition in

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

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

Powers of Dismissal

Section 11-43-160, Code of Alabama 1975, states that any person appointed to an office in any city or town may, for cause, after a hearing, be removed by the officer making the appointment. Section 11-43-81, Code of Alabama 1975, states that the mayor may remove, for good cause, any non-elected officer appointed by him or her and permanently fill the vacancy. In *State v. Thompson*, 100 So. 756 (1924), however, the Alabama Supreme Court ruled that where the mayor has been given the power to make appointments solely on his or her own discretion and without the approval of the council, the mayor must grant a hearing to the appointee before the dismissal. Of course, the appointee may waive this right to a hearing.

The mayor may remove any officer for good cause, except those elected by the people, and permanently fill the vacancy if the officer was elected by the council or appointed with its consent. In either of these cases, the mayor must report the dismissal to the council and state the reasons for the action to the council at its next regular meeting. If the council sustains the mayor's act by a majority vote of those elected to the council, the vacancy must be filled as provided in Title 11 of the Code of Alabama. Again, Section 11-43-160, states that the appointee must be granted a hearing, which can be waived by the employee, before the dismissal becomes permanent. Section 11-43-160 of the Code of Alabama gives the city council the authority to remove any officer in the several departments, but not employees. The term "officer" includes all those positions specifically set forth in the Code of Alabama as "officers," as well as any position created by the city council pursuant to ordinance. An officer is limited to a person that exercises some level of authority, presumably over employees, and performs some discretionary, policy-making functions. A city council is not authorized to fire an "employee" pursuant to section 11-43-160 of the Code. AGO 2012-0039.

In municipalities having a population of less than 12,000 inhabitants, according to the last or any subsequent federal census, the mayor may vote on the removal of any person appointed to office in the municipality pursuant to this section and the mayor shall be considered as a member of the council in determining whether there is a two-thirds vote of the council for the removal of the officer. Section 11-43-160, Code of Alabama 1975. The mayor may not permanently remove the police chief or any other officials who were not appointed by him or her, but the mayor may temporarily remove such officials pending a hearing on the question by the council. Section 11-43-81, Code of Alabama 1975. The mayor of a city of 12,000 or more in population does not sit as a member of the council and, therefore, has no vote on questions of appointment or dismissal of officers or employees who come before the council. The mayor of a city of 12,000 or more in population does not have the power of veto over appointments made by the council.

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

Municipal Finances

Section 11-43-84, Code of Alabama 1975, requires the mayor, as chief executive officer, to present a written statement to the council at least once every six months showing the financial condition of the municipality and the steps the mayor proposes to take for the protection of the city or town. This section also states that the mayor shall require any officer of the city or town to make a report at such times as the mayor or the council directs. This authority is intended to facilitate supervision of the various municipal departments and officials and to assist the mayor in making reports to the council.

Section 11-43-85, Code of Alabama 1975, requires the mayor or the city manager to appoint an expert accountant to make a detailed examination of all books and accounts of the city. It continues to be standard operating procedure for any municipal audit or audit report conducted pursuant to Section 11-43-85 to be submitted to the council and spread on the minutes at the council's first meeting after the completion of the report or audit.

The council does not have authority to appoint its own accountant in lieu of the mayor's appointment. Further, the mayor is authorized to fix the accountant's fee without the approval of the council and the council is legally obligated to pay a reasonable amount for these services. If the council is not satisfied with the audit provided by the mayor's accountant, the council may order an additional audit to be made by an auditor of its choice. For a more thorough discussion of the requirements of the municipal audit please refer to the article in the League's *Selected Readings for the Municipal Official* titled "The Municipal Budget and Auditing Process".

The council is required to appropriate the sums necessary for the expenditures of city departments, and for interest on indebtedness, not exceeding in the aggregate 10 percent of its estimated receipts. In addition, the council cannot appropriate in the aggregate an amount in excess of its annual legally authorized revenue. Section 11-43-57, Code of Alabama 1975.

While a city is not required to adopt a budget, most municipalities do so to ensure that citizens obtain maximum service for each tax dollar. As chief executive officer, the mayor is in the best position to determine the requirements of the various municipal departments. While the mayor does not draft the final budget, he or she compiles estimates of revenues and expenses and presents those figures to the council along with recommendations for appropriations and for revenue-raising procedures, if necessary. The municipal budget is not considered permanent and, therefore, is not subject to the mayor's veto. AGO 1991-0180.

The mayor plays an important role in the disbursement of municipal funds. Warrants must be drawn by the clerk, approved by the mayor or such other person as the council designates and presented to the treasurer for payment. The Alabama Supreme Court held in *Edwards v. 1st National Bank of Brewton*, 377 So.2d 966 (1979), the council may, by ordinance, remove the mayor's authority to sign checks. *See*, AGO 1990-0284; *see also*, AGO 2001-0260.

