

What Every Candidate Should Know

What Every Candidate Should Know About Municipal Government

This article is not intended as a guide for qualifying and running for municipal office. The League publishes a manual called *Procedures for Holding Elections in Mayor-Council Municipalities* which covers issues related to campaigning and holding the election. A copy of this manual is available [here](#). Rather, 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. An understanding of these rules can prevent future embarrassment from discovering that a campaign promise can't be fulfilled.

Potential municipal candidates must be aware of the laws governing the municipality in which they choose to run for office. 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?

Throughout history, all governments have been created for a combination of two reasons: protection and convenience. Originally, of course, individuals banded together to protect themselves from invading armies and bands of marauders. Today, governments provide other forms of protection: job rights, a cleaner environment and other safeguards which are deemed important to a better life-style.

They 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.

Local governments provide 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 state 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. The authorization must be either explicit or clearly implied from the language of a state statute or constitutional provision.

Briefly, Alabama is governed by a document that was first passed in 1901, although it has been amended many times since. This is the Alabama Constitution. Laws in the 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. Any action taken by a municipal government cannot conflict with these legislative actions. Beyond that rule, however, is a further limitation. 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.

So, when a potential candidate decides that some action needs to be taken, he or she must examine the laws to ensure that the municipality has the power to act in the way desired. If not, the municipal official may first have to obtain legislative authority, which may require the adoption of a constitutional amendment.

The Extent of Municipal Power

Municipalities are established by incorporation through the procedures set out in the Code. Municipalities grow through annexations. The methods of annexing property are also provided for in the Code.

Municipalities are divided into cities and towns on the basis of population. 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.

Municipalities also have authority to exercise certain powers within their police jurisdictions. The police jurisdiction is a legislatively created area outside the corporate limits of a municipality. The size of the police jurisdiction is either a mile-and-a-half, or three miles, depending on the population of the municipality. It ensures orderly development beyond the municipal limits and allows the municipality to protect persons who live within these areas.

Municipalities can levy certain types of taxes in the police jurisdiction in order to pay for services which are provided in the area. Additionally, municipalities can enforce criminal ordinances in the police jurisdiction. Construction and development can be regulated through the application of municipal building codes and subdivision regulations. Municipalities can also provide a wide range of services to citizens within the police jurisdiction.

Appropriations

A common area of contention between municipal officials and their constituents concerns appropriations. 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 1901. 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, 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.

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. It doesn't matter under Section 94 that the group is non-profit. 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.

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 perform for the municipality. Bear in mind that the service being performed generally must be a service that the municipality could 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. However, municipalities may not make donations to band booster clubs or other private clubs organized by students or parents because these are private groups.

Municipalities must also comply with the State bid law. The bid law prohibits expenditures (with certain exceptions which are listed in the Code) of more than \$7,500.00 (\$50,000 for public works contracts) without first soliciting competitive bids. However, cities and towns may contract with other public agencies or purchase items through a state contract without first obtaining bids.

There are, of course, 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 to ensure that what he or she wants to do is legal.

Citizen Petitions

Citizens often draft and circulate petitions to be presented to the municipal governing body. What is the legal effect of these petitions?

Of course, in some cases the Code requires the council to act on petitions which contain a certain percentage of citizen signatures. In these cases, the council must follow through on all statutory requirements. These situations, though, are rare. Usually, the council is not required to act on, or even debate, requests submitted by petition. At best, a petition serves as a means of bringing the issue before the council.

Certainly, citizens have the right to make requests of the governing body. And, just as clearly, the number of signatures on a petition has a practical political effect. In most cases, however, a council may deny a petitioner's request, or refuse to even consider it.

Even where a municipal council will consider a citizen petition, it is important that candidates realize that they cannot delegate the authority to make legislative decisions to the citizens themselves. Frequently, elected officials want to allow citizens to vote on issues. The legislative power of a municipality, though, cannot be delegated to the citizens. For instance, in Opinion No. 91-00262, the Attorney General held that a city council may not make zoning in a particular district subject to a referendum of the residents. In fact, a city may not sponsor and hold a non-binding referendum using city employees and officials to work on the election, even if the cost of the referendum is paid for with private funds. 94-00001. But, a private group may conduct a non-binding referendum for a municipality, although the municipality may not participate other than as private citizens and the council cannot agree to be bound by the referendum. 97-00257. Of course, under state law the municipality must submit some questions to the voters to make the final decision. A candidate must be sure whether a referendum is required, or even allowed, prior to agreeing to allow the public to vote on specific issues.

The Division of Duties Between Elected Officials

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, 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 C.E.O. 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. 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-thirds votes.

The council is the legislative branch. 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.

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.

Council Meetings

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. 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. Citizens have no right to speak at a council meeting, although most councils do set aside a time for public comment. The Sunshine Law grants citizens the right to be present at public meetings, but does not grant them an absolute right to express their views at the meeting. A public body may establish reasonable guidelines governing public participation in the meeting. 98-00134.

There are three different types of council meetings. The time of regular meetings--which are held once or twice monthly, again depending on the population of the municipality--is established by the council at its organization meeting and is usually set out in the council's rules of procedure. Adjourned meetings are merely continuations of earlier deliberations which were delayed until a later time.

Most controversies concern special meetings. Special meetings are called pursuant to a procedure set out in the Alabama Code. The controversy usually arises over the type notice the Code requires in order to conduct a special meeting.

All elected officials must receive notice of the meeting and have the opportunity to attend. This guarantees all citizens the right to participate in the affairs of the government through their representatives. Additionally, in *Slawson v. Alabama Forestry Commission*, 631 So. 2d 953 (Ala. 1994), the Alabama Supreme Court held that the Alabama Sunshine Law requires that reasonable notice be given to the public of special meetings, unless an emergency exists.

Similar problems arise over public records. Clearly, most records maintained by a municipality are public. However, controversies over what this means are common. Everyone is not entitled to see public records any time they wish. The municipality is entitled 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.

Additionally, not all records are public. Some records, such as on-going police investigation files, some material in personnel records and similar records which contain information not for public consumption, are not open to the public. Further, individual councilmembers have no greater right to inspect municipal records than do any other members of the public.

Relationships with Boards

Not all municipal services are provided by the municipality itself. Many are provided by municipal boards. Some of these boards are separately incorporated, while others are not. Municipalities have the authority to create a broad range of boards to control particular functions. Perhaps utility boards provide the most common example.

Boards are usually created when the governing body takes on the duty of performing so many functions that its needs to give the responsibility to another entity so that it can adequately provide for the other needs of the citizens. Once a board is created, its powers are specified by the statute under which it was organized. The council may not change the duties of the board from those set out in the statute. Nor can a council create boards that are not authorized by the legislature. Although a council may create an advisory board, it cannot delegate power over any municipal function in its control unless the legislature has given them that authority. An advisory board can only make recommendations to the council, which it must enact itself.

Frequently, municipal officials are asked to remove board members or to order the board to take certain actions. Municipal citizens must understand that once a board is created, it has the sole power to act and the council has no power to make demands on the members of the board. Members of these boards are appointed for terms and generally they cannot be removed until their terms expire. This is especially true for separately incorporated boards.

It is important to understand the difference between an incorporated and an unincorporated board. Incorporated boards usually cannot be dissolved until some event defined in the Code occurs. Frequently this is the payment of the debts of the board. Therefore, members of incorporated boards are totally independent from council members. Unincorporated boards may be dissolved by a governing body although the council may not change the duties of the board from those set out in the Code.

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.

However, what is often overlooked 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.