

PROCEDURES FOR HOLDING ELECTIONS IN MAYOR-COUNCIL MUNICIPALITIES



AN ALABAMA LEAGUE OF MUNICIPALITIES SPECIAL REPORT

PREPARED FOR THE 2012 MUNICIPAL ELECTIONS



Disclaimer: This elections manual is provided as a service to persons involved in the general municipal election to be held on August 28, 2012, with a runoff on October 9, 2012, if necessary. **The use of this manual and any accompanying ordinances, calendars or other information is at the sole risk of the user.** It is the responsibility of the user to verify any information included in this manual prior to use or reliance thereon. The Alabama League of Municipalities; its officer and employees; and the municipality and/or official which may distribute this manual disclaim any responsibility of liability for failure to comply with any filing requirement or any other election law.

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PREFACE

The 1961 Alabama Legislature established the first uniform election procedures for Alabama cities and towns. Although these laws have been amended from time to time, they still provide the basic election procedures used to conduct municipal elections in Alabama.

This Special Report is intended to serve as a comprehensive guide to Alabama's municipal election process for the municipal clerk or other municipal officials or employees who are given the responsibility for conducting municipal elections.

This report covers the laws relating to election procedures as well as laws pertaining to political activity of government employees, the Fair Campaign Practices Act, the Hatch Act and the State Ethics Law. Sample forms to be used in the elections process are included at the back of this publication.

It is extremely important that municipal clerks, and other persons responsible for conducting municipal elections, plan ahead so that the requirements of the law are met without problems.

The League wishes to gratefully acknowledge the assistance of the following individuals who reviewed and made suggestions regarding this manual:

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Executive Director
November 2011

Dear fellow Alabamian,

Each time a citizen casts a ballot in our state, they are not just marking a line on a sheet of paper; they are voicing their opinions and beliefs about what they want from their government and the officials who manage it. Those who vote are expressing the ideas of liberty and freedom that our forefathers envisioned long ago. They are being active participants through a democratic process that keeps America a sound republic. From City Hall to the Courthouse to the White House, and everything in between, elections at every level for every office are important.

Fair and honest elections are the cornerstone of preserving and maintaining our republic. Citizens must have confidence that their vote counts when it is cast. Ensuring fair and honest elections has been, and continues to be, my top priority as secretary of state. The people of Alabama deserve nothing less.

We have many election resources available through our websites at www.sos.alabama.gov and www.alabamavotes.gov. Additionally, my staff and I stand ready to assist in answering any questions you may have. **We can be reached at 1-800-274-VOTE (8683) or 334-242-7210.**

Thank you for all you do to ensure the integrity of municipal elections.

Sincerely,

A handwritten signature in black ink that reads "Beth Chapman". The signature is fluid and cursive, with a long horizontal line extending to the right from the end of the name.

Beth Chapman
Alabama Secretary of State

CONTENTS

Statutes	7
Election Dates	7
Setting Salaries	8
Election from Wards or At-Large	9
Altering Ward Lines and Voting Districts	9
Establishment of Places	9
Use of Electronic Devices	10
Notice of Election	11
Statements of Candidacy	11
Qualification Fees	12
Qualifications of Candidates	13
Final Date to Qualify	14
Printing of Ballots	14
No Write-In Candidates Allowed	14
Withdrawal of a Candidate	14
The Fair Campaign Practices Act	15
Election Offenses	18
Campaign Contributions and Expenditures	18
Political Activity of Governmental Employees	19
Advertising on Public Buildings	19
Election Supplies	20
List of Voters	21
Guide for Preparing the Voter List	21
Registration of Voters	22
Voting Rights Act	23
Voting Machines	24
Disabled Voters	25
Preserving Machine Records	25
Election Officials	25
Compensation of Election Officials	28
Failure of Election Officials to Attend Polls	28
Preparing Machines	28
Election Day	30
Machine Breakdown	34
Proximity to the Polling Place	34
Voter Assistance	35
Watchers	35
Provisional Ballots	36-40
Absentee Elections Manager	41
Absentee Ballots	41
Canvassing Results	48
Recount	49
Runoff Elections	50
Additional Copy of Returns to Probate Judge	51
Disposition of Records After Election	51
Contests	51
Duties of the Clerk – Organization of New Council	52
Additional Assistance	53
Endnotes	54
2012 Municipal Elections Calendar	55

Appendix: Sample Forms, Ordinances and Resolutions

Salary Ordinance Checklist for Mayors and Councilmembers 64

Sample Ordinance Establishing the Monthly Salary of the Mayor and Councilmembers 65

Sample Ordinance Establishing the Monthly Salary of the Mayor and Councilmembers to be Paid Twice Monthly .. 66

Salary Ordinance Alternative C 67

Sample Ordinance Numbering Council Places 68

Sample Ordinance Setting Qualification Fees 69

Sample Affidavit of Indigency 70

Sample Written Statement from Mayor to Council Notifying the Council that Only One Person Filed
a Statement of Candidacy for a Particular Office 71

Sample Resolution for Each Officer Elected Without Opposition 72

Sample Resolution Appointing Election Officers (Paper Ballot Polls) 74

Sample Resolution Appointing Election Officers (Voting Machine Polls) 75

Sample Resolution Appointing Election Officers (Electronic Vote Counting Systems) 76

Sample Ordinance Establishing Procedure for the Appointment of Additional Election Officers for Absentee
Ballots in Municipalities Under 10,000 pop. 77

Sample Notice of Appointment of Election Officers 78

Sample Resolution Establishing the Use of Electronic Vote Counting Devices 79

Sample Resolution for Canvassing Election Results 80

Sample Certificate of Election 81

Sample Oath of Office 82

Sample Form to Use if Candidate Fails or Refuses to File Statement of Economic Interests at the Same
Time as Statement of Candidacy 83

Sample Ordinance to Hire Mayor as Utility Superintendent 84

US Department of Justice Letter (1989) 85

GENERAL ELECTIONS INFORMATION

Persons conducting elections for municipal officials should use this Special Report as a guide. It is also important that a copy of the Code of Alabama 1975, be kept close at hand for reference.

Included at the end of this report is a listing of important dates and deadlines applicable to municipal elections to be held on August 28, 2012.

Statutes

Elections in mayor-council municipalities are conducted pursuant to the general municipal election laws pertaining to mayor-council cities and towns. These laws are codified at Sections 11-46-20 through 11-46-74, Code of Alabama, 1975. Absentee ballot laws applicable to municipal elections are codified at Sections 17-11-1 through 17-11-19, Code of Alabama 1975.

Numerous changes were made to Alabama's election laws since the 2008 municipal elections. Those changes that are relevant to municipal elections have been incorporated into this manual. Persons conducting municipal elections should be thoroughly familiar with these laws as well as the other laws cited in this publication.

Election Dates

Section 11-46-20, Code of Alabama 1975, provides that general elections in all municipalities, which are not Class 1 municipalities or commission cities or towns, shall be held and conducted at the times and in the manner prescribed by Article 2, Chapter 46, Title 11, Code of Alabama 1975. The expenses and costs incident to the conduct of all such elections shall be paid out of the city or town treasury of the municipality holding the election.

Section 11-46-21, Code of Alabama 1975 provides that the regular municipal elections in cities and towns shall be held on the fourth Tuesday in August 1984 and quadrennially thereafter. Runoff elections, if required, shall be held on the sixth Tuesday next thereafter following said regular election.

Municipal officials elected at regular elections shall assume the duties of their respective offices on the first Monday in November following their election unless otherwise provided by Article 2, Chapter 46, Title 11, Code of Alabama 1975. All officers elected shall serve until their successors are elected and qualified. Section 11-46-21, Code of Alabama 1975.

Local laws adopted by the state legislature and applicable to certain enumerated cities or towns may alter these election dates in some instances. See, *Siegelman v. Folmar*, 432 So. 2d 1246 (Ala. 1983).

Any municipality that has election dates established by classification act, local act or general act of local application may continue to use said election dates unless a majority of the members of the governing body vote to use the election dates provided in Sections 11-46-20 through 11-46-73, Code of Alabama 1975. See Section 11-46-74, Code of Alabama 1975.

A municipality may, by resolution, postpone its election under the circumstances where the safety of voters is threatened by a natural disaster, such as a hurricane, under Section 11-46-72 of the Code of Alabama 1975, subject to preclearance by the Department of Justice. AGO 2004-219.

Setting Salaries

Before February 28, 2012

Setting Salaries – Before February 28, 2012

Alabama law provides that the fees, salary, compensation, or emoluments of any officer, whose election or appointment is required or authorized by statute, may not be increased nor diminished during the term for which the officer was elected or appointed, and no gratuitous appropriation may be made for the benefit of any officer or employee in addition to that salary. Section 11-43-9, Code of Alabama 1975; Section 68 of the Alabama Constitution of 1901.

Section 11-43-2, Code of Alabama 1975, provides that the salaries of councilmembers must be fixed by the council at least six months prior to each general municipal election.

Section 11-43-80, Code of Alabama 1975 provides that the salary of the mayor must be fixed by the council at least six months prior to each general municipal election.

The salary of the mayor and councilmembers must be fixed by the council through passage of an ordinance. If the council fails to take action six months prior to the election, the salary schedule then in existence continues during the next administration. Sample ordinances to establish salaries for mayors and councilmembers are provided in the Appendix.

Municipalities that are amending their salary ordinances should strongly consider including a provision tying the salary to council meetings that they attend. Such a provision should, of course, limit the number of paid meetings that may be held during the month. This action encourages officials to attend the meetings and participate in governing the municipality. A sample ordinance paying officials for meetings attended is provided in the Appendix.

No salary can become effective for council members until the new council is elected in the next general municipal election. AGO 2001-046.

Sometimes a governing body might wish to provide that elected officials come under the insurance plans of the city or town with the premiums to be paid by the governing body. Any such intention must be expressed in the salary ordinance as such an action would be deemed to be an increase in compensation. AGO 1981-013 (to the Hon. Maurice C. West, October 7, 1980); AGO 1981-197 (to Roy W. Owens, January 28, 1981).

In cases where a governing body is elected on a staggered basis, the salary of all members of the body may be increased upon the expiration of the term of the first member of the body, provided the increase was approved according to law. AGO to the Hon. Dewitt Garrett, February 9, 1978.

An ordinance which provides that a mayor shall be afforded all benefits now extended, or in the future extended, to all full time employees of the City would not include a cost-of-living and therefore, a mayor may not receive cost-of-living raises during his or her present term of office. AGO 2003-112. If a salary ordinance adopted at least six months prior to the election does provide for a cost of living, though, the newly elected officials are entitled to receive this increase according to terms of the ordinance. AGO 2005-071.

Election from Wards or At-Large

Before February 28, 2012

Election from Wards¹ or At-Large – Before February 28, 2012

Mayor-council cities and towns may determine whether councilmembers are elected from wards or from the municipality at-large. Any change from at-large to ward elections of councilmembers must be adopted by ordinance by a majority of the governing body at least six months prior to the general municipal election. The number of districts cannot be less than 5 or more than 7, except Class 1, 2 or 3 municipalities, which cannot have more than 9. Section 11-43-63 and Section 11-43-2, Code of Alabama 1975.

Any such change in voting procedure must be submitted to the U.S. Department of Justice for approval pursuant to the Voting Rights Act of 1965.

Altering Ward Lines and Voting Districts

Before May 28, 2012

Altering Ward Lines and Voting Districts – Before May 28, 2012

The one-man-one-vote rule requires near equal population in each ward if a municipality elects its councilmembers by wards. If the population of a municipality has substantially increased as a result of annexations made during the last four years or for other reasons, there may be a need for alteration of ward lines in municipalities which elect councilmembers from wards.

The deadline for ward line changes and the division of wards into voting districts is three months prior to the general election. Section 11-46-23, Code of Alabama 1975; Section 11-40-8, Code of Alabama 1975.

A city may change the locations of designated voting places and add additional voting places after the notice required by 11-46-22, Code of Alabama 1975 has been published. However, no changes to voting locations may be made within three months before the election. See AGO 1979-240 (to the Hon. Emory Folmar, July 10, 1979).

Any changes in ward lines or voting districts must be submitted to the U. S. Department of Justice for approval pursuant to the Voting Rights Act of 1965.

If a municipality is subject to federal court jurisdiction regarding their district lines, the court, rather than the Justice Department, may have to approve any alteration to these lines. Municipalities whose district lines were required by court order should check with their city attorney to see if this is necessary.

Establishment of Places

Before March 31, 2012

Establishment of Places – Before March 31, 2012

Before giving notice of the election, the council in all municipalities where councilmembers are elected at-large must adopt an ordinance numbering the places on the council and requiring candidates to specify the particular place for which they are candidates in the statements of candidacy. If more than one councilmember is elected from each ward, a similar ordinance must be adopted. This must be done prior to the first day of April preceding the election. Section 11-46-22, Code of Alabama 1975.

If a municipality has a permanent ordinance establishing numbered places and requiring a candidate to specify the place to which he or she seeks office, no additional ordinance is necessary. It is also unnecessary to adopt such an ordinance in municipalities where councilmembers are elected from single-member wards.

The establishment of places on the council does not carry with it any different responsibilities for those who run for respective places, and after the election, it really makes no difference which place the candidates ran for. The establishment of places is required merely to facilitate the holding of the election in accordance with the municipal election laws of the state.

The question has been raised in the past about whether a candidate for one council place may withdraw his statement of candidacy prior to the deadline for filing statements of candidacy and then file another statement of candidacy for a different place on the council. While such action is unlikely, there appears to be nothing to prevent a candidate from doing this as long as it is done before the deadline for filing statements of candidacy. A person's name may only appear once on the ballot. AGO to the Hon. Walker Hobbie, II, July 18, 1975. If a person chooses to withdraw his statement of candidacy prior to the deadline for filing statements of candidacy and then file another statement for a different place, it is the opinion of the League that the candidate is not entitled to a refund of any qualification fees paid.

A sample ordinance numbering council places is provided in the Appendix.

Use of Electronic Devices

Use of Electronic Devices

Although electronic vote counting systems have been around for some time (the state's electronic voting Committee was created in 1983), they were first used by a significant number of municipalities during the elections in 1996. Until this point, voting machines and paper ballots were by far the most popular ways to vote. Only a handful of cities and towns used electronic counters.

The League anticipates that in the 2012 elections most, if not all, municipalities will utilize some form of electronic system. Because statutes cannot be amended rapidly enough to keep up with the rapid technological advances and changes in these counters, the legislature empowered a Committee to develop regulations to govern their use. This Committee has the power to establish rules and regulations for the use of electronic vote counters in Alabama.

In general, regulations of the Electronics Voting Committee refer only to elections conducted by the county. Regulation 307-X-1-.03, though, makes clear that to the extent practicable, the regulations apply in municipalities which use direct recording electronic voting devices or marksense ballot counters. Duties assigned in the rules to a state or county election official are to be performed by the corresponding municipal official. If there is no corresponding municipal official, the clerk performs the duty, unless he or she is "ineligible," which would probably include a situation where the clerk is a candidate or has a family member who is a candidate. In municipal elections, references in the rules to the county governing body mean the municipal governing body.

Regulation 307-X-1-.03 also provides that where the rules refer to a statutory provision that conflicts with specific state laws or acts applicable in municipal elections, the municipal election provision prevails. Therefore, clerks and others must be familiar with these regulations if they plan to use electronic vote counters.

Section 17-7-21, Code of Alabama, 1975, authorizes municipalities to establish the use of electronic vote counters in municipal elections. The municipal governing body must adopt a resolution specifying the type equipment to be used and

establishing the procedure for implementation. A copy of the resolution must be filed with the Secretary of State.

In order to be used, an electronic counter must be approved by the Committee. To qualify, a counter must, at a minimum, meet the criteria set out in Sections 17-7-21(b) and 17-2-4, Code of Alabama 1975.

Note that in many cases, the electronic devices used in municipal elections will be the same devices as used by the county. The League recommends passing a resolution adopting the use of the specific type of device in order to comply with the Alabama Code. This resolution could provide simply that the municipality will use the same type devices as are used in the county elections. If this is a change in procedure, this resolution will need to be precleared by the Justice Department prior to the election.

Notice of Election July 3, 2012

Notice of Election – July 3, 2012

Notice of the general municipal election is required to be published by the mayor on the first Tuesday in July or the first business day thereafter.

If a newspaper is published in the municipality, the notice of election must be published at least one time in such newspaper. If no newspaper is published in the municipality, then the notice must be published by posting in three public places in the municipality. The form of the notice should resemble the sample set out in Section 11-46-22, Code of Alabama 1975. While there is no requirement that municipalities which are districted post notice in each district, the League recommends that this be done.

All registered and qualified electors of the state, who reside within the corporate limits of the municipality, and have resided therein for 30 days or more immediately preceding the date of such election, and who are qualified to vote in the county precinct which embraces and covers that part of the corporate limits of the municipality in which the elector resides, are authorized to participate in said election.

In brief, the notice gives the date when the election will be held, the offices to be filled, the requirements for voting in the election, and it gives notice where the polling places will be located. This notice should be signed by the mayor and attested by the clerk. No formal action is required on the part of the council in calling or giving notice of the election. However, if the council has adopted such a resolution or ordinance, such action would **not** relieve the mayor of his duty to publish the notice required by Section 11-46-22, Code of Alabama 1975.

Statements of Candidacy Beginning July 3, 2012

Statements of Candidacy – Beginning July 3, 2012

Municipal election laws state that candidates may begin to qualify after the mayor gives the notice of election. It should be noted that the state legislature, in 1971, abolished primary elections of political parties in cities and towns having less than 300,000 inhabitants. That Act further provides that the election of members of municipal governing bodies in cities and towns of less than 300,000 inhabitants shall be by and on a nonpartisan ballot. Section 11-46-3, Code of Alabama 1975.

Statements of candidacy should be in substantially the same form as that found in Section 11-46-25, Code of Alabama 1975. The section further provides that

no person may become a candidate for more than one office to be filled at the election. All statements of candidacy filed with the mayor must be preserved for six months after the election. As a matter of precaution, the statements of candidacy should be received in the office of mayor by both the mayor and the clerk noting the date and the time received with their initials.

Questions have arisen concerning the manner of entering the name of a candidate on the ballot. Candidates should be cautioned to sign their names legibly on their statements as they desire them to appear on the ballot, and also to print their names under their signatures so there will be no mistake in the printing of the ballots. The Attorney General has ruled that candidates in municipal elections may use a nickname followed by their family or last name on the ballot. The name signed by a candidate on the statement of candidacy is the name that should be printed on the ballot. AGO 1996-00264.