All expenditures of municipal funds must be specifically approved by the mayor or by some other person designated by the council. Section 11-43-120, Code of Alabama 1975. The council may, however, make a purchase over the objection of the mayor. AGO to Hon. Norman Plunkett, June 22, 1977.

Further, Section 11-43-120 provides that no warrant shall be drawn except by the authority of law or ordinance, and the treasurer shall allow no expenditure unless it is approved by ordinance or by the mayor. If the mayor questions the legality of an expenditure, the clerk and treasurer and, if necessary, the city attorney, should be consulted about the matter. The mayor may be held responsible for unauthorized expenditures made on the basis of his or her approval. *See*, *Altmayer v. Daphne*, 613 So.2d 366 (Ala. 1993). Additionally, the council should stress that only those with authority to authorize expenditures should do so, because in *Brannan and Guy, P.C. v. Montgomery*, 828 So.2d 914 (2002), the Alabama Supreme Court held where the authority to set the compensation rates of contract attorneys rests solely with the mayor, a discussion of rates between the city attorney and the contract attorney at the request of the mayor does not create a unilateral contract that binds the city.

While it is unnecessary for the council to validate each disbursement individually, Section 11-43-120 requires that all claims, requisitions and demands against a municipality for goods purchased or debts incurred be presented to the council for approval, unless already provided by ordinance or resolution.

Municipal Contracts

Unless otherwise directed by state law or ordinance, the mayor is authorized to enter into and execute all municipal contracts in the name of the city or town. However, the mayor cannot change the price fixed by the council without authority from the council to do so. *Albany v. Spragins*, 93 So. 803 (Ala. 1922). All obligations for the payment of money by the municipality, except for bonds and interest coupons, shall be attested by the clerk. Section 11-47-5, Code of Alabama 1975.

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

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

Section 11-47-20 of the Code of Alabama, 1975 authorizes a municipality, by ordinance entered on the minutes of the council, to dispose of any real property not needed for public or municipal purposes. The council directs the mayor to make title thereto. The council may file a writ of mandamus against the mayor if the mayor refuses to execute a deed as required. AGO 1995-0113. A conveyance made by the mayor in accordance with this ordinance invests the grantee with the title of the municipality. Section 11-47-21 requires a municipality to follow the same procedure when it wishes to lease any of its real property. No similar requirement is made for personal property. *See*, Section 11-43-56, Code of Alabama 1975. For further discussion on this topic, please see the article entitled "Sale of Lease of Unneeded Municipal Property" located in the *Selected Readings for the Municipal Official* (2016 ed.).

If a public official, public employee, member of the household of the public official or employee, or business with which that person is associated, enters into a contract to provide goods or services and payment, in whole or part, for the contract will come out of state, county or municipal funds, must be filed within the Ethics Commission within ten days after the contract has been entered into, regardless of the amount of the contract or whether or not the contract has obtained through competitive bid. AGO 2001-0029.

Legislative and Judicial Powers of the Mayor

Section 11-45-1, Code of Alabama 1975, gives municipalities the power to adopt ordinances and resolutions to carry into effect the powers and duties conferred on it by statute and to provide for the safety, preserve the health, promote the prosperity, improve the morals, order, comfort and convenience of the citizens of the municipality. The council, as the legislative body of the municipality, is responsible for enacting these ordinances.

In municipalities of less than 12,000 in population, the mayor sits with, presides over and is considered a member of the municipal council. This provision entitles the mayor to vote for or against the adoption of ordinances that the council considers. It is unnecessary that an ordinance be approved by the mayor or authenticated by his or her signature. Section 11-43-2, Code of Alabama 1975.

In cities with populations of 12,000 or more, the mayor does not sit as a member of the council, unless the city has elected by ordinance to continue operating under the legislative functions of a city with a population less than 12,000. *See* Section 11-43-2, Code of Alabama 1975. Therefore, the clerk must transmit all ordinances and resolutions intended to be of a permanent nature to the mayor within 48 hours after passage by the council. If the mayor disapproves of an ordinance or resolution transmitted by the clerk, he or she must, within 10 days of its passage by the council, return it to the clerk with the written objections. The clerk is to report these objections to the council at its next regular meeting. If the mayor fails to return the ordinance within 10 days, the clerk shall publish the ordinance as though the mayor had signed his or her approval. *See*, Sections 11-45-4 and 11-45-5, Code of Alabama 1975. The mayor has no authority to veto an ordinance which merely disposes of an administrative matter. AGO to Hon. Carl H. Kilgore, July 8, 1975. Therefore, nonpermanent ordinances are not subject to the mayor's veto. AGO 1991-0072.

The council has the power to pass an ordinance over the mayor's veto by two-thirds vote of the members elected to the council. The vote must be recorded on the minutes. Section 11-45-5, Code of Alabama 1975.

