



THE LEGAL VIEWPOINT

By Ken Smith
Director, Legal Services & Computer Programs

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 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. 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.

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.

It is clear, though, 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 toward 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 depends also 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. 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.

continued next page

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

Section 11-43-81, Code of Alabama, 1975, states that the mayor has the power to appoint all officers whose appointment is not otherwise provided for by law. The Attorney General of Alabama has ruled that if the council has exercised its powers to appoint officers of the city or town, then the appointment would be "otherwise provided for by law," thus removing the mayor's power to make appointments. Attorney General's Opinions to Hon. John W. Maples, April 17, 1957. See, also Attorney General's Opinions No. 95-00315 and 97-00166.

Further, a council may adopt an ordinance which gives the council exclusive authority to appoint a chief of police, all police officers and a superintendent of utilities. However, as chief executive officer of the municipality, the mayor's power to oversee the daily activities of city officials cannot be removed by the council. Attorney General's Opinion to Hon. A. J. Cooper, Jr., May 6, 1977. This same opinion provides that the council cannot by motion, resolution or ordinance require the mayor to give written work orders whenever he instructs a city employee to perform a task nor may the council require employees and department heads to answer directly to the council for their actions and to receive their instructions at least in part directly from the council.

Where the Code of Alabama specifies that the council has exclusive appointing power, such as over the municipal clerk, the council cannot delegate its appointing power. If an appointment is left to the discretion of the council, then the council may delegate its authority by a properly-drafted ordinance.

If the Code is silent as to who makes an appointment, then the mayor has the authority unless the council has provided differently in a properly-drafted ordinance. In cities of less than 12,000 in population, the mayor is a member of the council and may vote on appointments made by the council.

In all municipalities, the council may provide for a tax assessor, tax collector, chief of police and a chief of the fire department. The council also has the duty to specifically

designate the duties of each office. Section 11-43-5, Code of Alabama, 1975. In municipalities of less than 6,000 in population, the council must elect a clerk and may determine by ordinance the other officers of the city or town. Section 11-43-4, Code of Alabama, 1975.

The council has the duty to establish the salary of all officers and employees whose compensation is not fixed by law. Sections 11-43-7 and 11-43-8, Code of Alabama, 1975. The council must fix by ordinance the terms of service of the officers of the municipality whose terms are not otherwise prescribed by law. Section 11-43-6, Code of Alabama, 1975. And the council must prescribe, by ordinance, the powers to be exercised and the duties to be performed by officers appointed or elected, unless otherwise provided by law. Section 11-43-47, Code of Alabama, 1975. 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. The council is authorized to appoint the city attorney. Attorney General's Opinion 90-00173. Additionally, members of municipal boards must be appointed by the mayor or council, pursuant to the statutory authority under which the board was created. See, Attorney General's Opinion No. 98-00077.

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 states that the mayor may remove, for good cause, any non-elected officer appointed by him or her and permanently fill the vacancy. However, in *State v. Thompson*, 100 So. 756 (Ala. 1924), 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 11-43-81 of the Code states that the appointee must be granted a hearing, which can be waived by the employee, before the dismissal becomes permanent.

The mayor in a city of less than 12,000 in population presides over the council and may vote on any dismissals which come before the council. In an opinion to the Mayor

of Adamsville, July 19, 1956, the Attorney General pointed out that removal requires the vote of two-thirds of the members elected to the council, which, in most municipalities, counting the mayor, is the vote of four councilmembers or three councilmembers and the mayor. However, a dismissed employee is entitled to present his or her case to an impartial body. Councilmembers (including the mayor) with any bias must recuse themselves. *Stallworth v. City of 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 to appoint an expert accountant to make a detailed examination of all books and accounts of the city and to make a full report in writing, under oath, to be submitted to the council at its first meeting after completion of the report. This report must be placed in the minutes of the council. Section 11-43-85 also authorizes the mayor to request the Examiners of Public Accounts to audit the municipality. Attorney General's Opinion 92-00322.

The council has no 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.

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. Attorney General's Opinion No. 91-00180.

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. 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. However, the council may make a purchase over the objection of the mayor. Attorney General's Opinion 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, for instance, *Altmayer v. City of Daphne*, 613 So. 2d 366 (Ala. 1993).

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. In addition, the Alabama Supreme Court held in *Edwards v. 1st National Bank of Brewton*, 377 So. 2d 966 (Ala. 1979), that the council may, by ordinance, remove the mayor's authority to sign checks. See also Attorney General's Opinion 90-00284.

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

continued next page

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.

Section 11-47-20 of the Code 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. Attorney General's Opinion 95-00113. 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.

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 which the council considers. It is unnecessary that an ordinance be approved by the mayor or authenticated by his or her signature.

In cities with populations of 12,000 or more, the mayor does not sit as a member of the council. Therefore, all ordinances and resolutions intended to be of a permanent nature must be transmitted to the mayor by the clerk 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. Attorney General's Opinion to Hon. Carl H. Kilgore, July 8, 1975. Non-permanent ordinances are not subject to the mayor's veto. Attorney General's Opinion 91-00072.

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.

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. However in an opinion to the City Council of East Brewton, August 8, 1974, the Attorney General ruled that a mayor has no authority to remit forfeitures levied against sureties on appearance bonds by the municipal judge. Attorney General's Opinion to Hon. Richmond McClintock, July 17, 1957. Likewise, the mayor has no authority to approve or order the approval of any appearance bonds. Attorney General's Opinion 91-00374. Similarly, councilmembers may not sign as surety on bail bonds for persons arrested by municipal police officers. Attorney General's Opinion 90-00282.

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 therefor.

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. Attorney General's Opinion 88-00397.

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. Attorney General's Opinion 89-00070.

Similarly, the council may not require the mayor to devote full time to his or her duties as mayor. Attorney General's Opinion to Hon. William Willis, January 20, 1960. However, the legislature may, by local act, require the mayor to serve in a full-time capacity. Attorney General's Opinion 88-00298.

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 Attorney General's Opinion 89-00243, 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 Attorney General's Opinion 92-00289. 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 Attorney General's Opinion 95-00091, 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. 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. Attorney General's Opinion No. 99-00076.

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. Attorney General's Opinion to Hon. Norman Plunkett, June 22, 1977; Attorney General's Opinion 88-00262; and Attorney General's Opinion 91-00147. Council committees are advisory only and cannot supervise or give directions to city employees. 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. However, in an opinion to Hon. Gwin Wells, June 4, 1981, 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. ■

ADVERTISE WITH US!

Call 334-262-2566

**or visit our
web site at
www.alalm.org
for more
information.**