A candidate for municipal office must file a statement of economic interests with the election official on the date he or she becomes a candidate or his or her name shall not appear on the ballot. Clerks should inform the candidate of this requirement at the time the statement of candidacy is filed. The League recommends that if the candidate does not file the statement of economic interests along with the statement of candidacy, the clerk should have the candidate sign a form acknowledging that he or she understands that the statement of economic interest must be filed. A form for this purpose is included in the Appendix.

The election official must forward the statement to the State Ethics Commission within five days. The Ethics Commission may, in its discretion, allow the candidate an additional five days to file because of mistake, omission, error or other good cause. This extension may be granted at any time before the election official is due to forward the statement to the Ethics Commission. **Clerks should ask all candidates to inform them when an extension is requested and if an extension is granted. In any event, the clerk should contact the Ethics Commission directly before removing the name of any candidate from the ballot.** Incumbents who already have a current statement on file with the Ethics Commission (the annual report) do not have to file a new statement. Section 36-25-15, Code of Alabama 1975. However, clerks may want the incumbents who already have a Statement on file to sign an affidavit stating that fact.

Qualification Fees

Before June 28, 2012

Qualification Fees – Before June 28, 2012

Section 11-46-2, Code of Alabama 1975 authorizes municipalities to adopt ordinances establishing and fixing a qualification fee to be imposed upon all candidates seeking election in municipal elections conducted under the general municipal election provisions. The fee, if established, must be no less than 10 dollars (\$10.00) and no more than 50 dollars (\$50.00). The ordinance establishing a qualification fee must be adopted by the municipal governing body at least five days prior to the first day upon which a candidate seeking election in a municipal election may qualify.

The Attorney General has advised that a municipality may establish such a qualification fee **only** if the ordinance contains a provision whereby an indigent may become a candidate. This opinion was based on the language in *Thomas v. Mims*, 317 F. Supp. 179 (D.C. Ala. 1970). AG Opinion to Hon. James H. Lackey, April 2, 1973; AG Opinion to Hon. Roy H. Phillips, August 3, 1973. See also *Harper v. Vance*, 342 F. Supp. 136 (D.C. Ala. 1972).

A sample ordinance establishing qualification fees is provided in the Appendix.

Qualifications of Candidates

Qualifications of Candidates

In filing their statements of candidacy, the candidates certify that they are fully qualified to hold the respective offices for which they are candidates if elected thereto. Section 11-43-1, Code of Alabama 1975 provides that every mayor, councilmember and officer elected by the whole electorate of the city or town shall be a resident and qualified elector of the city or town at the time they qualify to run for office and shall reside within the limits of the city or town during the term of office.

Councilmembers elected from wards are required to reside within the limits of the wards from which they were elected during their terms of office. In order to be a qualified elector of the municipality, a person must have resided within the municipality for at least 30 days prior to the election. Section 11-46-22, Code of Alabama 1975. AGO to the Hon. John F. Watkins, June 2, 1972.

Additionally, all candidates must have been residents of the municipality for at least 90 days prior to the election and be a qualified elector at the time of filing of the statement of candidacy. Section 11-46-25, Code of Alabama 1975. Similarly, candidates for election from wards must have been a resident of the ward they seek to serve for at least 90 days prior to the election. Section 11-43-63, Code of Alabama 1975.

On numerous occasions, the residency requirement set forth herein has been construed to mean actual physical residence and not merely legal residence for voting purposes. The term “resident” refers to domicile or permanent residence as distinguished from temporary residence. Neither residence in the police jurisdiction nor ownership of property within the corporate limits qualifies a person to vote in a municipal election. AGO to the Hon. Chalmers Bryant, February 9, 1972.

Residence, once acquired, cannot be lost by temporary absence with the intention of remaining. Section 17-3-32, Code of Alabama 1975; AGO 80-00442 (to the Hon. Mixon Jones, July 3, 1980); AGO 1992-00284; and AGO 1992-00383.

Persons residing within territory annexed prior to elections may vote in and become candidates in the municipal election. AGO to the Hon. Charles E. Guntharp, June 4, 1972; AGO to the Hon. Gussie R. Calhoun, June 29, 1976. However, these annexations must be precleared by the Justice Department before these persons are entitled to vote or run for office. *Singer v. City of Alabaster*, 821 So.2d 954 (Ala. 2001).

A candidate does not establish a legal residence merely by stating an intention to reside in a particular district. A candidate must have a physical presence in the district, as well as the intention to reside in the district. AGO 2000-146.

The receipt and filing of statements of candidacy constitute ministerial acts. **The clerk and the mayor have no authority to judge the qualifications of a candidate. Their only job is to receive the statements which are properly filled out and see to it that the names of the candidates are properly placed on the ballot.** If a question is raised concerning the qualifications of a candidate, a decision thereon should be made by a court. Before leaving the name of a candidate off the ballot after a proper statement of candidacy and the statement of economic interests have been filed, the mayor should have a court order or

Attorney General's Opinion to that effect. See, *Harris v. McKenzie*, 703 So.2d 309 (Ala. 1997).

A municipal candidate who fails to pay his qualifying fee before the qualifying deadline passed has not properly qualified, and his name should not appear on the ballot. If a candidate pays the qualification fee by check and the check is dishonored, the candidate has not met a condition for qualifying as a municipal candidate, ie., the payment of the fee, and therefore, the candidate's name should not be placed on the ballot. AGO 2000-212.

Final Date to Qualify

July 17, 2012

Final Date to Qualify – July 17, 2012

The clerk closes out receipt of statements of candidacy at 5:00 p.m. on the third Tuesday in July preceding the election. This is the final day on which a candidate may qualify to run in the general municipal election in mayor-council cities and towns. Section 11-46-25, Code of Alabama 1975.

Printing of Ballots

Printing of Ballots

The mayor must cause to be printed on the ballot the names of all qualified electors who filed statements of candidacy by 5:00 p.m. on the third Tuesday in July preceding the general municipal election. No names shall be printed on the ballot for a particular office unless more than one statement of candidacy has been filed for that office. **In cases where only one statement of candidacy was filed for a particular office, the mayor must immediately file a written statement with the council certifying the fact that only one person filed a statement of candidacy for that office. At the first regular meeting after receiving such statement, the council shall issue a certificate of election to such person.** Section 11-46-26, Code of Alabama 1975.

Sample forms for this procedure are provided in the Appendix.

Names of candidates for various municipal offices need not be printed in alphabetical order. AGO to the Hon. A. J. Hutcheson, August 15, 1972. However, printing the names alphabetically helps avoid allegations of favoritism.

Section 11-46-25(h), Code of Alabama 1975, provides that if a candidate withdraws from an election where electronic tabulators are used, the individual's name shall be removed in accordance with the manufacturer's guidelines.

No Write-In Candidates Allowed

No Write-In Candidates Allowed

Section 11-46-43, Code of Alabama 1975 provides that electors shall not be entitled to vote for any person whose name does not appear on the ballot and that **no elector shall write in the name of any person on the ballot.** The Attorney General has advised that this section is constitutional. AGO to the Hon. J. L. Buzbee, July 27, 1972. See also *Burdick v. Takushi*, 504 U.S. 428 (1992). In the League's opinion, requirements Sections 17-7-21(b) and 17-2-4 that electronic devices must allow for write in candidates do not permit or require municipalities to allow write-in voting in the municipal election.

Withdrawal of a Candidate

Withdrawals of Candidates

Any candidate may withdraw as a candidate by giving written notice to the mayor, at any time, prior to the date of the election. If a candidate withdraws, as herein provided, the election officials shall, if paper ballots are used in the election, draw a line in ink through the name of such candidate. If voting machines are used in

the election, the election officials shall paste or otherwise secure a strip of white paper over the name of such candidate. All notices of withdrawal filed with the mayor shall be preserved for six months after the election. Section 11-46-25, Code of Alabama 1975.

The Fair Campaign Practices Act

The Fair Campaign Practices Act

The Fair Campaign Practices Act, Sections 17-5-1 through 17-5-19, Code of Alabama 1975, requires all candidates for local office who receive contributions or make expenditures of \$1,000 or more to report his or her contributions or expenditures. Candidates for local office who do not meet the \$1,000 threshold do not have to report contributions or expenditures. However, all elected officials must still file an annual statement in January.

The filing requirements are as follows:

- Within five days after a candidate either (1) qualifies for the election, or (2) meets the \$1,000 threshold amount, he or she must file, with the judge of probate of the county in which the office is sought, a principal campaign committee statement. The statement must show the names of from two to five persons the candidate has chosen to serve as his or her principal campaign committee, or the candidate may declare themselves as the person to serve as the principal campaign committee.
- Along with this list, each candidate must file a written statement showing the acceptance or consent of the committee members of their appointment.

For any year in which an election is held, the Act requires the treasurer of a committee to file with the probate judge reports of contributions and expenditures once a campaign has received contributions or made expenditures of \$1,000 or more.² Once this occurs, the treasurer of the committee must file a report with the probate judge on the last day of each month during the 12 months leading up to the election with the exception of the month preceding the election. In the month preceding the election, the treasurer of the committee must file a report with the probate judge every Friday leading up to election day.

Candidates serving as their own campaign committee must perform the duties of the chairman and treasurer which are set out in the Act.

Every committee must have a chairman and a treasurer. The committee has exclusive custody of all funds contributed, donated, subscribed or in any manner furnished to or for the candidate represented by the committee. No candidate may spend any personal funds to help his election except by contributing those personal funds to the campaign committee he or she has designated. Section 17-5-4, Code of Alabama 1975.

If any vacancies occur on the committee, the candidate is to fill the vacancy or the remaining members may discharge and complete the duties required as if the vacancy had not occurred.

The committee must maintain a checking account for all contributions it receives. All committee funds must be segregated from, and not commingled with, personal funds of officers, members or associates of the committee. The committee may

not spend any money except by check drawn on the account or out of a petty cash fund from which it may make expenditures in connection with a single purchase or transaction of \$100 or less. Section 17-5-6, Code of Alabama 1975.

It is the duty of the committee treasurer to keep a detailed, exact account of all contributions and expenditures. The committee must report the identity of each person who has made a contribution in an aggregate amount greater than \$100, along with the date and amount of the contribution. The committee must also report the identity of every person to whom an expenditure in an aggregate amount greater than \$100 is made, along with the date and amount of the expenditure and the name of each candidate on whose behalf the expenditure was made.

In addition, the treasurer must obtain and keep a receipted bill or cancelled check, stating the particulars for every expenditure made by or on behalf of the committee greater than \$100, and of expenditures of a lesser amount, if the aggregate amount paid to the same person during the calendar year is greater than \$100. The treasurer must preserve all receipted bills and accounts for a period of two years from the date of the expenditure. Items costing more than \$100.00 charged to a credit card must be itemized individually. AGO 1995-00132.

If a candidate pays for campaign expenses using that candidate's personal funds, the candidate's principal campaign committee may reimburse the candidate, but the committee and the candidate must itemize the recipients for each of the expenditures made by that candidate to accurately reflect to whom the expenditures were made. This opinion applies prospectively only. AGO 2007-006.

Essentially, any gift, donation, advance or deposit of money or anything of value, or a contract to do any of these things, constitutes a contribution. A contribution would also include the payment of compensation by any person for the personal services or expenses incurred on behalf of a candidate or political committee without payment of full and adequate compensation by the candidate.

Section 17-5-7, Code of Alabama 1975, states that candidates may not accept, solicit or receive contributions more than 12 months before an election in which they intend to be a candidate. The candidate may also solicit contributions for a period of 120 days after the election in which the person was a candidate, but only to the extent of any campaign debt of the candidate or the principal campaign committee of the candidate as indicated on the campaign financial disclosure form or to the extent of reaching the threshold that is required for qualification as a candidate for the office which he or she currently holds. The section prohibits the accepting, soliciting or receiving of campaign contributions as a bribe or for the intention of corruptly influencing the official actions of the public official or candidate for public office. The section further outlines how campaign contributions may be used. Section 36-25-6, Code of Alabama 1975, provides that candidates may not convert campaign funds to personal use.

Expenditures are defined as any purchase or transfer of anything of value, made to influence the result of the election, or any contract for this purpose.

However, certain actions are specifically exempted from the definitions of contributions and expenditures. These are listed in full in Section 17-5-2 of the Fair Campaign Practices Act.

Candidates for municipal office should file financial disclosure forms in all counties in which the municipality lies, unless the candidate is running for election in a district totally contained in one county. AGO 1996-00306. Forms are available from the Office of the Secretary of State as well as from the probate judge in each county.

The filing date is considered to be the date the report was received by the probate judge. However, in the case of certified or registered mail, a report will be deemed properly filed if it is postmarked at least two days prior to the required filing date and is properly addressed with postage prepaid. Section 17-5-10 of the Code of Alabama 1975.

It is the duty of the Secretary of State or the probate judge to furnish all forms necessary for compliance with the Act. Section 17-5-11 of the Code of Alabama 1975. The probate judge must receive all reports required to be filed, along with any extra information that is voluntarily supplied, and preserve a copy of each report for public inspection and copying. However, no information copied from the reports can be used by any political party or committee to solicit funds or for commercial purposes without the express written permission of the candidate or committee furnishing the information.

No certificate of election or nomination shall issue to any person who fails to file any statement or report required by the Act. In addition, penalties for Class A and Class B misdemeanors may also apply. A municipal election, however, cannot be annulled for a failure to file. Further, Section 17-5-18, Code of Alabama provides for the revocation of the certificate of election of any candidate who fails to file a statement or report required by the FCPA.

All political advertisements or electioneering communications must be clearly marked with a statement identifying the entity who paid for or authorized the advertisement. Section 17-5-12, Code of Alabama 1975. It is unlawful for any person or committee to distribute, broadcast or publish any campaign literature, political advertisement, or electioneering communications, including cards, pamphlets, circulars, posters or other printed material related to or concerning the election, without this notice. Section 17-5-13, Code In *McIntyre v. Ohio Elections Comm.*, 514 U.S. 334 (1995), the U. S. Supreme Court held that a similar provision in Ohio law violated the First Amendment to the U.S. Constitution. The Alabama Attorney General has ruled that the Court decision only applies to individuals in non-candidate elections. Persons placing an ad for the purpose of electing an individual to office in Alabama must continue to comply with this provision of the Fair Campaign Practices Act. AGO 1995-00218.

It is illegal for any person to obstruct, intimidate, threaten or coerce any other person in order to interfere with that person's right to vote, or to cause that person to vote for, or not vote for, any candidate or other proposition. Section 17-17-33, Code of Alabama 1975.

It is illegal to pay, offer to pay, or accept payment, either to vote or withhold a vote, or to vote for or against a candidate or proposition. Section 17-17-34, Code of Alabama 1975.

No one shall make a contribution in the name of another person, or knowingly permit his or her name to be used to effect a contribution made by one person in

the name of another person, or to knowingly accept a contribution made in the name of another person. Section 17-5-15, Code of Alabama 1975.

It is illegal for any person to misrepresent himself or herself, or any other person or organization with which he or she is affiliated, as acting for or on behalf of any candidate, committee or political party, or agent or employee thereof, in a manner which is damaging or is intended to be damaging to such other candidate, committee or political party. Section 17-5-16, Code of Alabama 1975.

It is illegal for any person or committee, or any agent of a person or committee, to solicit or secure anything of value by physical force, job discrimination or financial reprisals, or by threats or by the imposition of dues, fees or other money required as a condition of employment. Section 17-5-17, Code of Alabama 1975.

A person who violates any provision of this Act, other than a reporting requirement, is guilty of a Class A misdemeanor and may be fined up to \$2,000 and sentenced to up to one year. 17-17-35, Code of Alabama 1975.

A person who violates a reporting requirement is guilty of a Class B misdemeanor and may be fined up to \$1,000 or an amount not more than double the amount or value of contributions or expenditures not reported, whichever is greater, and imprisoned up to six months. A person who intentionally violates Section 17-5-7, Code of Alabama 1975, is guilty of a Class B felony. 17-17-35, Code of Alabama 1975.

Some cities have their own campaign finance laws.

Under circumstances that would allow public money to be spent for this purpose, the Fair Campaign Practices Act would allow an individual to use excess campaign funds to pay the legal expenses of a criminal prosecution related to the performance of official duties. AGO 2000-165.

Election Offenses

Election Offenses

Chapter 17 of Title 17 of the Code of Alabama 1975, lists various election offenses which also apply to municipal elections. Other offenses are found in the general municipal election laws found in Title 11, Chapter 46, Code of Alabama 1975.

Campaign Contributions and Expenditures

Campaign Contributions and Expenditures

Under general law, there is no limitation on the amount an individual may contribute to the campaign of a person running for municipal office. However, a corporation is limited to giving \$500 per candidate per election. See Sections 10A-21-1.03 and 10A-21-1.04, Code of Alabama 1975. Some municipalities may have special laws on this. Limited liability companies organized under Section 10-12-1, et seq., Code of Alabama 1975, are not corporations and may contribute more than \$500.00. AG Opinion No. 97-00271. A corporation may, during the calendar year either before or after an election, make a \$500.00 contribution to a PAC for each separate election occurring within that calendar year. Elections held on a regularly scheduled date are treated as single elections for purposes of determining corporate contribution limitations. AGO 1999-00255.

Political Activity of Governmental Employees

Political Activity of Government Employees

Section 17-1-4, Code of Alabama 1975, provides that no city employee, whether classified or unclassified, shall be denied the right to participate in county and state political activities to the same extent as any other citizen of the state, including the endorsing of candidates and contributing to campaigns of his or her choosing. The statute gives county employees the right to participate in city and state elections and gives state employees the right to participate in county and city elections.

Section 17-1-4, Code of Alabama 1975, allows municipal employees the right to participate in municipal elections. To be a candidate, the employee must take an unpaid leave of absence or use personal leave or compensatory time. Employees who violate this provision must be dismissed. Employees may not use public funds or property for political activity. AGO 1993-00108. Supervisors may not coerce employees to campaign. Employees who campaign must do so on their own time.

Unpaid reserve officers do not have to take a leave of absence to run for municipal office unless the council establishes a policy requiring this. AGO 1997-00034. A personnel policy that allows employees during an unpaid leave to continue their health insurance coverage, provided they pay the premiums, would permit an employee taking time off to run for office to do the same. AGO 1998-00090.

A local act that prohibits employees of a county commission from participating in political activities at the city, county and state levels is in conflict with Section 17-1-4 of the Code of Alabama, which sets forth the right of city, county and state employees to participate in political activities. AGO 2000-153.

The federal Hatch Act covers federal employees and officers and employees of a state or local agency if their principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States government or a federal agency. Generally, this law does not restrict activity in nonpartisan elections. Municipal elections are nonpartisan. The Hatch Act is enforced by the United States Civil Service Commission. Additional information may be obtained from that office.