Under general law, in municipalities over 12,000 in population, Section 11-45-5 gives the mayor power to approve or veto in whole or in part all ordinances or resolutions fixing the salaries of officers and employees. At its next regular meeting, the council votes on whether it will override the mayor's veto. If it fails to override the veto, then it votes upon the approval of the ordinances as approved by the mayor. However, the mayor of a city or town that has elected, by ordinance, to continue operating under the legislative functions of a city with a population less than 12,000 may not exercise veto power and his or her signature as the mayor may not affect the validity of an ordinance or resolution passed by the council while the mayor is a voting member of the council. *See* Section 11-45-5, Code of Alabama 1975.

Section 12-14-15, Code of Alabama 1975, states that the mayor, under authority as chief executive officer, has the power to remit fines and costs imposed by the municipal judge or the court to which an appeal was taken for violation of a municipal ordinance. In addition, the mayor has the power to pardon those convicted and sentenced by the municipal judge for violations of municipal ordinances. In an opinion to the city council of East Brewton, however, the Attorney General ruled that a mayor has no authority to dismiss pending cases in municipal court. AGO to City Council of East Brewton, August 8, 1974. Further, the Attorney General has determined that the mayor has no authority to remit forfeitures levied against sureties on appearance bonds by the municipal judge. AGO 1991-0374. Likewise, the mayor has no authority to approve or order the approval of any appearance bonds. AGO 1991-0374.

Section 12-14-15 also requires the mayor to make a written report to the council at its first regular meeting each month, listing the fines and costs remitted, sentences commuted, and pardons and paroles granted by the mayor during the preceding months and stating the reasons therefore.

The council may, by a properly-adopted ordinance, authorize the mayor to administer oaths on behalf of the municipality, pursuant to Section 11-43-5, Code of Alabama 1975. AGO 1988-0397.

The mayor may serve as superintendent of the municipal utility system. The council has no authority to reduce the mayor's salary by the amount he or she receives for serving as superintendent. AGO 1989-0070.

Similarly, the council may not require the mayor to devote full time to his or her duties as mayor. AGO to Hon. William Willis, January 21, 1960. However, the Legislature may, by local act, require the mayor to serve in a full-time capacity. AGO 1988-0298. See also, AGO 2005-0076.

Legislative Powers of the Council

The council as a body establishes municipal policy, and the mayor is charged with the duty of implementing that policy. For instance, in AGO 1989-0243, the issue was whether the mayor or the council had authority to establish the working conditions of a police dispatcher. The Attorney General concluded that the mayor could require the dispatcher to work at city hall unless the council provided otherwise. The question of where the dispatcher performed her duties was a matter of policy, a decision for the council to resolve. Until the council acted, it was the mayor's decision. However, once the council acted, the mayor was required to implement that policy.

Another example of the legislative power of the council is found in AGO 1992-0289. It concluded that the council is responsible for establishing policies which will be followed by municipal departments. Department heads may not set policies unless the council has delegated the authority to them. A council may delegate authority to set policy to the mayor, who may authorize department heads to determine policies which their departments will follow. Where the council has not acted, department heads may set informal procedures to be followed until the council acts.

Other examples of the legislative power of the council to draft city policy include AGO 1995-0091, which concludes that the use of city-owned vehicles is under the control of the council, which should promulgate a policy regarding their use. This Opinion also makes clear that the council has the power to decide how much to reimburse an individual for the use of a personal vehicle on municipal business.

Subpoena Power

A municipal council or a committee authorized by the council may, by resolution, issue subpoenas pursuant to Section 11-43-163 of the Code of Alabama 1975. This does not require a permanent resolution. The council or committee may impose punishment pursuant to Section 11-43-163 for failure to comply with the subpoena. AGO 1999-0076.

Council Committees

While no law requires a council to establish committees, most councils set up committees to study the needs of the various departments of municipal government and to make recommendations regarding the operating policy of each department. Council committees should confer with the mayor for his or her views on the policies and programs under consideration since, as the chief executive, the mayor will be responsible for carrying them out.

When questions about council committees arise, they usually involve the desire of councilmembers to directly control the functions of city employees. It must be remembered that council committees are not administrative bodies and have no authority to exercise any executive power over the administrative branch of the municipal government. This means that the council cannot direct and supervise the work of employees, even through the creation of a committee. AGO to Hon. Norman Plunkett, June 22, 1977; AGO 1988-0262; and AGO 1991-0147. Council committees are advisory only and cannot supervise or give directions to city employees. AGO 1985-0156 (to Hon. H.T. Mathis, January 8, 1985).

The sole purpose of committees is to give detailed attention to the programs and policies concerning the departments

entrusted to their study and to report their findings to the full council and the mayor so appropriate actions may be taken.

Generally, the presiding officer of the council makes appointments to the committees, which usually consist of three councilmembers each. In AGO 1981-0409 (to Hon. Gwin Wells, June 4, 1981), however, the Attorney General stated that council committees may be appointed by the mayor, or by the mayor and the council, depending on the internal rules of procedure established by the council. The mayor of a municipality of under 12,000 in population is a member of the municipal council and therefore may vote on and serve on these committees.