Advertising on Public Buildings

Advertising on Public Buildings

Political materials may not be displayed on buildings that are owned, rented or leased by the state. Sections 36-12-60 through 36-12-64, Code of Alabama 1975. Also see AGO to the Hon. Gene Stedham, October 5, 1976. Voters, or those inside a polling place to assist voters, may wear campaign items. AGO 1993-00118.

It further appears that municipalities may adopt ordinances to control the placing of political advertising on municipal property.

Common or public areas of public buildings and grounds can be used for holding press conferences or videotaping political advertising, provided that access to these areas is available to all candidates on an equal basis, subject to reasonable restrictions. Any areas in public buildings that are not open for equal access to all candidates, such as individual offices, should not be used by any candidate, including public officials and employees. AGO 1998-00211.

Election Supplies

Election Supplies

The mayor shall, at municipal expense, procure, superintend, and ensure the delivery of the necessary election supplies to the election officers at each polling place. Section 11-46-32, Code of Alabama 1975.

When paper ballots are used, such supplies shall consist of:

- At least 100 ballots for each 50 registered electors at each voting place;
- The same number of black seals, two inches square, around the outer edge of which is a mucilaginous surface one-fourth inch wide, designed so that a seal may be placed securely over the square bearing the ballot number in such manner that it will make it impossible to read such number without removing the seal, yet such seal may be removed without obliterating the number;
- Ballot boxes;
- Blank poll lists;
- For each ward or voting district, three or more cards of instructions to voters, which shall be printed in large clear type and shall contain full instructions to electors as to what should be done--first, to obtain ballots for voting; second, to prepare the ballot for deposit in the ballot box; third, to obtain a new ballot in place of one accidentally spoiled; and fourth, to obtain a watcher for each candidate to be voted for;
- Certificates of results;
- Oaths and any other stationery, blank forms or supplies necessary for the conduct of the election. Section 11-46-32, Code of Alabama 1975.

When voting machines are used, such supplies shall consist of:

- Ballot labels;
- Diagrams (sample ballots);
- Blanks for keeping a record of assisted voters;
- Seals;
- Blank forms for a statement of canvass of the votes cast on each machine, such forms to conform to the type of voting machines to be used, and the designating number and letter if the construction of the machine is such as to require a designating number and letter of each candidate, shall be printed next to the candidate's name on the statement of canvass;
- All other necessary election supplies for use on voting machines. Section 11-46-32, Code of Alabama 1975.

When electronic machines are used:

Limits of 300 voters per ballot box, 600 voters per voting machine, or 1,200 for electronic voting machines (600, 1200, or 2400 respectively, for run-off elections involving 50 percent or fewer races than the general election), do not apply to electronic counters. Section 11-46-24, Code of Alabama 1975. The municipality must provide sufficient counters, or ballot boxes where central counters are used, to ensure that all voters may vote without undue delay. There must be at least one precinct counter, or ballot box, for each 2,400 expected voters or fraction thereof. The number of expected voters is determined by the largest number of votes cast in that precinct during the last four years. If the manufacturer's recommended maximum number of ballots is less than 2,400, then the recommended number shall be used.

The municipality must also provide a sufficient number of voting stations so that each voter may vote in privacy without undue delay. The number of voters permitted in the voting area may not exceed the number of private voting stations available, unless a voter chooses to vote without using a private voting station.

List of Voters

List of Voters – On or before July 17, 2012

Section 11-46-36, Code of Alabama 1975, provides that the mayor must file with the clerk the list of electors qualified to vote in the general municipal election. The list of electors must be filed on or before the third Tuesday in July preceding the general municipal election.

Section 11-46-37, Code of Alabama 1975, provides that if the mayor is a candidate for re-election, the mayor is disqualified from performing this duty. The council is required to appoint some disinterested person to perform this duty. There is no legal prohibition against the council appointing the clerk to prepare such lists if the council is satisfied of the clerk's disinterest. The son of an incumbent elected official may be appointed, although it might be better to appoint someone else. AGO 1992-00306.

Section 11-46-36, Code of Alabama 1975, contemplated that all qualified electors eligible to vote in the August elections would be known by the third Tuesday in July. However, in view of the 30-day residency requirement, some qualified electors may move into the municipality after this date and still be qualified to vote in the municipal election. These electors should be added to a supplemental list filed by the mayor, if they appear on the Secretary of State's voter list. See *Fluker v. Wolff*, 46 So.3d 942 (Ala. 2010)

In preparing the list of persons qualified to vote regular ballots, if the municipality is divided into wards, separate lists for each ward must be prepared. The voters in each ward are listed alphabetically. If the election is held at-large, the list is alphabetical for the whole municipality, and it is divided alphabetically for the assignment of voters to the respective polling places. The alphabetical divisions in such instances are made to assign, as nearly as possible, 300 voters to each ballot poll, or 600 voters to each machine poll, or 1,200 voters to each electronic voting machine.

The clerk is required to publish the list of electors qualified to vote regular ballots in the election at least five days before the election. Again, there is no requirement that the list be published in each district if the municipality is divided into districts.

The list is published by posting it in three public places in the municipality. Section 11-46-36, Code of Alabama 1975.

Guide for Preparing the Voter List

Guide for Preparing the Voter List

The voter list should contain the names of all registered and qualified voters of the State of Alabama who:

- Reside within the corporate limits of the municipality;
- Have resided therein for 30 or more days immediately preceding the date of the election; and
- Are qualified to vote in the county precinct which embraces and covers that part of the municipality in which the elector resides. Section 11-46-36, Code of Alabama 1975.

The person designated to prepare the voter list should obtain from the county the voting lists for all county voting precincts which cover a portion of the municipality. The person preparing the voter list for the municipality must strike the names of all persons on this list who do not live within the corporate limits of the municipality in order to obtain an accurate municipal voter list.

Questions often arise as to how a person who resides in the municipality but is registered in another county should be treated. The Alabama Supreme Court in *Hass v. McCrary*, 399 So.2d 298 (Ala. 1981), held that, in order for a voter who is registered to vote in one county to be eligible to vote in a municipal election held in another county to which the voter has moved and established a new residence, the voter must re-register in the county of his or her new residence.

Regulation 820-2-3-.03³ requires printing the correct ballot style designations for each voter on the list of qualified voters. The ballot style designation is the designation assigned to each race (set of candidates) in the municipal election, and corresponds to the designation assigned for absentee purposes. See the information on absentee voting in this manual for more information.

Another frequently-asked question concerns a person who is on the voter list but has moved out of the corporate limits. In *Jacobs v. Ryals*, 401 So.2d 776 (Ala. 1981), the Alabama Supreme Court held that a change of domicile cannot be inferred from an absence, temporary in character, and attended with the requisite intention to return. The intent to return is usually the controlling point in determining such questions.

In *Osborn v. O'Barr*, 401 So.2d 773 (Ala. 1981), the Alabama Supreme Court held that, in order to acquire a domicile of choice, there must be both an abandonment of the former domicile with no present intention of return and the establishment of another place of residence with the intention to remain permanently or at least for an unlimited time. See, also, *Harris v. McKenzie*, 703 So.2d 309 (Ala. 1997).

Registration of Voters

Although municipal officials are not directly concerned with registration of voters (except where municipal clerks have been appointed deputy registrars), it is appropriate to call attention to several opinions of the Attorney General relating to voter registration.

The Board of Registrars may not register persons within 10 calendar days prior to a municipal election. AGO to the Hon. Pauline Trammell, July 7, 1976.

Persons who are 18 years of age may vote and to effect this constitutional demand, persons who are 17 years of age at the time registration closes but who will become 18 years of age prior to the election must be permitted to register. AGO to the Hon. Thomas A. Jernigan, August 8, 1975.

Persons 18 to 21 years of age may establish voting residency in locales different from their parents or guardians. University students may establish voting residency in university communities. AGO to Mrs. Reed Proctor, March 10, 1972.

Crimes which disqualify an Alabama citizen from voting are discussed. in AGO 1979-268 (to the Hon. Jenny C. Knight, August 10, 1979).

Violation of a municipal ordinance does not result in disenfranchisement. AGO 1980-420 (to the Hon. Bill J. Dukes, June 12, 1980).

Registration of Voters

Absent any adjudication of criminal guilt by a court, a board of registrars should not regard a person who is charged with a crime as convicted of that crime. AGO 1979-438 (to the Hon. Clarence Nance, September 27, 1979).

A voter who has had his name removed from the voter list because of a felony conviction cannot be re-registered to vote unless his voting rights have been restored by the Board of Pardons and Paroles. AGO 1981-615 (to the Hon. Ruth Parker, September 30, 1981).

The board of registrars is required to remove the names of voters from the voter list who have moved to another county or state and to transfer the names of voters who have moved from one precinct to another. AGO 1981-457 (to Board of Registrars, June 30, 1981).

A qualified voter may not have his name transferred from one polling place to another within 10 days of an election. AGO 1980-539 (to the Hon. Pearl Green, September 2, 1980).

Any person convicted of a felony, as well as any person convicted of illegal voting, buying or selling votes or bribery to secure the registration of any person, is disqualified from registering to vote and may be removed from the voter's list after the appeal is resolved against him or her. AGO 1992-00048.

In *Williams v. Lide*, 628 So.2d 531 (Ala. 1993), the Alabama Supreme Court held that convicted felons who were not notified that their names had been removed from the voter registration list, contrary to Alabama statute, were not on that basis qualified to vote in the county election.

If municipal officials have any doubts concerning the qualification of a voter, they should obtain a court order or opinion of the Attorney General before removing a person from the voters' list.

A person whose name is not on the voters list at the polls may have his or her name added to the list and be allowed to vote if the person presents a certificate from the Board of Registrars that verifies his or her registration, or he or she may vote a challenged ballot. AGO 1998-00063. NOTE: Although this Opinion applies to challenged balloting, the League assumes that it will apply to provisional voting as well. See *Fluker v. Wolff*, 46 So.3d 942 (Ala. 2010).

Voting Rights Act

Voting Rights Act

Section 5 of the Voting Rights Act of 1965, provides that any changes in voting qualifications, prerequisites to voting, or standard practices or procedures with respect to voting which are different from that in force on November 1, 1964, must be submitted to the United States District Court, District of Columbia, for declaratory judgment or may be submitted by the chief legal officer to the Attorney General of the United States for approval. For more information, please see article No. 66, "Prelearance of Election Changes Under the Voting Rights Act" in League publication *Selected Readings for the Municipal Official*.

Voting Machines

Voting Machines

NOTE: It is the League’s understanding that voting machines are not currently used by any municipality in Alabama. Instead, Alabama municipalities use either paper ballots or electronic devices. The use of these electronic devices is governed by rules adopted by the Alabama Electronic Voting Committee and state law and should not be confused with laws referring to voting machines. While laws governing state and county elections referring to voting machines have been repealed, Alabama law governing municipal elections does, however, refer to voting machines. Therefore, this publication summarizes the laws on voting machines here and elsewhere in this publication because these laws remain in place as of publication.

A municipality must provide at least one machine (or ballot box as the case may be) for the voters of each ward unless a municipality uses electronic vote counters or tabulators or other devices regulated by the Alabama Electronic Voting Committee that are capable of counting ballots from all wards that vote at one central place of voting. Section 11-46-24.

Whether or not the municipal governing body has elected to use voting machines in the municipal election makes no difference if the county has determined to use and provide voting machines in the precinct or precincts in which the municipality is located. However, a municipality does not have to use electronic vote counters if the county adopts such a system. AGO 1992-00354.

At least 30 days prior to the general election, the councils of municipalities where voting machines are used must cause a voting machine to be on public display. As soon as possible, the machine must be set up to show how the candidates, parties and issues will be placed on the machine on election day. Section 11-46-31, Code of Alabama 1975.

It is customary for the municipal governing body to have sample ballots of the voting machine prepared to show how the candidates will appear thereon with instructions for the voter on how to use the machine for casting a vote. Such sample ballots are published by posting where the sample machine is located, and copies are used at the voting places on election day to instruct voters who have not become familiar with the machine before that time.

Disabled Voters

Disabled Voters

A city may and should provide paper ballots as an alternate method of voting for the physically handicapped who are unable to use voting machines. AGO to the Hon. David Vann, December 17, 1975.

Additionally, Section 17-2-4(c)(1), Code of Alabama 1975, requires voting systems in Alabama to “Be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation, including privacy and independence, as for other voters.” Although there is some question whether this provision applies to municipal elections, the League recommends that municipalities comply with it.

Preserving Machine Records

Preserving Machine Records

Voting machines are required by law to remain locked against voting for the time provided by law for the filing of contests. However, the law provides that, in the event another election is held during the time for which the machines are required to be locked and the machines are needed, the board charged with canvassing the returns of the election at which the machines were last used shall be authorized to break the seal and make a record of the numbers on all counters on each machine and remove all of the election records from the machine.

The canvassing board shall securely seal all records from the machine in an envelope or package and, on the outside thereof, label the package in such manner as to indicate plainly the machine from which they are records. Each member of the canvassing board shall certify the accuracy of the record of the numbers on the counters and shall sign the envelope or package across the seal. This certificate together with all other records taken from the machines shall be delivered to the officer to whom paper ballots are delivered after an election and preserved by him or her for the same length of time and then destroyed in the same manner as paper ballots are handled. Section 11-46-53, Code of Alabama 1975.

When the same machines are used by the municipality at the runoff election, it would be the duty of the municipal council to perform the task of certifying the records from such machines and to deliver them to the municipal clerk for preservation.

Election Officials Before August 13, 2012

Election Officials – Before August 13, 2012

Not less than 15 days before the holding of any municipal election, the municipal governing body, or a majority thereof, must appoint, from the qualified electors of the respective wards or voting districts, officers to hold the election. Section 11-46-27, Code of Alabama 1975.

Where paper ballots are used, there shall be one returning officer for each ward and three inspectors and two clerks for each box at each voting place.

Where voting machines are used, there shall be an inspector, a chief clerk, and a first and second assistant clerk for each voting machine. In the event that voting centers or central voting places are used, the requirements set out in Section 11-46-24, Code of Alabama 1975, shall control the number of election officials. Section 11-46-27, Code of Alabama 1975.

If the municipality with a central voting location under Section 11-46-24, Code of Alabama 1975, uses paper ballots, there must be one returning officer; one chief inspector; and two clerks for each box. If machines are used in the central location, there must be one chief inspector; one inspector; one chief clerk; and two assistant clerks for each machine. There must also be at least one machine or ballot box for each district or ward.

Where electronic machines are used, Rule 307-X-1-.10 provides that elections officials are to be appointed in accordance with the provisions of §17-6-1 *et seq.* The appointment and duties of municipal election officials, though, are governed by several Code sections, especially §§11-46-27 and 11-46-24. Because the rules provide that municipal provisions control where there is a conflict, we must look at the provisions in Title 11 to determine the number and responsibilities of the officials.

Section 11-46-27 provides that where paper ballots are used, there shall be one returning officer for each ward and three inspectors and two clerks for each box at each voting place. Where voting machines are used, there shall be an inspector, a chief clerk, and a first and second assistant clerk for each voting machine. In the event that voting centers or central voting places are used, the requirements set out in §11-46-24, as amended, shall control the number of election officials.

In any event, Rule 307-X-1-.10(1) states that there must be at least one inspector and three clerks. The League recommends following manufacturer's recommended guidelines or those of the entity that supplied the machines in determining the number of officials that must be appointed, keeping in mind that there must be at least one inspector and three clerks.

The inspector:

1. is in charge of the precinct,
2. serves as official challenger in accordance with §17-10-2 (§§11-46-38 and 11-46-39 in municipal elections) and
3. is the precinct returning officer.

The registration list clerk is responsible for checking voters' names against the list of registered voters and marks off the names of those who vote to prevent double voting. If anyone whose name does not appear on the list of registered voters is permitted to vote by certificate or by provisional ballot, the clerk must:

1. legibly print their name and address on the voters' list,
2. mark through the names to indicate that they have voted, and
3. record by the names the means by which they voted (certificate with the source and date or by provisional ballot).

The poll list clerk shall ensure that each voter signs the poll list. If the voter's signature is illegible, the clerk must print the voter's name on the same or a duplicate list so that the signature can be identified. The poll list clerk then gives the voter a marksense ballot, being sure that the stub remains attached to the ballot pad. The ballots must be given out in sequence, beginning with the lowest numbered ballot.

If the voter requests assistance, the ballot clerk must help the voter deposit the ballot in the precinct ballot counter or the ballot box. The clerk must take care to preserve the secrecy of the ballot box.

A municipality may employ additional poll officials as necessary to serve at any precincts and at a central ballot counter or memory pack tabulator where these are used. These additional poll officials are appointed in the same manner as other officials. The duties of these officials are determined according to Rule 307-X-1-.10 and 17-8-1 Code of Alabama, 1975.

Election officials must be chosen from the list of qualified electors eligible to vote at the respective polling places to which they are assigned. In cities of more than 10,000 inhabitants, additional election officials must be appointed to handle absentee ballots. See section on absentee voting printed below.

In any Class 6, 7, or 8 municipality, election officials must reside within the municipal corporate limits but may serve at any polling place within the municipality. An election official appointed to serve in a polling place other than

where he or she would be required to vote may vote by absentee ballot. Section 11-46-27, Code of Alabama 1975.

No officer or employee of the municipality shall be eligible to serve as an election official. No kindred of any candidate or of his or her spouse to the second degree, according to civil law, shall be eligible to serve as an election official. Section 11-46-27, Code of Alabama 1975.

At least 10 days prior to the election, the mayor must publish lists of election officers and the voting places to which they are assigned by posting in three public places in the municipality or by publication in a newspaper for one time. Section 11-46-27, Code of Alabama 1975.

Prior to the election, the council must provide for a school of instruction for election officials where machines are used. The clerk is required to give 48 hours notice of the time and place of the school to each election officer. Section 11-46-30, Code of Alabama 1975.

If the municipality uses electronic voting machines, the municipality must conduct a training school not less than five days before an election for the officials who will conduct the election. Section 17-8-9, Code of Alabama 1975. The judge of probate (probably the municipal clerk in municipal elections) shall notify such election officials of the time and place of the holding of such school of instruction, and shall also publish notice at least 48 hours before the same is to be held.

No election official shall serve in any election in which an electronic voting machine is used, unless he or she has received the required training within 60 days prior to the election and is fully qualified to perform the duties in connection with the electronic voting machine, and has received a certificate from the authorized instructor to that effect. However, this does not prevent the appointment of an uninstructed person as an election official to fill a vacancy among the election officials. Although it is unclear that this provision applies to municipal elections, the league recommends that municipal governments using electronic voting machines follow this procedure.

In municipalities with populations of 10,000 or more, there shall be appointed one inspector and at least three clerks, who shall meet when the polls close on election day in the clerk's office for the purpose of receiving, counting and returning the ballots cast by absentee voters. In municipalities with populations of less than 10,000, the governing body *may* appoint additional election officials as provided above. If a municipality chooses to appoint extra officials for this purpose, it must adopt an ordinance at least six months prior to the election stating that at the time other election officials are appointed, additional officials will be appointed who shall meet on the day of the election at the place and hour designated by the governing body for the purpose of receiving, counting, and returning the absentee ballots cast at the election. There must be at least three election officials appointed for this purpose. When other officials are appointed, one shall be designated as the inspector.

Sample forms to be used to appoint election officials are provided in the Appendix.

Compensation of Election Officials

Compensation of Election Officials

Section 11-46-27, Code of Alabama 1975, provides that the returning officers, the inspectors and the clerks at polling places where voting is solely by paper ballots shall be entitled to such compensation as the municipal governing body establishes but which in no event shall be less than \$8.00 per day, and each election officer at a polling place where elections are conducted in whole or in part by voting machines shall be entitled to such compensation as the municipal governing body establishes but which in no event shall be less than \$8.00 per day. The compensation of the election officials shall be paid as preferred claims out of the general fund of the municipality holding the election on proper proof of service rendered.

Failure of Election Officials to Attend Polls

Failure of Election Officials to Attend Polls

Whenever a person who has been appointed an election official fails to attend the polls at the hour prescribed for his or her attendance, the election officers appointed for that voting box or machine that are present may appoint any election officers as are needed to complete the required number of election officials for the box or machine. All persons so appointed shall be qualified electors who are entitled to vote at that polling place.

Should all the appointed election officers fail to be present at a polling place by the hour designated, then any three qualified electors who are entitled by law to vote at that polling place may open the polls and act as three of the election officers for such box or machine and appoint such other officers as are required to fill the place of those absent, provided that every person so appointed shall be a qualified elector entitled to vote at the polling place. Section 11-46-29, Code of Alabama 1975.

Some municipalities have made it a practice to appoint alternate election officials for this reason.

Preparing Machines

Preparing Machines

It is customary for the municipality to employ the custodian of the machines to assist the municipal clerk in the job of preparing the machines for the election.

Not later than 9:00 a.m. on the day before the election, the clerk, in the presence of two watchers, must commence the inspection and sealing of the voting machines to be used in the election. Candidates or their representatives have a right to see that the machines are set up so that votes cast by turning the keys opposite their names register the proper vote on the candidate counters assigned to them. The candidate counters are then set on zero and sealed and locked, not to be opened again until after the election when the election officials take the readings for their certificates of results. Section 11-46-33, Code of Alabama 1975.

Electronic voting machines must also be tested. Rule 307-X-1-.04 provides that the probate judge (municipal clerk in municipal elections) must have each precinct ballot counter tested to ensure that it accurately counts votes cast for all offices and measures on the ballot before each election in which the counter will be used. The precinct counter, remember, is one that tabulates marksense paper ballots at the polling place. The testing is open to the public and notice of the time and place of the test must be given. The test must be conducted as close as practicable to the date of the election and not more than 14 days before the election of the Code and Rule 307-X-1-.04(1).⁴

Under the rule, party chairmen may be present during the test. Because municipal elections are non-partisan, this rule probably would allow each candidate to be present or have a representative present during the test. Collectively, these individuals and the clerk must prepare a sufficient number of test ballots that are clearly marked as test ballots. The ballots must be voted so that each candidate or measure receives at least two votes. Additionally, at least one ballot must be an over-vote; that is, the ballot must be marked as an attempt to vote for more than the allowed number of candidates in one office. The test ballots may be validated by hand count or by a piece of equipment that has correctly tabulated the original test ballots. The ballots then must be hand counted and the results recorded and retained. (NOTE: If the manufacturer prescribes an alternative test method, the alternate procedure may be substituted for this test, provided that written approval is obtained from the Electronic Voting Committee.)

As an alternative to the public testing of all precinct counters, the following procedure may be used. The clerk or designee shall test each counter prior to the public test and correct the causes of any discrepancies. Representatives of candidates participating in the election may attend this test. The test materials and printed output of this test shall be attached to the counters, which shall subsequently be assembled for the public test. At the public test a sample of counters shall be selected for retesting by drawing lots. At least one counter shall be selected and tested for each ballot configuration. Each candidate in a primary and each party in a general election may select an additional machine representing each ballot type for public testing. If any precinct counter fails to produce a completely accurate count, all counters using the same ballot configuration shall be tested. Rule 307-X-1-.04(4).

The causes of any discrepancies must be corrected before the equipment is sealed and certified ready for the election. Once any required corrections are made and each piece of equipment correctly tabulates the results, the machine must be cleared, setting all counters to zero, and making the machine ready for use on election day. The machine is then sealed by the clerk or representative and is certified ready for use. Rule 307-X-1-.04(5).

Memory packs and memory pack tabulators that will be used during the election must also be tested along with the precinct counters. The data from each memory pack must be read into the tabulator, and the total must then be compared with a total that is hand tabulated from the printed output of the precinct counters for at least one city-wide office, which shall be selected at the time of the test by a random procedure. Candidates for other offices, or their representatives, may audit the test totals for their office. Any discrepancies must be corrected before the equipment is certified and sealed. Rule 307-X-1-.04(6).

After testing all materials (including the results of the hand count, the test ballots, and the printed output from the counters) must be sealed in a box or envelope, which shall be maintained unopened for use in the event of an election contest. The rule provides that this sealed box or envelope is to be kept by the sheriff. The sheriff, though, is not involved in municipal elections. Therefore, it seems that this information should be kept by someone with official election duties. In most cases, the League feels that this should be the municipal clerk. Rule 307-X-1-.04(7).

Election Day

August 28, 2012

Election Day – August 28, 2012

On election day, it is the duty of the clerk to see that ballots, boxes and supplies are provided at each polling place, or if machines are used, that proper supplies are provided at each polling place. Section 11-46-32, Code of Alabama 1975.

Prior to the date when the mayor gives notice of the election, the municipal governing body shall, by ordinance, determine and establish the hours which the polls will be open for voting. Every polling location must be open for voting at 7:00 a.m. and remain open for voting until 7:00 p.m. All polling places located in the Eastern Time Zone *may* open and close pursuant to Eastern Time. Section 11-46-28, Code of Alabama 1975. If a municipality chooses to change the time for the opening and closing of the polls to Eastern Time, the League is of the opinion that such a change would require preclearance from the United States Department of Justice at least 60 days prior to the election.

The election officers at voting places shall meet, at the respective places of holding elections for which they have been appointed, 30 minutes before the hour and shall open the polls at 7:00 a.m. and keep them open without adjournment or recess until 7:00 p.m. and no longer.

Where electronic devices are used, Rules 307-X-1-.11 and -.17 provide that all poll officials are to report to the voting place at least 30 minutes before the polls open. Where precinct counters are used, each counter must be tested according to the manufacturer's instructions to ensure that all vote counters are set at zero and to prepare the equipment for voting. Candidates may have two watchers present to observe the test. Errors must be reported to the custodian and no votes shall be tabulated on the machine until it is repaired or substituted. Once the malfunctioning equipment is repaired or replaced and the test is satisfactorily completed, the inspector, the ballot clerk and any watcher present must sign a certificate to that effect. Although Rule 307-X-1-.11 doesn't specifically state this, presumably the rule intends that once the test is properly completed, the equipment may be returned to service.

Despite the malfunction, until the machine is repaired—or if it cannot be repaired or replaced—the polls must still open and voting shall proceed. In this case, Rule 307-X-1-.17 (5) provides that where precinct ballot counters are used, voters are to deposit their ballots in a ballot box or other suitable container. The inspector shall notify the custodian, who shall attempt to repair or replace the equipment, and the municipal clerk, who shall maintain a public list of all precincts where there has been an equipment failure. If the counter cannot be repaired, when the polls close, the ballot box shall be opened and the ballots should be counted by hand, determining the voter's choice as set out below, or by feeding the ballots into an operable precinct ballot counter. Poll watchers and members of the media may observe this process.

Assuming that there is no malfunction, where vote recorders⁵ are used, the poll officials shall compare the ballot pages of each recorder with a sample ballot for that precinct to determine that they agree. The officials must also vote every position of a specially marked demonstration ballot and compare the punches with the pages of the recorder to determine that they agree. No recorder may be used in a precinct until it has been properly verified. A vote recorder is a device into which a ballot card is inserted and which is used by the voter to punch holes in the card to record his or her vote. Rule 307-X-1-.11(2).

The clerk and other verification officials must certify in writing that the boxes were empty, locked and sealed prior to the election and prior to the box being delivered to the inspectors at the respective precincts. This certificate must state the date, time and place that the boxes were inspected, locked and sealed, and must include the seal numbers that are used on the boxes. The original of this statement is part of the permanent election file. The rule requires that in state and county elections, the original must be kept by the probate judge. A duplicate copy of the statement is filed with the sheriff. Rule 307-X-1-.11(4). In municipal elections, the original should be on file with the municipal clerk. It is unclear whether a duplicate is necessary in municipal elections. The safest course, though, would be for the council to designate someone in the city or town to retain a duplicate copy. Municipalities may want to contact the machine supplier to see how this has been done in previous elections.

Once the boxes are verified as empty, they must be locked and sealed. To avoid allegations of tampering, this should take place immediately after the verification, but must occur before the boxes are issued to the inspectors at the various precincts. Rule 307-X-1-.11(3) provides that the locks may use either a key or a combination, and the seals may be either plastic, metal or any other material, as long as they are numbered. The ballot box must be designed so that no ballots can be removed with removing the lock. The numbered seal is placed on the insertion door of the box so that no ballots can be inserted into the box without removing the seal.

The locking and sealing of the boxes is open to the public. The clerk must notify the public when this will occur. Poll watchers may, of course, attend.

Before the polls open, the inspector at each precinct, along with another election official, shall remove the seal from the box and verify that the box is empty. If the seal has been broken or the box contains any material, the inspector must immediately call the municipal clerk⁶ before opening the polls. If the numbered seal is intact, it is placed in an envelope and the inspector then completes the "Ballot Box Inspection Report." This report states that the box was empty prior to opening the polls and is signed by the inspector and the other polling officials at the precinct. **Under no circumstances should the ballot box be opened at the precinct.** Rule 307-X-1-.11(4).

In any hand count of an electronic voting device, Rule 307-X-1-.17(4) provides that polling officials must review each ballot to determine the elector's choice for each office to be filled. This determination shall be made pursuant to the standards set forth below. Once the voter's choice is determined, the polling officials shall manually add the elector's votes to the total votes for each candidate for the offices to be filled.

To determine the voter's choice, poll officials must consider the ballot as a whole, taking into consideration the manner in which the voter marked the ballot, when determining the voter's choice. Only choices marked consistently are to be counted. "Marked consistently" refers specifically to the manner in which the voter has expressed his or her choice, such as the method of marking the ballot. If the poll officials cannot determine the manner in which the voter marked the ballot, the ballot is rejected in its entirety. Rule 307-X-1-.17(4).

Any qualified elector entitled to vote at such polling place who has identified himself with the election officials at such polling place by closing time shall be

permitted to vote. Section 17-9-30, Code of Alabama, 1975 requires that each elector provide valid identification to an election official before being permitted to vote. Any of the following forms of identification shall be allowed:

1. A current valid photo identification;
2. A copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.

The term “other government document” may include but is not limited to, any of the following:

- a. A valid identification card issued by a branch, department, agency, or entity of the State of Alabama, any other state, or the United States authorized by law to issue personal identification;
- b. A valid United States Passport;
- c. A valid Alabama hunting or fishing license;
- d. A valid Alabama permit to carry a pistol or revolver;
- e. A valid pilot’s license issued by the Federal Aviation Administration or other authorized agency of the United States;
- f. A valid United States Military identification card;
- g. A certified copy of the elector’s birth certificate;
- h. A valid Social Security card;
- i. Certified naturalization documentation;
- j. A certified copy of court records showing adoption or name change;
- k. A valid Medicaid card, Medicare card, or an Electronic Benefits Transfer card (formerly referred to as a “food stamp card”).

In state and county elections, an individual who does not have identification in his or her possession at the polls shall be permitted to vote if the individual is positively identified by two election officials as a voter on the poll list who is eligible to vote and the election official signs the voters list by where the voter signs. For the 2012 municipal elections, this provision DOES NOT apply⁷. An individual who is unable to meet the identification requirements listed above shall be permitted to vote by provisional ballot. Municipal elections officials will need to be instructed on this difference between state, county and federal elections and municipal elections. Many of the officials used in municipal elections also serve in these other elections so they will need to be trained on this distinction.

Upon opening the polls, the election officials are required to subscribe to an oath to conduct the election according to law. Section 11-46-28, Code of Alabama 1975.

Central Daylight Savings Time governs the poll hours at municipal elections in Alabama. *Quarterly Report of the Attorney General*, Vol. 132, pages 28 and 32. Note, though, that Section 11-46-28, Code of Alabama 1975, allows a municipality operating on Eastern Time Zone to hold its elections on Eastern Time.

According to a November 3, 1994 letter from the Secretary of State, the Justice Department has ruled that videotaping at a polling place may intimidate voters, and may constitute a violation of the Voting Rights Act.

The Electronic Rules provide that where electronic devices are used, an elector’s ballot must be counted for each office to be filled except for each office where it is impossible to determine the elector’s choice for that office. The inability to determine the voter’s choice for any particular office to be filled shall not cause the rejection of votes for other offices where the elector’s choice may be determined.

No ballot shall be rejected for any technical error that does not make it impossible to determine the elector's choice. Rule 307-X-1-.17(1)

The counters shall be programmed to return the ballot to the elector if the elector has marked more names than there are persons to be elected to a particular office. The elector shall be provided the opportunity to review his or her ballot and to correct the ballot. Rule 307-x-1-.17(2)(a).

If the elector chooses to correct the ballot, the original ballot shall be spoiled by a poll worker and the elector shall be issued a new, blank ballot. Rule 307-X-1-.17(2)(b). If the elector chooses not to correct the ballot, the elector shall deposit the ballot into a ballot box or other suitable container. After the close of the polls, polling officials shall count the ballot by hand, determining the voter's choice as set out above. Poll watchers of opposing interests and members of the media, if any are present, shall be permitted to witness this process. Rule 307-x-1-.17(2)(c).

Any ballot returned by the machine in a post-election recount must be counted by hand. The results of this hand count shall be added to the certificate of results, and the ballots shall be bound separately and returned with the other ballots. If a ballot is defective and the counter is unable to accept or read the ballot, the ballot shall be spoiled and the elector shall be issued a new ballot. Poll watchers of opposing interests and members of the media, if any are present, shall be permitted to witness this process. Section 17-16-21(b), Code of Alabama 1975.

Once the polls close and the records are sealed, the poll officials must lock the equipment against further voting by following the manufacturer's instructions. Section 17-16-21(c), Code of Alabama 1975.

According to Rule 307-X-1-.18(1), the election officials must also obtain a printout of the votes on each question and office. The first printout shall be torn from the equipment so that all printing during the day, from the initial test before the polls open through the first printout of results shall be on one continuous sheet or roll of paper. Then, other printouts of the results shall be produced and torn out. To each certificate shall be added, if it is not automatically printed, the following information:

1. The name of the precinct;
2. The date;
3. The identifying number (serial number) of the tabulating equipment;
4. The value of the public counter (indicating the number of votes cast);
5. The name of each candidate next to the total number of votes cast for that candidate;
6. The number and short title of each proposition next to the number of votes for and against that proposition.

According to Rule 307-x-1-.19(1), after completing and signing the certificate of result, the election officials shall seal the ballots, certificates, and other records as follows:

1. The list of registered voters, the record of assisted voters, the ballot accounting certificate and the first copy of the certificates of result are placed in an envelope addressed to the municipal clerk, who shall keep them for public inspection and/or an election contest, and the list of registered voters or a copy thereof may be used by the board of registrars in updating their records

2. All used marksense ballots (both voted and spoiled), all challenged ballots, one copy of the certificate of result, the poll list (which is already sealed in a separate envelope), one copy of each challenged voter's affidavit and each witness' affidavit, and all requests for assistance in voting shall be placed in a large envelope or box, which is sealed and signed across the seal by all inspectors. The inspector shall retain possession of the memory pack until it is read into the tabulator.

Each envelope or box shall be sealed and signed across the seal by the inspectors. On the outside of each envelope the inspectors shall record the precinct or district and the date of the election. The envelopes or boxes shall remain unopened and be returned by the inspector or returning officer immediately in the manner provided for by law. These records are to be retained in accordance with the records retention schedule adopted by the State Records Commission.

The municipal clerk may order a post-election retest of any electronic machine using the same procedures prescribed for the pre-election test. If the retest shows a malfunction or error in the equipment or its program, the clerk must order a recount as provided below. In this circumstance, the municipality pays the cost of the recount.

Machine Breakdown

Machine Breakdown

Voting machines that break down during an election should be repaired or a substitute obtained. If this cannot be accomplished, paper ballots should be used. AGO 1980-458 (to the Hon. James M. Oliver, July 10, 1980). Electronic voting machines that break down during the election should be handled as discussed above in the section titled "Election Day."

Proximity to the Polling Place

Proximity to the Polling Place

The marshal, chief of police, or other chief law enforcement officer of the municipality shall preserve good order at all municipal elections held in the city or town, but no more than one officer shall be allowed to enter the polling place at the same time.

Except as electors are admitted to vote and persons to assist them and except the above-mentioned law enforcement officers, the election officers and the watchers, no person shall be permitted within 30 feet of the polling place. Section 11-46-28(i), Code of Alabama 1975. Regulations of this type are constitutional. *Burson v. Freeman*, 504 US 191 (1992).

The 30-foot distance shall be measured from the door of the building in which the voting machines or ballot boxes are located. AGO 1982-113 (to the Hon. Don Siegelman, December 10, 1981). Children under the age of 18 may accompany parents into the voting booth. AGO 1980-414 (to the Hon. Don Siegelman, June 11, 1980). All citizens are allowed to photograph or videotape general election activities in a polling place as long as they remain 30 feet outside the polling place and do not photograph an elector marking their ballot. After the polls close, at least one member of the news media must be allowed, if requested, to enter the polling place and to photograph or videotape the vote tabulation process. However, Section 17-9-50, Code of Alabama 1975, prohibits any person from taking photographs or videotaping inside of or within 30 feet of a polling place while voting is in progress. AGO 2000-160.

Voter Assistance

Voter Assistance

The procedures to be followed relating to the assistance of disabled and illiterate voters are set out in Section 11-46-51, Code of Alabama 1975. Note that procedures similar to these in the general election laws of Alabama (formerly Section 17-8-29, Code of Alabama 1975) were declared unconstitutional by a federal district court in *Harris v. Siegelman*, 700 F. Supp. 1083 (M.D. Ala. 1988). Pursuant to this court decision, any voter may obtain assistance from any individual, except the voter's employer or union representative. Voting assistance is allowed provided that the voter and the person rendering assistance sign the proper column on the voter's list. The provisions outlined in the case have now been codified in Section 17-9-13 of the Code of Alabama 1975. To date, Section 11-46-51 has not been amended to reflect the changes made as a result of the *Harris* case.

A voter should be allowed to choose any person he desires to assist him in voting, even though the person chosen has assisted other voters in the election. There is no prohibition against a candidate or a poll watcher assisting a voter in the preparation of his ballot.

Watchers

Watchers

Each candidate may name a watcher for every polling place. A polling place is defined as a location for ballot boxes or voting machines, regardless of the number thereof. Section 11-46-35(a), Code of Alabama 1975.

The watcher must present his or her appointment in writing and be sworn faithfully to observe the rule of law prescribed for the conduct of elections. After being sworn, watchers shall be permitted to be present at the place where ballots are cast from the time the polls are opened until the ballots are counted and certificates of the result of the election are duly signed by the proper election officers. The watcher's function is to observe the activities at the polling place. Watchers may not disturb voters, attempt to influence voters, campaign, or display or wear any campaign material or buttons while inside any polling place. Section 11-46-35(b), Code of Alabama 1975.

When paper ballots are used at the election, the watcher shall be permitted to see the ballots as they are called during the count. Section 11-46-35(c), Code of Alabama 1975.

When voting machines are used, the watchers shall, upon presentation of their appointment in writing, be permitted to be present when the machines are being prepared and sealed for use at the election. On election morning the watcher may witness the breaking of the seal on the envelope containing the key or keys to the voting machines, and, when the machine has been unlocked and the counters exposed, he or she shall carefully examine each and every counter to see that it registers zero. He or she shall also examine the ballots and satisfy himself or herself that they are in the proper places on the machine and that the machine is properly placed. The watcher must also sign a certificate setting out the above facts, as required by subsection (c) of Section 11-46-47. He or she may also be present and witness the opening of the machine after the polls have closed, the reading and tabulating of the result of the election as recorded on the voting machine and the resealing of the machine. Section 11-46-35(d), Code of Alabama, 1975.

PROVISIONAL BALLOTS

The provisional voting requirements are located in 17-10-1 through 17-10-3, Code of Alabama 1975. A voter is required to cast a provisional ballot when:

- (1) The name of the individual does not appear on the official list of eligible voters for the precinct or polling place in which the individual seeks to vote and the individual's registration cannot be verified while at the polling place by the registrar, deputy registrar, or a member of the canvassing board. See also §11-46-39 which provides that if a person's name does not appear on the list of qualified voters for a ward or box, they person may not vote except by provisional ballot.
- (2) An inspector has knowledge that the individual is not entitled to vote at that precinct and challenges the individual.
- (3) The individual is required to comply with the voter Identification provisions of Section 17-10-1, Code of Alabama 1975, but is unable to do so.
- (4) A federal or state court order extends the time for closing the polls beyond that established by state law and the individual votes during the extended period of time. Notwithstanding any other provision of state law, where provisional ballots are cast pursuant to a federal or state court order extending the time for closing the polls beyond that established by state law, the provisional ballots shall be segregated from other provisional ballots into a separate sealed container for such purpose and shall be counted, tabulated, and canvassed only pursuant to the order of a court having proper jurisdiction.

The Alabama Secretary of State's website provides an excellent discussion of the provisional ballot process at: <http://www.sos.state.al.us/downloads/election/hava/ProvisionalInstructionBooklet.pdf>.

Please note that **this overview is not an authoritative statement of the law, nor is it a substitute for the Code of Alabama or other legal materials. This outline seeks to serve only as a general guide and training manual for the implementation of provisional voting in Alabama.**

Additionally, please note that the League has edited the procedure from the information on the Secretary of State's website to reflect changes needed for municipal elections.

I. Provisional Ballot Instructions for Poll Workers

When a person shows up to vote on Election Day:

- 1) Ask the person for his or her name.
- 2) Look on your list of registered voters to see if his or her name is on the list.
- 3) **If the person's name is on your list**, follow normal voting procedures.
- 4) **If his or her name is marked as "inactive"**,
 - a. have this person fill out a voter update form before letting him or her vote.
 - b. check the "update" box on the form.
- 5) **If you cannot find the person's name on your list**,
 - a. take the person to the provisional ballot officer, and
 - b. inform the person that because his or her name is not on the list of registered voters, he/she will receive help from another poll official.
- 6) **If his or her name is marked off because he or she applied for an absentee ballot**,
 - a. take this person to the provisional ballot officer and,
 - b. tell the provisional ballot officer that the person is marked off for having applied for an absentee ballot.
- 7) **If the person does not provide voter identification as required by law**,
 - a. take this person to the provisional ballot officer and,
 - b. tell the provisional ballot officer that the person did not provide voter identification.
- 8) **If an inspector challenges the person's right to vote in the precinct**, the inspector will take the person to the provisional ballot officer and will fill out the inspector challenge statement.

II. Instructions for the Provisional Ballot Officer

When a poll worker brings a person to you, do the following:

- 1) Explain the provisional ballot process to the person and to the person's assistant, if the person has requested assistance.
- 2) Find out why the person was identified as a potential provisional voter. Be familiar with this list of reasons that trigger provisional voting:
 - a. **The person's name is not on the voter list.**
 - b. **The person's name was marked off the voter list because he or she applied for an absentee ballot.**
 - c. **The person did not provide voter identification, as required by law.**
 - d. **The person's right to vote is being challenged by an inspector.**
- 3) If the person's name is not found on the voter list, call the board of registrars to find out if the person is eligible to vote.
- 4) If the board of registrars confirms that the person is eligible to vote, do the following:
 - a. write the name of the Registrar who confirmed that the person can vote in your precinct, in the shaded space on the back of the update form.
 - b. have the person fill out an update form.
 - c. make sure that the verification box is checked on the update form.
 - d. direct the person to a poll worker so that he or she can vote a regular ballot.
 - e. remind the person to give the update form to the poll worker.
 - f. if you are unable to confirm that the person is eligible to vote, go to #5.
- 5) **When a person's eligibility to vote cannot be verified,**
 - a. explain to the person and the person's assistant, if he/she has an assistant, that he/she has a legal right to vote a provisional ballot.
 - b. provide the person with oral and written instructions about provisional voting.
- 6) **If the person wants to vote a provisional ballot, secure the proper roster, and**
 - a. have the person sign or mark the provisional ballot roster.
 - b. ask the person or the person's assistant to fill in all the requested information.
- 7) Secure the provisional verification envelope, then
 - a. write on the provisional verification envelope the line number from the provisional ballot roster.
 - b. write the election date, precinct number and ballot style on the provisional verification envelope.
 - c. check the correct box on the provisional verification envelope to mark the reason why the person is casting a provisional ballot.
 - d. After you have completed your portion of the provisional verification envelope,
 - i. explain to the person and the person's assistant, if he/she has requested an assistant, that a sworn statement must be signed by the voter
 - ii. show the person the sworn statement in the shaded area of the provisional verification envelope.
 - iii. have the person or the person's assistant complete the requested information on the sworn statement.
 - iv. The person must sign or mark the "signature line."
 - e. direct the person to fill out the voter update form.
 - f. Make sure the "provisional" box is checked on the form.
 - g. Place the completed form in the provisional verification envelope.
- 8) **If the person is voting a provisional ballot because of an inspector's challenge,**
 - a. separate the multi-part challenge statement.
 - b. place the original statement in the provisional ballot box.
 - c. place one copy in the provisional verification envelope.
 - d. give one copy to the person.
- 9) Before giving the person a provisional ballot, cut or tear off the upper left corner of the ballot.
- 10) Give the person the provisional ballot and direct him/her to the designated voting area for provisional voters.
- 11) Direct the person to place his/her completed ballot in the provisional ballot inner envelope and seal the envelope.
- 12) Direct the person to place the provisional ballot inner envelope into the provisional ballot outer envelope and seal the envelope. You will need to write the person's name and roster number in the designated areas on this envelope.
- 13) Direct the person to place the provisional ballot outer envelope into the provisional ballot box.

When the polls close, do the following:

- 1) Collect the provisional verification envelopes, the provisional ballot rosters, and any other provisional ballot forms or

materials; then place them in a precinct verification envelope (return envelope). The precinct verification envelope shall be addressed to the Board of Registrars.

- 2) Before sealing the precinct envelope, count the number of provisional voters listed on the roster(s). Write, on the sealed provisional ballot box, the total number of provisional voters listed on the provisional ballot roster(s).
- 3) Place the provisional ballot roster(s) inside the precinct verification envelope and seal the envelope.
- 4) Give the municipal clerk the provisional verification envelope.
- 5) Give the municipal clerk the sealed provisional ballot box.

III. Provisional Ballot Instructions for the Board of Registrars

The following information regarding the procedure followed by the Board is provided for informational purposes. Municipal officials (other than clerk in delivering and receiving the provision ballots from the Board) are not directly involved in the actions of the Board of Registrars.

NOTE: In municipal elections, the Board of Registrars must perform an additional duty that is not necessary in other elections: When verifying a provisional ballot that was cast because the individual's name does not appear on the official list of eligible voters for the polling place in which the individual seeks to vote, the board of registrars must verify that the voter is registered to vote at an address located within the municipal corporate limits or district within which he or she seeks to vote, rather than that the voter is just registered in the county.

Municipalities will have to cooperate with the Board to accomplish this.

FOR MUNICIPALITIES LOCATED IN MULTIPLE COUNTIES: For municipalities located in more than one county, provisional ballots must be accounted for and returned separately to the proper county for verification. If you are located in more than one county, make sure you work with your election supplier to additional envelopes and supplies to cover multiple counties.

Each Registrar shall do the following on Election Day:

1. Be in the office when the polls open at 7:00 A.M. to receive calls from election officials. Remain in the office until 7:00 P.M. and do not close the office on Election Day.
2. Only Registrars should answer questions from polling officials.
3. When the provisional ballot officer calls,
 - a. look up the person's name on the statewide voters list.
 - b. check other records (such as update forms and registration applications on file)
 - c. determine if the person is registered to vote.
 - d. write down the telephone number of the provisional ballot officer because you might need to call him/her back with the requested information.
4. **If the person's name is found**, verify his/her registration to the provisional ballot officer and state the precinct in which he/she is registered. Accuracy is important! The provisional ballot officer will have to write your name on the update form.
5. **If the person's name is not found**, report that finding to the provisional ballot officer.

The city clerk will deliver the precinct verification envelopes to your office no later than noon on the day following the election. You may also receive provisional verification envelopes from the Absentee Election Manager.

During the week after the election, each Registrar shall do the following:

1. Upon receiving the materials from each precinct, you must tally the total number of provisional verification envelopes.
2. If the roster list matches the number of provisional ballots within the precinct verification envelope, you must begin updating the statewide voters list with the information from the update forms. Go to #5.
3. If the roster list does not match the number of provisional ballots within the precinct verification envelope, you must notify the municipal clerk and request assistance in resolving the difference.

4. The clerk and each member of the County Board of Registrars shall sign a written statement if the two are unable to resolve the difference. This statement must be included in the container holding the records of election.
5. The day after the election, you must examine the provisional verification envelopes and
 - a. identify the envelopes that were completed as a result of the provisional ballot being cast due to challenge statement from the inspector.
 - b. mail a written notice statement to each inspector-challenged provisional voter and give him/her the opportunity to respond.
6. Look inside each provisional verification envelope for an update card. Use the card in the verification process. Some envelopes may contain challenge statements from inspectors.
7. Use reasonable efforts to determine whether or not each provisional ballot should be counted. You should use the space on the back of the provisional verification envelope to make notations. Written documentation is very important.
8. Make a final determination whether a ballot should or should not be counted. The finding must be written plainly on the provisional verification envelope and all 3 registrars should sign in the designated “middle” area.
9. Deliver the findings to the municipal clerk no later than noon seven days after the election.
10. Prior to this delivery, all findings must remain confidential.
11. While entering the voter histories into the statewide voters list; enter the names of the voters who cast provisional ballots, whether the ballot was or was not counted, and the reason each was or was not counted.
12. The findings as to whether the provisional ballot was or was not counted shall be made available to a requesting voter. The identity of the voter should be confirmed before releasing such information.

IV. Instructions for the Absentee Election Manager

Prior to Election Day, the Absentee Election Manager shall do the following:

- 1) Review the absentee ballot application and determine the applicant’s name.
- 2) Look on your list of registered voters to see if his or her name is on the list at the address provided on the application.
- 3) **If the person’s name is on your list at the address provided on the application**, follow normal procedures for issuing an absentee ballot.
- 4) **If you cannot find the person’s name on your list at the address provided on the application**, mark the word “Provisional” on the affidavit envelope (“second envelope”) before providing the provisional ballot and other provisional materials to the applicant.
- 5) With the absentee ballot, enclose a written explanation as to why the ballot is a provisional ballot, with instructions for completing the provisional ballot and other provisional forms including⁸:
 - a. Instructions for how the voter should complete the voter re-identification form and sworn statement.
 - b. A description of the procedure followed by the board of registrars in verifying and certifying provisional ballots.
 - c. A voter re-identification form.
 - d. The sworn statement of the provisional voter.
 - e. A written explanation of how the voter can find out whether or not his/her ballot was counted and, if not counted, why it was not counted.
- 6) When a provisional absentee ballot and related materials are returned by the voter,
 - a. Secure the ballot by placing the ballot, contained in the affidavit envelope, in a provisional ballot return envelope.
 - b. Complete a provisional verification envelope for absentee voters and enclose the voter’s update card in the envelope.
 - c. Always check to see if the voter has enclosed a copy of one of the acceptable forms of identification. If the voter has not provided identification, contact the voter with written instructions regarding identification.

Note: The following written notice should be sent to all absentee voters who returned a ballot without identification:

Attention Absentee Voter

Your absentee ballot has been received by the Absentee Election Manager, but proper voter identification has not been provided. Please read the following information and take the required action to ensure your vote will be counted.

1. Unless proper identification is provided to the Absentee Election Manager by 5:00 p.m. on the Friday before the election, your ballot will become a Provisional Ballot.
2. In the event your ballot becomes a Provisional Ballot due to lack of identification, proper identification, including your

address and telephone information, must be provided to the Board of Registrars no later than 5:00 p.m. on the Friday following the election.

3. In the event you fail to provide proper identification to the Board of Registrars by 5:00 p.m. on the Friday following the election, your ballot will not be counted.

4. Anyone who casts a provisional Ballot will be able to determine whether their vote was counted and, if the vote was not counted, the reason that the vote was not counted. The Board of Registrars, after verifying the identity of a Provisional voter, shall make available at the request of the voter, the findings of the Board of Registrars as to whether the vote was counted and, if not, the reason why. This may be accomplished by calling the Board of Registrars at -----. There will no charge for obtaining this information and the verification of this information will be handled in a confidential manner.

On Election Day, the Absentee Election Manager shall do the following:

- 1) Deliver the provisional absentee ballots, provisional verification envelopes, and the regular absentee ballots to the election officials responsible for counting the absentee ballots.
- 2) If an absentee voter is challenged by an inspector or clerk, you will:
 - a. receive copies of the challenge form and
 - b. send by first class mail, to the voter at the mailing address provided on the provisional voter's application for an absentee ballot:
 - i. one copy of the challenge statement of the inspector, and
 - ii. a written explanation of the procedure used by the board of registrars in verifying and certifying provisional ballots, and
 - iii. an address and telephone number by which the provisional voter may respond, and
 - iv. a written explanation of how the voter can find out whether or not his/her ballot was counted and, if not counted, why it was not counted.

V. Recommendations for the City Clerk

On Election Day, the city clerk shall do the following:

- 1) Be available during the day to take calls from poll workers to verify the eligibility of persons to vote at polling places.
- 2) Retrieve the precinct verification envelopes from each precinct and deliver the envelopes to the Board of Registrars by noon on the following day.
- 3) Retrieve the sealed provisional ballot box and secure the boxes until the day of canvassing.

On the seventh day after Election Day:

- 1) At noon, meet with the municipal governing body to canvas the election results, including the provisional ballots.
- 2) Review each provisional ballot and the findings of the board of registrars as to whether each ballot should be counted.
- 3) Count the ballots.
- 4) Post the results of the provisional precinct in the city hall.

NOTE: The League urges municipal clerks, or another municipal official to inform the local Board of Registrars that in municipal elections, the Board of Registrars must perform an additional duty that is not necessary in other elections: When verifying a provisional ballot that was cast because the individual's name does not appear on the official list of eligible voters for the polling place in which the individual seeks to vote, the board of registrars must verify that the voter is registered to vote at an address located within the municipal corporate limits or district within which he or she seeks to vote rather than that the voter is just registered in the county.

Municipalities will have to cooperate with the Board to accomplish this.

Absentee Elections Manager

Absentee Elections Manager

Section 11-46-57, Code of Alabama 1975, provides that the town clerk, city clerk or other officer performing the duties of the clerk, as the case may be, shall perform the duties of absentee elections manager as provided in Chapter 11 of Title 17, Code of Alabama 1975. For performing these duties, the municipal governing body may compensate the clerk, or other officer performing the duties of the clerk, in whatever manner and amount it deems appropriate.

Absentee Ballots

Absentee Ballots

Sections 17-11-1 through 17-11-19, 17-9-51, and 17-17-24 through 17-17-27, Code of Alabama 1975, govern absentee voting in all primary, general, special and municipal elections in the State of Alabama. This law specifically supersedes all other laws relating to absentee voting.

Section 17-11-3, Code of Alabama 1975, provides that any qualified elector of this state may apply for and vote an absentee ballot by mail or by hand delivery provided he or she applies not less than five (5) days prior to the election and if the applicant meets one of the following requirements:

“(1) The person will be out of the municipality on election day.

“(2) The person has any physical illness or infirmity which prevents his or her attendance at the polls, whether he or she is within or without the county on the day of the election.

“(3) The person works on a shift which has at least 10 hours which coincide with the hours the polls are open at his or her regular polling place.

“(4) The person is enrolled as a student at an educational institution located outside the county of his or her personal residence attendance at which prevents his or her attendance at the polls.

“(5) The person is a member of, or spouse or dependent of a member of, the armed forces of the United States or is similarly qualified to vote absentee pursuant to the federal Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff.

“(6) The person has been appointed as an election officer or named as a poll watcher at a polling place other than his or her regular polling place.”

Also, any registered elector who requires emergency treatment by a licensed physician within five days of an election may apply for an emergency absentee ballot for the election and may vote by returning the ballot no later than 12:00 noon on the day the election is held. The attendant physician shall describe and certify the circumstances as constituting an emergency on a special form designed by the Secretary of State and provided by his or her office to local absentee election managers. The special form shall be attached to the application. Section 17-11-3, Code of Alabama 1975.

In addition, any registered elector may vote by an emergency absentee ballot if he or she is required by his or her employer under unforeseen circumstances to be out of the county on an emergency business trip on election day. Under such circumstances, the applicant shall apply for an emergency absentee ballot at the office of the absentee election manager no later than the close of the business day

one day prior to the election. The applicant shall complete and file an application form designed by the Secretary of State for emergency absentee voters. The form shall contain an affidavit which the applicant shall sign or swear acknowledging that he or she was not aware of the out of county business requirement prior to five days before the election. An applicant who meets these requirements may vote by emergency absentee ballot. After voting the ballot at the office of the absentee election manager, the voter shall hand the ballot to the manager in person. Section 17-11-3, Code of Alabama 1975.

Persons detained in a detention facility in Alabama who are qualified to vote may apply for and cast an absentee ballot pursuant to the provision that allows a person who has a physical illness or infirmity that prevents his or her attendance at the polls on election day to vote absentee. AGO 2001-052.

An applicant who is a member of the United States Armed Forces, including members of the Alabama National Guard and Reserves, or an applicant who is the spouse of any member of the armed forces may make application for an absentee ballot by filling out the federal postcard application form authorized by the Federal Voting Assistance Act of 1955. Section 17-11-3, Code of Alabama 1975.

National Guardsmen on summer camp may vote absentee. AGO to the Hon. Frances Weathers, July 28, 1972.

In all municipal elections held at a time different from a primary or general election, the duties with reference to the handling of absentee ballots shall be performed by the municipal clerk. If the clerk is a candidate in the upcoming election, the municipal governing body shall appoint a qualified elector of the municipality to handle the duties of the clerk with regard to absentee ballots. Section 17-11-15, Code of Alabama 1975.

A person who desires to vote absentee may vote absentee provided he makes application in writing not less than five days prior to the election to the municipal clerk or the person designated to serve instead of the clerk. Section 17-11-3, Code of Alabama 1975.

The application shall be in a form prescribed by the Secretary of State and shall be used throughout the state. Notwithstanding the foregoing, handwritten applications can also be accepted at any time prior to the five-day deadline. The application shall contain sufficient information to identify the applicant. The application must contain the following: the applicant's name, residence address, or such other information necessary to verify that such applicant is a registered voter.

Application forms shall have printed thereon all such penalties for violation of the absentee ballot laws. Section 17-11-4, Code of Alabama 1975.

A federal Postcard Application for Registration and Absentee Ballot may be treated as both an application for registration to vote and as an application for an absentee ballot. AGO 1983-064 (to the Hon. John L. Moore, November 3, 1982).

Any applicant may have assistance in filling out the application, but each application shall be manually signed by the applicant. If the applicant signs by mark, the name of the witness of his or her signature must be signed thereon. The application may be sent to the clerk by U. S. mail or delivered personally. An

application for an emergency absentee ballot may be forwarded to the absentee election manager by the applicant or his or her designee. Section 17-11-4, Code of Alabama 1975.

An application other than an application for an emergency absentee ballot cannot be returned by a person other than the applicant. Section 17-11-4, Code of Alabama 1975.

Separate applications for absentee ballots are required for elections which are more than 30 days apart except as to individuals voting pursuant to the federal Uniformed and Overseas Absentee Voting Act (under UOAVA), 42 U.S.C. 1973ff.⁹ Other voters who wish to receive an absentee ballot for a run-off election must submit a new application for an absentee ballot for that election. AGO 2000-188.

The absentee election manager may not accept multiple applications which are mailed in one envelope. AGO 1982-551 (to the Hon. Don Siegelman, September 10, 1982).

Upon receipt of the application for an absentee ballot, if the applicant's name appears on the list of qualified voters in the election to be held or, if the voter makes an affidavit for a provisional ballot, the absentee election manager shall furnish the absentee ballot to the applicant by forwarding it by U.S. mail to the applicant's or voter's residence address or upon written request of the voter the address where the voter regularly receives mail or by handing the absentee ballot to the voter in person or in the case of emergency voting, his or her designee in person. Section 17-11-5, Code of Alabama 1975.

If the absentee election manager verifies that an applicant for an absentee ballot in a run-off is a duly registered voter entitled to vote by absentee ballot based upon the information provided in the application, an absentee ballot for the run-off election must be mailed to that applicant. AGO 2000-166.

If the absentee election manager has reasonable cause to believe that the applicant has given a fraudulent address on the application for the absentee ballot, the election manager shall turn over the ballot application to the district attorney for any action which may be necessary. The absentee election manager further may require additional proof of a voter's eligibility to vote absentee when there is evidence of continuous absentee voting. Section 17-11-5, Code of Alabama 1975.

The absentee election manager shall mail any absentee ballot requested to be mailed no later than the next business day after an application has been received unless the absentee ballots have not been delivered to the absentee election manager. If the absentee ballots have not been delivered, the absentee election manager shall hold all requests until the ballots are delivered and shall then respond by placing ballots in the mail no later than the next business day. Section 17-11-5, Code of Alabama 1975. Absentee ballots must be mailed to a voter's residence address as shown on the voters' list or, if requested by the voter, to an address where the voter regularly receives mail. AGO 2000-156; AGO 2000-193.

If a voter who requested an absentee ballot signs an affidavit stating that the voter did not receive the ballot, the absentee election manager may provide the voter with a replacement absentee ballot. The affidavit and documentation by

the absentee election manager should be attached to the voter's application for an absentee ballot. If one voter casts multiple ballots, none of those ballots should be opened or counted. In addition, a person who applied for an absentee ballot and claims that he did not receive the ballot or that it was lost and who is able to go the polling place on election day is entitled to vote by challenged ballot at the polling place. AGO 2000-244. NOTE: Although this Opinion concerned challenged balloting, because challenged balloting has been repealed, the voter should now be permitted to vote a provisional ballot.

The official list of qualified voters shall be furnished to the absentee election manager at least 35 days before the election. Any supplemental list of qualified electors shall also be provided to the absentee election manager as soon as the list becomes available. Section 17-11-5, Code of Alabama 1975.

The absentee election manager shall underscore on the list of qualified voters the name of the applicant and write immediately beside the applicant's name the word "absentee." See Section 17-11-5, Code of Alabama 1975. On the list of absentee voters, the manager shall also enroll the name, residence and polling place of the applicant and the date the application was received. This list should be posted daily on the regular bulletin board or other public place at city hall. Another copy of the list must be maintained in the clerk's office for 60 days after the election and then filed with the probate judge. Pursuant to Section 17-11-5, a person's name should be stricken from the list of qualified voters when that person applies for an absentee ballot in a municipal election. AGO 2000-231.¹⁰

The absentee election manager shall also, before the polls open at any election, cause to be delivered to the election officers of each polling place, a list showing the name and address of every person whose name appears on the list of qualified voters for such polling place who applied for an absentee ballot in the election. The name of an applicant for absentee ballot shall be identified on the list of qualified voters and that person shall not be allowed to vote again, except by provisional ballot. Section 17-11-5(c), Code of Alabama 1975. See also, §11-46-58, Code of Alabama 1975 (requiring that Chapter 11 of Title 17 be followed with respect to marking, enrolling, posting, and delivering lists showing names and addresses of applicants for absentee ballots.)

The official ballots for absentee voters shall be in the same form as the official regular ballot, except the words "Official Absentee Ballot" shall be printed on them. Section 17-11-6, Code of Alabama 1975.

Each absentee voter shall be furnished with an absentee ballot together with two envelopes for returning the marked ballot. The voter shall also receive instructions for correcting mistakes in completing ballots or obtaining a replacement ballot. One envelope shall be a plain envelope in which the ballot shall be sealed by the voter after he has marked it. The second envelope shall have a voter's affidavit printed on the back substantially in the same form as provided by Section 17-11-7, Code of Alabama 1975. The second envelope shall be large enough to seal the plain envelope containing the ballot inside. Such return mail envelope shall be addressed to the absentee election manager as prescribed in Section 17-11-9, Code of Alabama 1975.

An absentee voter can mark his ballot at any place he desires including the office

of the municipal clerk or other persons designated as absentee ballot manager. AGO to the Hon. D. L. Cockrell, January 21, 1976.

After marking the ballot, the voter shall seal the ballot in the plain envelope provided, place the plain envelope inside the affidavit envelope, complete the affidavit, have his signature on the affidavit witnessed by either a notary public or other officer authorized to acknowledge oaths or by two witnesses 18 years of age or older, and shall forward it by U. S. mail to the clerk or shall hand it to the clerk in person. Section 17-11-9, Code of Alabama 1975. Absentee ballots that are not witnessed or notarized should not be opened or counted. AGO 2000-180.

The clerk should not accept a ballot unless it is mailed to him or hand delivered to him in person by the voter. AGO 1980-551 (to the Hon. James E. Floyd, September 12, 1980).

The Alabama Supreme court has held that absentee ballots retrieved from a United States Post Office without a postmark could not be counted in mayoral election. *Washington v. Hill*, 960 So.2d 643 (Ala. 2006).

The absentee election manager shall determine whether an applicant for an absentee ballot must provide identification or re-identify. For absentee applicants required to produce identification¹¹, a third envelope of different color and sufficient size to enclose the first and second envelopes shall be provided to the applicant along with instructions for including a proper form of identification.

For absentee applicants required to re-identify because they do not appear in the voting place for which they seek to vote but do appear in another voting place within the state voter registration list, the absentee election manager shall provide to the voter a third envelope of different color and sufficient size to enclose the first and second envelopes along with a voter re-identification form, a provisional voter affirmation, and instructions for casting a provisional ballot. Such ballot shall be treated as a provisional ballot and the term "Provisional" shall be marked on the second or affidavit envelope prior to transmitting the ballot to the voter. Applicants for an absentee ballot who do not appear on the state voter registration list shall not be entitled to an absentee ballot. 17-11-9, Code of Alabama 1975.

In *Townson v. Stonicher*, 933 So.2d 1062 (Ala. 2005), the Alabama Supreme Court held that the votes of absentee voters who failed to submit proper identification with their ballots could not be counted.

In *Washington v. Hill*, 960 So.2d 643 (Ala. 2006), the court held that identification requirements of the statute governing absentee ballots would not be set aside to remedy an elections manager's failure to notify voters of their errors in time for remediation.

Upon receipt of the absentee ballot, the absentee election manager shall record its receipt on the absentee list and shall safely keep the ballot without breaking the seal of the affidavit envelope. The absentee election manager is required by Section 17-11-10, Code of Alabama 1975, to safely keep the absentee ballots. The city council does not have the authority to impose specific procedures for the safekeeping of the absentee ballots. AGO 2004-214.

For absentee ballots received by noon on the day of the election, the absentee

election manager shall, beginning at noon, deliver the sealed affidavit envelopes containing absentee ballots to the election officials provided pursuant to Section 17-11-10, Code of Alabama 1975. Such election officials shall call the name of each voter casting an absentee ballot, with poll watchers present as may be provided under the law of Alabama, and shall open each affidavit envelope, review the affidavit to determine if the signature of the voter has been appropriately witnessed. If the witnessing of the signature and the information in the affidavit establish that the voter is entitled to vote by absentee ballot, then the election officials shall certify the findings, open each affidavit envelope, and deposit the plain envelope containing the absentee ballot into a sealed ballot box. The Supreme Court has indicated that an affidavit is in substantial compliance if it contains the voter's signature, two witnesses or a notary, the reasons for voting absentee, and the voter's residence. See, e.g., *Eubanks v. Hale*, 772 So.2d 1113 (Ala. 1999). The absentee ballots shall, upon the closing of the polls, be counted and otherwise handled in all respects as if said absentee voter were present and voting in person. Section 17-11-10, Code of Alabama 1975.

No poll worker or other election official shall open an affidavit envelope if the affidavit printed thereon is unsigned by the voter (and unmarked), and no ballot envelope or ballot therein may be removed or counted. No poll worker or other election official shall open an affidavit envelope if the voter's affidavit signature (or mark) is not witnessed by the signatures of two witnesses or a notary public (or other officer authorized to acknowledge oaths) and no ballot envelope or ballot therein may be removed or counted. Section 17-11-10, Code of Alabama 1975.

In municipalities with populations of 10,000 or more, there shall be appointed three managers, two clerks, and a returning officer, who shall meet when the polls close on election day in the clerk's office for the purpose of receiving, counting and returning the ballots cast by absentee voters. In municipalities with populations of less than 10,000, the governing body *may* appoint additional election officials as provided above. If a municipality chooses to appoint extra officials for this purpose, it must adopt an ordinance at least 6 months prior to the election stating that at the time other election officials are appointed, additional officials will be appointed who shall meet on the day of the election at the place and hour designated by the governing body for the purpose of receiving, counting, and returning the absentee ballots cast at the election. There must be at least three election officials appointed for this purpose. When other officials are appointed, one shall be designated as the inspector.

The returns from the absentee box shall be made as required by law for all other boxes. These election officers must be appointed when the other election officers are appointed by the local governing body pursuant to Section 11-46-27, Code of Alabama 1975. Any person authorized to appoint poll watchers may have a single watcher present at the counting of the absentee ballots. It is unlawful for any election official or other person to publish or make known to anyone the results of the count of absentee votes before the polls close. Section 17-11-11(a), Code of Alabama 1975.

In municipalities of less than 10,000 inhabitants, the return mail envelopes containing the ballots shall be delivered by the absentee election manager to the election official of the precinct of the respective voters where they shall be counted and otherwise handled as if the absentee voter were present and voting in person unless the city has adopted a procedure as provided above at least 6 months prior

to the election. Section 17-11-10, Code of Alabama 1975.

Not more than seven days after the last day to qualify as a candidate in a municipal election, or in the case of a runoff municipal election, not more than fourteen days after the first election, or in the case of a municipal election held for a purpose other than the election of municipal officers, not more than seven days after the giving of notice of the election, the officer charged with the printing and distribution of the official ballots and election supplies shall deliver to the absentee election manager a sufficient number of absentee ballots, envelopes and other necessary election supplies. If the absentee election manager is a candidate with opposition in the election, he shall immediately, upon receipt of such ballots, envelopes and supplies, deliver the same to the person authorized to act in his stead. Section 17-11-12, Code of Alabama 1975.

Any person who willfully changes an absentee voter's ballot to the extent that it does not reflect the voter's true ballot, or any person who willfully votes more than once by absentee in the same election, or any person who willfully votes for another voter or falsifies absentee ballot applications or verification documents so as to vote absentee, or any person who solicits, encourages, urges, or otherwise promotes illegal absentee voting shall, upon conviction, be guilty of a Class C felony. Any person who willfully aids any person unlawfully to vote an absentee ballot, any person who knowingly and unlawfully votes an absentee ballot, and any voter who votes both an absentee and a regular ballot at any election shall be similarly punished. Section 17-17-24, Code of Alabama 1975.

Absentee ballots may be returned up to and including the day of the election. No absentee ballot shall be opened or counted if received by the absentee election manager by mail, unless postmarked as of the date prior to the day of the election and received by noon the day of the election. Absentee ballots may be returned by hand delivery if delivered to the absentee election manager not later than the close of business¹² on the day prior to the election. Ballots delivered by the medical emergency designee may be returned by noon on election day. Section 17-11-18, Code of Alabama 1975. Procedure proposed to count timely received absentee ballots that were discovered by election officials on a day after the other absentee ballots were counted is appropriate under state law. AGO 2003-028; AGO 2003-029.

Except for provisional absentee ballots that have not been verified by seven days after the election, any election official who fails to count a legal vote cast by absentee ballot shall be guilty of a Class C felony and punished as provided by law. Section 17-17-27, Code of Alabama 1975.

Each person, firm or entity supplying to any county or municipality any absentee affidavit envelopes, absentee ballots, or other absentee election materials in connection with the municipal election shall, at the time of the shipment or delivery of the same, provide to the municipality, and to the Secretary of State, an itemized and signed statement showing a description and the quantity of each item so shipped or delivered. At the conclusion of the election, the absentee election manager shall return all unused absentee election materials to the Secretary of State along with an itemized, signed statement showing the description and quantity of each item of absentee election material not utilized by the municipality in the election then concluded, and said unused absentee election materials shall be

maintained for the period of time prescribed by applicable law and, in no event, less than eighteen (18) months. Section 17-11-19, Code of Alabama 1975.

Absentee votes cast for a deceased candidate should be counted in determining the total votes cast for the election and are not to be attributed to the replacement candidate. Voters who have cast an absentee ballot for a deceased, disqualified, or otherwise ineligible person are not authorized by Alabama Law to cast a new ballot. AGO 2003-022.

Canvassing Results

September 4, 2012

Canvassing Results – September 4, 2012

The results of the voting at each polling place are certified by the election officials to the municipal council, which is the official canvassing body. The municipality may allow the media to be present when the ballots are counted, if it wishes to do so.

On the first Tuesday next after the election, commencing at noon, the municipal clerk shall deliver to the governing body the envelopes of elections results which were delivered to the clerk, including the provisional ballot results returned by the Board of Registrars. The governing body shall canvass the returns, and ascertain and determine the number of votes received by each candidate. Section 11-46-55, Code of Alabama 1975.

Election results may be canvassed before noon seven days after the election if there are no provisional ballots cast in the election OR if the board of registrars has returned the provisional ballots early. In either of these cases, the governing body may canvass the results at any regular or special called meeting held before the Tuesday seven days after the election. Section 11-46-55, Code of Alabama 1975.

The canvass of the votes is considered a ministerial task which consists of listing the names of the candidates and showing the vote which each received at each polling place and the resulting total vote for each candidate. In so doing, the council determines whether or not a majority of the votes cast for an office have been won by any of the candidates. In doing so, the council must consider the determinations made by the Board of Registrars regarding whether a provisional ballot should be counted.

If a majority of the votes cast for an office have been won by any candidate, such candidate is declared elected to that office and the council provides him with a certificate of election.

Where no candidate receives a majority of the votes cast for an office, the council declares a runoff election between the top two candidates at an election to be held on the sixth Tuesday thereafter. The entire proceedings of the canvass must be recorded in the minutes of the council. Sections 11-46-46 and 11-46-55, Code of Alabama 1975. A sample council resolution for this purpose is provided in the Appendix together with a sample certificate of election.

Votes cast for a candidate who is disqualified are not to be treated as void but must be counted in determining the total votes cast for the election. If none of the remaining candidates received a majority of the votes cast in the election, a run-off election is necessary. AGO 2001-232.

If no candidate receives a majority vote at the first election and there is a tie

for second place, a runoff must be held between the top three candidates. If no candidate receives a majority at the runoff election, a second runoff must be held between the top two candidates. AGO 1981-006 (to the Hon. Mixon Jones, October 7, 1980).

If a candidate in the runoff should withdraw from the election, the law provides that there is no need to conduct the runoff election. The remaining candidate would be entitled to a certificate of election upon the withdrawal of his opponent. Where a candidate withdraws, the mayor or clerk should procure a sworn statement from the candidate to that effect, and the council should note the withdrawal in its minutes when it declares the remaining candidate elected.

The clerk shall securely keep the ballot boxes until it is known that there will be no contest, but in any event not less than six months, and, if in that time no contest has been properly instituted, the clerk shall then destroy the contents of such boxes without examining the same. Section 11-46-46, Code of Alabama 1975.

No ballot box shall be opened except in one or the other of the following events:

- Where the box has been ordered opened by a court hearing a contest of the elections; or
- For the purpose of canvassing returns where the box has been returned but no certificate of result of the election has been separately delivered to the governing body by the election inspectors.
- For the purpose of conducting a recount of the ballots as allowed by law.

In any of these instances, the clerk should follow carefully the provisions of Section 11-46-46, Code of Alabama 1975.

Recount

Recount

Section 11-46-55.1 relates to municipal election recounts. This provision, rather than provisions relating to state elections should be followed in municipal elections.

Any person with standing to contest a municipal election may petition the canvassing authority for a recount of any or all precinct returns within 48 hours of the official canvass of returns by the municipal governing body. The petitioner is responsible for the cost of the recount and is required to give security to cover such costs in an amount to be determined by the governing body. However, if the recount alters the result of the election, the cost of the recount shall be borne by the municipality.

The recount must be conducted under the supervision of a trained and certified election official.

Representatives of opposing interests must be given at least 24 hours notice of any recount and shall be invited to participate in the recount.

Any recount should be conducted as simply as the type of equipment and local conditions permit provided that the following minimum safeguards are observed:

1. The box or envelope holding the ballots shall be delivered unopened to the inspector in charge of the recount.
2. A representative of the municipality shall be present during the recount.
3. Where ballots are counted by hand, representatives of opposing interests

have the right to participate in the hand count, and any unresolved disputes over the interpretation of the voter's intent may be appealed to the municipal governing body.

When the recount is completed, the ballots must be returned to their container along with a copy of the recount results. The container shall be sealed and signed by the inspector and by a representative of the authority having custody of the ballots.

If the recount produces a change in precinct totals of sufficient magnitude to alter the result of the election, the outcome shall constitute grounds for an election contest as prescribed by law.

Runoff Elections – October 9, 2012

Runoff Elections

October 9, 2012

Immediately after the canvass, the council announces the runoff election, which shall be conducted in all respects as the regular election except that it will include only those offices for which no one received a majority of the votes cast in the regular election, and it will include only the top two candidates for each such office, unless there was a tie for second place in the regular election.

The mayor should immediately publish notice of the election and order the necessary supplies.

The second election shall be held by the same election officers who held the first election and at the same places the first election was held. Section 11-46-55, Code of Alabama 1975.

In a runoff election involving 50% or fewer races than were on the general election ballot, the number of voters allowed per machine is doubled – that is, there must be at least one ballot box for every 600 voters or fraction thereof, on voting machine for every 1,200 voters or fraction thereof, and one electronic voting machine for every 2,400 voters or fraction thereof. Section 11-46-24, Code of Alabama 1975.

If all the ballots in a municipal runoff election are the same – for instance, where the only race remaining in the runoff is for the mayor's position – then again, there must be at least one ballot box for every 600 voters or fraction thereof, on voting machine for every 1,200 voters or fraction thereof, and one electronic voting machine for every 2,400 voters or fraction thereof. Section 11-46-24, Code of Alabama 1975.

The results of the runoff election are determined by canvass conducted by the council on the first Tuesday next after the election, commencing at 12:00 noon. The winners are awarded their certificates of election.

If there should be a tie vote in the runoff election, the tie shall be decided by the municipal governing body in office at the time of the election. A vote for a particular candidate by a majority of those councilmembers eligible to vote shall be necessary to decide the winner of the election.

The municipal clerk shall file a copy of each certificate of election in the office of the judge of probate of the county in which the municipality is located, and the judge shall file such certificate in the manner that he files the declaration of the result of elections to county offices. Section 11-46-55, Code of Alabama 1975. If your municipality is located in more than one county, the certificate must be

filed in each county.

Newly-elected officials shall assume office on the first Monday in November.

Additional Copy of Returns to Probate Judge

Additional Copy of Returns to Probate Judge

Section 17-12-12, Code of Alabama 1975 requires election officials to make an additional copy of the returns from each polling place at any state, county, municipal or local election and deliver it to the probate judge who shall preserve it as a public record for at least one year. It is a misdemeanor to fail to do so. Section 17-17-29, Code of Alabama, 1975. If your municipality is located in more than one county, the additional copies must be filed in each county.

Disposition of Records After Election

Disposition of Records After Election

Section 17-9-15, Code of Alabama 1975, provides that at the close of all municipal elections, the list of registered voters and the voter re-identification forms shall be returned to the board of registrars in a sealed envelope addressed to the board. The inspectors and any poll watchers present shall sign across the seal.

Contests

Contests

Any contest of the municipal general election must be commenced within five days after the results of the election are declared by the council following its canvass. Section 11-46-69, Code of Alabama 1975.

Proceedings relative to contests are governed by the provisions of Articles 2 and 3, Chapter 16 of Title 17 and by Sections 11-46-69 and 11-46-70, Code of Alabama 1975. AGO to the Hon. Gwin Alderman, August 24, 1972.

In *Turner v. Cooper*, 347 So.2d 1339 (Ala. 1977), the Alabama Supreme Court held that the annulment of city elections under the mayor-council election laws requires either proof of illegal votes, rejected legal votes, or the failure of the contestee to receive the requisite number of legal votes. See also *Nunley v. Abernathy*, 622 So.2d 922 (Ala. 1993). Errors and irregularities of election officers which are shown not to affect the election result will not be considered in a municipal election contest, otherwise legal voters would be deprived of their franchise.

Absent any ruling by the court in which an election contest is filed that a city official must not assume office, all newly-elected officials, including the official whose election is being contested, should be sworn in on the appropriate day. AGO to the Hon. Roy Coffee, September 23, 1976.

When a municipal election contest is appealed, the candidate receiving the majority vote in the election must be sworn in and certified pending final action by the Alabama Supreme Court. AGO 1981-112 (to the Hon. Clarence Rhea, December 9, 1980).

Duties of the Clerk – Organization of New Council

Duties of the Clerk -- Organization of New Council

Newly-elected municipal councils shall assemble and organize on the first Monday in November following their election. At this time more than at any other moment in the administrative cycle of cities and towns, the guidance and arrangements of the municipal clerk are needed and appreciated. Section 11-43-44, Code of Alabama 1975.

If the municipality has less than 12,000 inhabitants, the clerk should contact the mayor-elect at an early date to fix the time and place of assembly for the organizational meeting.

If the municipality is 12,000 or more in population, the clerk should contact the president-elect of the council, if the city voters elect a council president, for this purpose.

The Open Meetings Act requires at least 7 days notice of meetings unless otherwise specifically provided for by law. Once a time is established for the organizational meeting, the clerk should post notice. Section 36-25A-3(a).

At this time, it is necessary to decide on the person who will be asked to administer the oath of office to the newly-elected officers of the municipality when they assemble at the organizational meeting.

The clerk should notify all members of the newly-elected governing body of the time and place of the organizational meeting and make arrangements for the officer who will administer the oaths unless the mayor-elect has taken this responsibility. The clerk should prepare forms, in duplicate, for the oath of office for each officer to subscribe before the administering officer.

A sample oath is provided in the Appendix.

When the new council assembles in organizational meeting, the clerk should take minutes of the meeting, noting that it is the organizational session. The order of business should include the following:

- The clerk should have each new officer sign the oath in duplicate. One copy is kept for the records of the clerk and the other is filed by the clerk with the probate judge of the county in which the municipality is located. The clerk may want to prepare a third copy for the elected official.
- The mayor presides over the council in municipalities of less than 12,000 population. In such municipalities, the first act of the council should be the election of a chairman pro tempore of the council who will perform the duties of the mayor when he is absent or unable to perform his duties.
- In cities of 12,000 or more having a large council with a council president, the council president presides and the first order of business would be the election of a council president pro tempore.
- In cities of 12,000 or more which have a council which does not have a president elected by the voters, the first order of business is the election of a council president to preside and then the election of a council president pro tempore. In this latter instance, it is in order for the clerk to preside over the council until it elects its council president.
- The next order of business is for the council to establish the time and place of regular meetings to be held each month. Towns are required to meet at least once a month and cities are required to meet at least twice a month.

- It is then advisable for the council to adopt rules of procedure which it will follow in its deliberations for the coming term. Reference is made to the *Handbook for Mayors and Councilmembers*.
- Following the adoption of procedural rules, there should be the appointment of committees. While it is dependent upon the ordinances of the municipality establishing committees, it is general practice for the presiding officer of the council (the mayor in municipalities under 12,000) to make committee appointments. Prior to the organizational meeting, the clerk should discuss this matter with the presiding officer of the new council so he or she will be prepared to make these appointments.
- Since it is usually not desirable to make appointments and establish salaries for personnel at the organizational session, the council should adopt a motion providing that all administrative officers and employees of the municipality shall continue in their respective duties temporarily, pending such time as the council shall make permanent appointments.
- The council should ratify the use of present depositories for municipal funds until such time as the council shall permanently designate such depositories.
- If the municipality owns and operates its own utilities system or systems, the council might wish to appoint the mayor to act as superintendent of such system or systems and provide compensation for his or her services in this capacity. State law provides that a mayor who serves as superintendent of a municipal utility system shall receive the amount of compensation set by the appointing authority. See Section 11-43-80, Code of Alabama 1975.

A sample ordinance to be used to hire the mayor as utility superintendent is provided in the Appendix. Please note that if the city utilities are operated by a separately incorporated utility board, the decision as to who to hire as utility superintendent is made by the board, not the governing body of the city.

Additional Assistance

Additional Assistance

In the months leading up to the election, the League plans to address many of the election issues that are likely to arise. Our attorneys will participate in numerous election seminars and we encourage all persons involved in the election process to take advantage of these opportunities to attend and learn as much as possible, and to participate in discussions with League attorneys and other officials, especially those who have been through elections before. We hope to anticipate the problems before they arise and to assist clerks and others who are responsible for conducting fair and impartial elections. For additional assistance on election questions, it is suggested that the person charged with the responsibility for conducting the municipal election contact the the Attorney General or the Secretary of State or the company providing election materials for the municipality. The Secretary of State's office has many useful documents, booklets and forms available on-line. For example, the following link contains links for documents relating to voter information, candidate filing guides, FCPA filing guidelines and provisional balloting information:

<http://www.sos.alabama.gov/downloads/dl2.aspx?div1=Elections%20Division&types=Publication>

Endnotes

1. In this manual, the terms wards and districts are used interchangeably unless the context indicates otherwise.
2. See appendix for letter dated September 18, 1989 from the Department of Justice discussing the filing requirements under the FCPA once the \$1000 threshold is met.
3. References in this format to “Regulations” refer to the Alabama Administrative Code. An on-line copy of this Code may be accessed at the League’s web site at www.alalm.org.
4. Previously, Section 17-24-9 provided that notice of the test must be given at least 48 hours before the test by specifically listed means. Section 17-24-9 was repealed by Act 2006-570.
5. Although the rule still refers to “vote recorders,” the League has been informed that no municipalities use this type electronic device.
6. Again, the rule states that the sheriff should be notified. The League feels that the clerk is in the best position to perform this duty in municipal elections.
7. Act 2010-687 specifically prohibited a voter without identification to vote in a municipal election even if two polling officials certify the voter’s identification. However, Act 2011-673 removed this prohibition. While there is some confusion as to the effective date of Act 2011-673, it is generally understood that this prohibition will still apply in municipal elections until 2014. While it is our opinion that polling officials cannot verify voter identification for municipal elections until 2014, the voter can still vote a provisional ballot and provide identification to the board of registrars in time to have their ballot counted.
8. Forms for this may be provided by your election supplier.
9. In the opinion of the Attorney General, the requirements of UOAVA do not apply to municipal elections. AGO 2008-107. Further, we are of the opinion that Act 2011-619, which relates to electronic voting for overseas military, does not apply to municipal elections for the same reasons given in AGO 2008-107.
10. This Opinion uses the word “stricken;” however it does not use the word in a literal sense. The underlining and notation requirements of 17-11-5 serve to strike the voter’s name from the list.
11. This language is used in the Code of Alabama, but all voters must produce identification.
12. Unless a municipality has set hours of operation, we recommend staying open until 5:00 p.m. as the law previously provided for.

2012 MUNICIPAL ELECTIONS CALENDAR

(Citations are to the Code of Alabama, 1975)

DISCLAIMER: This election calendar is provided as a service to candidates running in the general municipal election and those officials responsible for conducting the municipal election to be held on August 28, 2012, with a run-off on October 9, 2012, if necessary. *Use of this calendar is at the sole risk of the candidate. It is the responsibility of the candidate or official to verify the dates on which forms are due. The Alabama League of Municipalities and the municipality and/or official that may distribute this form disclaim any responsibility or liability for failure to comply with any filing requirement or any other election law.*

References are to dates in the year 2012 unless otherwise indicated and all citations are to the Code of Alabama 1975. In most cases, the dates printed in this publication represent the final deadline for performing the listed duties. The League urges officials and candidates to accomplish these duties well in advance of the deadline.

Electronic Voting Rule—An ordinance establishing the use of electronic vote counters must be adopted. No deadline is set, but the ordinance must be adopted far enough in advance to meet other election deadlines. §17-7-21.

August 28, 2011

First day candidates for municipal elections can begin to raise money. §17-5-7(b)(2). Under general law, there is no limitation on the amount an individual may contribute to the campaign of a person running for municipal office. However, a corporation is limited to giving \$500 per candidate per election. §§10A-21-1.03 and 10A-21-1.04. **NOTE: Once a candidate establishes a principal campaign committee pursuant to the Fair Campaign Practices Act, the committee must file monthly campaign disclosure reports pursuant to §17-5-8. The reports are due on the last day of each month up to the month preceding the election at which point the reports are due weekly on Fridays leading up to the election. §17-5-8. Forms are available from the probate judge, the Secretary of State, or the municipal clerk.**

February 28, 2012

Last day for the council to change the salaries for officials who will be elected in August. §§11-43-2 and 11-43-80. Last day for the council to decide whether to elect councilmembers at large or from districts. §§11-43-2 and 11-43-63. Last day for the council in municipalities with a population of less than 10,000 according to the most recent decennial census to provide for a procedure for the appointment of additional election officials to receive, count, and return the absentee ballots cast at the election. §§ 11-46-27, §17-11-10 and §17-11-11.

March 31

Last day for councils elected at large to number the places for election purposes. §11-46-22.

May 28

Last day for the council to change its district lines. §11-46-23. Last day for the council to change the location of designated voting places or add an additional voting place.

May 30

Last day a person can become a resident of the municipality and district and still be a candidate for election. Candidates must reside in the municipality and the district for a period of 90 days before the election. §11-425(g); §11-43-63.

June 28

Last day on which the council may adopt an ordinance establishing qualification fees. §11-46-2.

June 29

A municipality operating on Eastern Standard Time may open and close the polls under Eastern Standard Time if necessary. Changing to or from Eastern Standard Time would necessitate pre-clearance at least 60 days prior to the election. §11-46-28. Electronic Voting Rule – First day to conduct a training school for officials who will conduct an election using electronic voting machines. §17-8-9. No election official shall serve in any election in which an electronic voting machine is used, unless he or she shall have received such instruction within 60 days prior to the election and is fully qualified to perform the duties in connection with the electronic voting machine, and has received a certificate from the authorized instructor to that effect. This does not prevent the appointment of an uninstructed person as an election official to fill a vacancy among the election officials.

July 3

Mayor gives notice of the election on the first Tuesday in July. §11-46-22(a). Candidates may begin qualifying once notice is published. Qualifying forms are available from the municipal clerk. §11-46-22(a). **NOTE:** The Fair Campaign Practices Act requires all candidates to file with the PROBATE JUDGE a list of from two to five persons who will serve as their campaign committee. Candidates may serve as their own committee, but must still file a form to this effect with the PROBATE JUDGE. **THIS FORM MUST BE FILED WITHIN FIVE (5) DAYS OF QUALIFYING TO RUN FOR OFFICE. THIS FORM MUST BE FILED REGARDLESS OF WHETHER THE CANDIDATE HAS REACHED THE \$1,000 THRESHOLD UNDER THE FAIR CAMPAIGN PRACTICES ACT.** Forms are available from the probate judge, Secretary of State or the municipal clerk. §17-5-4.

IN ADDITION, once a candidate establishes a principal campaign committee pursuant to the Fair Campaign Practices Act, the committee must file monthly campaign disclosure reports pursuant to §17-5-8. The reports are due on the last day of each month up to one month from the election at which point the reports are due weekly on Fridays leading up to the election. §17-5-8.

FURTHER, the Ethics Law requires candidates to file a statement of economic interests with the MUNICIPAL CLERK. **THIS STATEMENT MUST BE FILED ALONG WITH THE QUALIFYING FORM.** A candidate for municipal office may request a five day extension to file the statement of economic interests. The request must be made through the MUNICIPAL CLERK. The statement of economic interests must be filed with the MUNICIPAL CLERK within the five day extension. **THE CLERK IS REQUIRED TO REMOVE FROM THE BALLOT THE NAME OF ANY CANDIDATE WHO FAILS TO FILE THE STATEMENT OF ECONOMIC INTERESTS BY THE DEADLINE.** Incumbents do not have to file the statement of economic interests as they are required to submit an annual report which is on file with the ETHICS COMMISSION. §36-25-15.

July 6

Principal campaign committee must file a weekly campaign disclosure report with the PROBATE JUDGE pursuant to §17-5-8. Forms are available from the probate judge, Secretary of State or the municipal clerk.

July 13

Principal campaign committee must file a weekly campaign disclosure report with the PROBATE JUDGE pursuant to §17-5-8. Forms are available from the probate judge, Secretary of State or the municipal clerk.

July 17

Last day to qualify to run for municipal office. The qualifying form must be filed by 5:00 p.m., Central Daylight Time, with the MUNICIPAL CLERK. Forms are available from the clerk. §11-46-25(g). Mayor must cause the printing of the ballots. §11-46-25. Mayor must file a list of qualified voters with the clerk. If the mayor is a candidate in the election, the council must appoint a qualified person to perform this duty. Sections 11-46-36 and 11-46-37.

July 20

Principal campaign committee must file a weekly campaign disclosure report with the PROBATE JUDGE pursuant to §17-5-8. Forms are available from the probate judge, Secretary of State or the municipal clerk.

July 23

Last possible day for candidates to file with the PROBATE JUDGE a statement showing the names of their campaign committee. §17-5-4. Last day for the clerk to forward candidate statements of economic interests to the Ethics Commission. §36-25-15.

July 24

Mayor must file a list of qualified voters with the absentee election manager. §17-11-5. Last day for the mayor (or other person assigned to this duty) to deliver absentee ballots and supplies to the clerk. §17-11-5. NOTE: §11-46-32 requires the mayor to provide absentee supplies no later than 21 days before the election. The provision in Title 17 is a more recently adopted provision and should be followed instead.

July 27

Principal campaign committee must file a weekly campaign disclosure report with the PROBATE JUDGE pursuant to §17-5-8. Forms are available from the probate judge, Secretary of State or the municipal clerk.

July 29

Last day to place a voting machine on display. §11-46-31. Last day for sample of the ballot or vote card to be placed on display in municipalities using vote tabulators that require voters to fill out a card or paper ballot to be read by the tabulator. §11-46-31.

August 3

Principal campaign committee must file a weekly campaign disclosure report with the PROBATE JUDGE pursuant to §17-5-8. Forms are available from the probate judge, Secretary of State or the municipal clerk.

August 10

Principal campaign committee must file a weekly campaign disclosure report with the PROBATE JUDGE pursuant to §17-5-8. Forms are available from the probate judge, Secretary of State or the municipal clerk.

August 13

Last day for the council to appoint election officials. **NOTE:** The clerk must notify the persons chosen as election officials and must hold an election school for them. The clerk must notify the official at least 48 hours before the school is scheduled. §§11-46-27 and 11-46-30.

August 14

Electronic Voting Rule – First day to test electronic vote counters. The test must be conducted as close as practicable to the date of the election. The test is open to the public. The League recommends forty-eight (48) hours notice of the test. Rule 307-X-1-.04.

August 17

Principal campaign committee must file a weekly campaign disclosure report with the PROBATE JUDGE pursuant to §17-5-8. Forms are available from the probate judge, Secretary of State or the municipal clerk.

August 18

Last day for the mayor to publish lists of the election officers and the voting places to which they are assigned. Section 11-46-27.

August 23

Last day for a voter to apply for a regular absentee ballot. §17-11-3(a). Last day to publish the list of qualified voters. §11-46-36. **Electronic Voting Rule** – Last day to conduct a training school for officials who will conduct an election using electronic voting machines. §17-8-9.

August 24

Principal campaign committee must file a weekly campaign disclosure report with the PROBATE JUDGE pursuant to §17-5-8. Forms are available from the probate judge, Secretary of State or the municipal clerk. Last day for an absentee voter who is required to provide identification but failed to include it with the ballot to submit this identification to the absentee election manager by 5:00 p.m. to prevent the ballot from becoming a provisional ballot. §17-10-2(c)(1)(a).

August 27

Last day for a voter to apply for an emergency absentee ballot if he or she is required by his or her employer to be out of the country on election day. §17-11-3(d). The clerk, along with two watchers, must inspect and seal voting machines which will be used in the election beginning no later than 9:00 a.m. §11-46-33. If an absentee ballot is returned by mail, it must be postmarked by August 27 **and** received by noon the day of the election. The deadline for hand-delivery of absentee ballots is the close of business on August 27. §17-11-3(c), 17-11-18.

August 28

Election Day. Regular municipal elections are held on the fourth Tuesday in August. §11-46-2. Candidates may appoint a poll watcher to observe voting procedures in the polling place. The appointment must be made in writing, signed by the candidate, and filed with the election officials at the polling place. §11-46-35. **NOTE:** Section 11-46-28 provides that the polls be open from 7:00 a.m. to 7:00 p.m. and that a municipality may set those times under Eastern Standard Time if necessary. Changing to or from Eastern Standard Time would necessitate preclearance at least 60 days prior to the election. (June 29, 2012).

Electronic Voting Rule – Precinct counters must be tested according to the manufacturer's instructions to ensure that they are set at zero and to prepared for voting. Rules 307-X-1-.11. Deadline for returning absentee ballots by mail or an emergency absentee ballot for a registered voter who requires emergency treatment by a licensed physician within 5 days of the election is 12:00 noon on August 28. §7-11-18. Election officials must meet at their respective polling places at least 30 minutes before polls open. §11-46-28. The clerk must ensure that all ballots, boxes and supplies are provided at each polling place, or if machines are used, that proper supplies are provided at each polling place. §11-46-33.

August 29

Deadline for the absentee election manager to notify voters whose absentee ballots have become provisional due to the inspector's personal knowledge that voter was not eligible to vote. §17-10-2(c)(3)(b). Municipal clerk must deliver the written affirmations of the provisional voters, inspector challenge statements, and all voter re-identification forms in a sealed envelope addressed to the board of registrars to the board of registrars no later than noon.

August 31

Last day for an absentee voter who was required to provide identification but failed to provide it before the election to submit identification to the board of registrars in order to have the vote counted. §17-10-2(c)(1)(c).

September 4

Commencing at noon the council must canvass the election results. §11-46-55. See also §11-46-46. If a candidate receives a majority of the votes cast for the office, the council issues a certificate of election. If no candidate receives a majority, the council shall order a run-off election to be held. ANYONE WITH STANDING TO CONTEST THE ELECTION MAY REQUEST A RECOUNT WITHIN FORTY-EIGHT HOURS OF THE OFFICIAL CANVASS OF THE ELECTION RESULTS. §11-46-55.1.

September 7

Principal campaign committee must file a weekly campaign disclosure report with the PROBATE JUDGE pursuant to §17-5-8. Forms are available from the probate judge, Secretary of State or the municipal clerk.

September 10

Last day a candidate may contest the results of the general election. §11-46-69.

September 11

Last day for the mayor (or other person assigned to this duty) to deliver absentee ballots and supplies to the clerk for the run-off election. §17-11-12.

September 14

Principal campaign committee must file a weekly campaign disclosure report with the PROBATE JUDGE pursuant to §17-5-8. Forms are available from the probate judge, Secretary of State or the municipal clerk.

September 21

Principal campaign committee must file a weekly campaign disclosure report with the PROBATE JUDGE pursuant to §17-5-8. Forms are available from the probate judge, Secretary of State or the municipal clerk.

September 25

Electronic Voting Rule – First day to test electronic vote counters for the run-off election. The test must be conducted as close as practicable to the date of the election. The test is open to the public. The League recommends forty-eight (48) hours notice of the test. Rule 307-X-1-.04.

September 28

Principal campaign committee must file a weekly campaign disclosure report with the PROBATE JUDGE pursuant to §17-5-8. Forms are available from the probate judge, Secretary of State or the municipal clerk.

October 4

Last day for a voter to apply for a regular absentee ballot. §17-11-3(a).

October 5

Principal campaign committee must file a weekly campaign disclosure report with the PROBATE JUDGE pursuant to §17-5-8. Forms are available from the probate judge, Secretary of State or the municipal clerk. Last day for an absentee voter who is required to provide identification but failed to include it with the ballot to submit this identification to the absentee election manager by 5:00 p.m. to prevent the ballot from becoming a provisional ballot. §17-10-2(c)(1)(a).

October 8

Last day for a voter to apply for an emergency absentee ballot if he or she is required by his or her employer to be out of the country on election day. §17-11-3(d). The clerk, along with two watchers, must inspect and seal voting machines which will be used in the election. §11-46-33. If an absentee ballot is returned by mail, it must be postmarked by October 8. The deadline for hand-delivery of absentee ballots is the close of business on October 8. §17-11-18.

October 9

Run-off Election Day. Candidates may appoint a poll watcher to observe voting procedures in the polling place. The appointment must be made in writing, signed by the candidate, and filed with the election officials at the polling place. §11-46-35. **Electronic Voting Rule** – Precinct counters must be tested according to the manufacturer’s instructions to ensure that they are set at zero and to prepared for voting. Rules 307-X-1-.11. Deadline for returning absentee ballots by mail or an emergency absentee ballot for a registered voter who requires emergency treatment by a licensed physician within 5 days of the election is 12:00 noon on October 9. §17-11-3(c), 17-11-18.

October 10

Deadline for the absentee election manager to notify voters whose absentee ballots have become provisional due to the inspector’s personal knowledge that voter was not eligible to vote. §17-10-2(c)(3)(b). Municipal clerk must deliver the written affirmations of the provisional voters, inspector challenge statements, and all voter re-identification forms in a sealed envelope addressed to the board of registrars to the board of registrars no later than noon.

October 12

Last day for an absentee voter who was required to provide identification but failed to provide it before the election to submit identification to the board of registrars in order to have the vote counted. §17-10-2(c)(1)(c).

October 16

Commencing at noon the council must canvass the election results. §11-46-55. See also §11-46-46. ANYONE WITH STANDING TO CONTEST THE ELECTION MAY REQUEST A RECOUNT WITHIN FORTY-EIGHT HOURS OF THE OFFICIAL CANVASS OF THE ELECTION RESULTS. §11-46-55.1.

October 22

Last day a candidate may contest the results of the run-off election. §11-46-69.

November 5

Newly elected municipal officials take office on the first Monday in November following the election. §11-46-21(c). Council meets for its organizational session. §11-43-44.

December 26

Last day for candidates who were not involved in the run-off election to raise money to pay off their campaign debts. §17-5-7.

February 6, 2013

Last day for candidates who were involved in the run-off election to raise money to pay off their campaign debts. §17-5-7.

All political advertisements must be clearly marked with a statement that the communication is a paid political advertisement. This statement must contain information which adequately identifies the person or committee that paid for or authorized the ad. §17-5-12.

NOTE: Candidates who are not elected should dissolve their campaign committees by filing a form with the PROBATE JUDGE. The Fair Campaign Practices Act requires all candidates who fail to dissolve their campaign committees to file an annual report listing all contributions or expenditures with the probate judge. Forms are available from the probate judge, the Secretary of State, or the municipal clerk. There have been changes to the Fair Campaign Practices Act since the 2008 election and there are different filing deadlines. Please refer to the manual for more information.

APPENDIX

SAMPLE FORMS, ORDINANCES AND RESOLUTIONS

Note: Any forms mentioned and included in this publication are intended solely as examples and not as a substitute for obtaining individualized legal advice. Use of these forms is at the sole risk of the user. The Alabama League of Municipalities and its staff disclaim any responsibility or liability which may arise or result from the use of these forms or any portion thereof.

SALARY ORDINANCE CHECKLIST FOR MAYORS AND COUNCILMEMBERS

At least six months prior to the election, the council can set the salary for the Mayor and Councilmembers. In addition to the basic salary, if the council wishes to provide additional benefits or salary increases, this list provides additional language which may be incorporated into the basic salary ordinance.

- Basic salary ordinance:**
Select one of the three sample ordinances provided to use as a basic salary ordinance.
- Additional Benefits – If additional benefits are to be provided in addition to basic salary, insert the following language into the basic sample ordinance:**

Section ____. In addition to the salary provided for herein, the mayor [or the mayor and councilmembers] shall also be entitled to any benefits normally accruing to all full-time employees of the city as authorized by law.

- Credit for Certified Municipal Officer (CMO) Training: If additional compensation will be provided in addition to basic salary for becoming a “Certified Municipal Official”, insert the following language into the basic sample ordinance:**

Section ____. In addition to the salary provided for herein, the mayor [or the mayor and councilmembers] shall be entitled to additional compensation as provided below for the attendance and completion of Certified Municipal Official training established by the Alabama League of Municipalities:

*A. Upon completion of the prescribed courses by the Alabama League of Municipalities resulting in the awarding of the designation of “Certified Municipal Official”, the mayor and any councilmember shall receive an additional \$_____ per month [or \$_____ annually to be paid in the same manner as any other compensation] **for each certification level.***

B. Upon presentation of proof of the awarding of the designation of “Certified Municipal Official”, either basic or advanced, the mayor or councilmember’s salary shall be increased as provided herein beginning the next pay period after being awarded the designation.

- Cost of living raises: If cost of living raises are to be provided in addition to basic salary, insert the following language into the basic sample ordinance:**

Section ____. In addition to the salary provided for herein, the mayor [or the mayor and councilmembers] shall also be entitled to any cost of living raises granted to all full-time employees of the city.

[SALARY ORDINANCE - ALTERNATIVE A]

SAMPLE ORDINANCE ESTABLISHING THE MONTHLY SALARY OF THE MAYOR AND COUNCILMEMBERS

AN ORDINANCE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF _____, ALABAMA AS FOLLOWS:

Section 1. That the salary of the mayor of the City of _____, Alabama, shall be and the same is hereby fixed at the sum of \$_____ per month.

Section 2. That each councilmember shall be compensated at the sum of \$_____ per meeting attended not to exceed \$_____ per month.

OPTIONAL LANGUAGE – IF THE COUNCIL DECIDES TO PROVIDE FOR ANY ADDITIONAL BENEFITS FROM THE SUGGESTED OPTIONS ON THE SALARY ORDINANCE CHECKLIST, THEN THESE ADDITIONAL SECTION(S) SHOULD BE PLACED IN THE ORDINANCE AT THIS POINT AND THE SUBSEQUENT SECTIONS RENUMBERED ACCORDINGLY.

Section 3. This ordinance shall become effective on the first Monday in November, 20___, and shall continue in force and effect until repealed by action of the council.

Section 4. The provisions of this ordinance are hereby declared severable; if any portion of this ordinance shall be held unconstitutional or otherwise invalid by a court of competent jurisdiction, such ruling shall not affect the remaining portions of this ordinance.

ADOPTED AND APPROVED THIS THE ___ DAY OF _____, 20___.

Presiding Officer

ATTEST:

City Clerk

[SALARY ORDINANCE - ALTERNATIVE B]

SAMPLE ORDINANCE ESTABLISHING THE SALARY OF THE MAYOR AND COUNCILMEMBERS TO BE PAID TWICE MONTHLY

AN ORDINANCE

BE IT ORDAINED BY THE CITY [TOWN] COUNCIL OF THE CITY [TOWN] OF _____, ALABAMA,
AS FOLLOWS:

Section 1. That the salary of the mayor of the City [Town] of _____, Alabama shall be and the same is hereby fixed at \$_____ annually to be paid in 24 equal installments on the first and fifteenth days of each month.

Section 2. That each councilmember shall be compensated at the sum of \$_____ per meeting attended not to exceed \$_____ annually to be paid in 24 installments on the first and fifteenth days of each month.

OPTIONAL LANGUAGE – IF THE COUNCIL DECIDES TO PROVIDE FOR ANY ADDITIONAL BENEFITS FROM THE SUGGESTED OPTIONS ON THE SALARY ORDINANCE CHECKLIST, THEN THESE ADDITIONAL SECTION(S) SHOULD BE PLACED IN THE ORDINANCE AT THIS POINT AND THE SUBSEQUENT SECTIONS RENUMBERED ACCORDINGLY.

Section 3. This ordinance shall become effective on the first Monday in November, 20__, and shall continue in force and effect until repealed by action of the council.

Section 4. The provisions of this ordinance are hereby declared severable; if any portion of this ordinance shall be held unconstitutional or otherwise invalid by a court of competent jurisdiction, such ruling shall not affect the remaining portions of this ordinance.

ADOPTED AND APPROVED THIS THE ___ DAY OF _____, 20__.

Presiding Officer

ATTEST:

City [Town] Clerk

[SALARY ORDINANCE - ALTERNATIVE C]

SAMPLE ORDINANCE

AN ORDINANCE

BE IT ORDAINED BY THE CITY [TOWN] COUNCIL OF THE CITY [TOWN] OF _____, ALABAMA, AS FOLLOWS:

Section 1. That the salary of the mayor of the City [Town] of _____, Alabama shall be and the same is hereby fixed at the sum of \$_____ per month and will be paid in equal installments per regular council meeting attended.

Section 2. That each councilmember shall be compensated at the sum of \$_____ per month and will be paid in equal installments per regular council meeting attended.

OPTIONAL LANGUAGE – IF THE COUNCIL DECIDES TO PROVIDE FOR ANY ADDITIONAL BENEFITS FROM THE SUGGESTED OPTIONS ON THE SALARY ORDINANCE CHECKLIST, THEN THESE ADDITIONAL SECTION(S) SHOULD BE PLACED IN THE ORDINANCE AT THIS POINT AND THE SUBSEQUENT SECTIONS RENUMBERED ACCORDINGLY.

Section 3. There will be no compensation for the mayor or councilmembers for attending special called meetings.

Section 4. This ordinance shall become effective on the first Monday in November, 20__, and shall continue in force and effect until repealed by action of the council.

Section 5. The provisions of this ordinance are hereby declared severable; if any portion of this ordinance shall be held unconstitutional or otherwise invalid by a court of competent jurisdiction, such ruling shall not affect the remaining portions of this ordinance.

ADOPTED AND APPROVED THIS THE ___ DAY OF _____, 20__.

Presiding Officer

ATTEST:

City [Town] Clerk

SAMPLE ORDINANCE NUMBERING COUNCIL PLACES

AN ORDINANCE

BE IT ORDAINED BY THE CITY [TOWN] COUNCIL OF _____, ALABAMA, AS FOLLOWS:

Section 1. That the City [Town] governing body of the City [Town] of _____, Alabama, shall consist of a mayor and five councilmembers who shall be elected by a vote of the voters at large in the City [Town] of _____, Alabama.

Section 2. That the places on the City [Town] Council be and the same are hereby designated as Place Number 1, Place Number 2, Place Number 3, Place Number 4 and Place Number 5.

Section 3. That each candidate for a place on the City [Town] Council shall in the announcement of his or her candidacy designate by number the place for which he or she is a candidate and no person shall be a candidate for more than one place.

Section 4. That all ordinances or parts of ordinances in conflict herewith are hereby repealed.

ADOPTED AND APPROVED ON THIS ___ DAY OF _____, 20__.

Presiding Officer

ATTEST:

City [Town] Clerk

SAMPLE ORDINANCE SETTING QUALIFICATION FEES

AN ORDINANCE

BE IT ORDAINED BY THE CITY [TOWN] COUNCIL OF _____, ALABAMA, AS FOLLOWS:

Section 1. A qualification fee in the amount of \$_____ [not less than \$10 nor more than \$50] is hereby fixed and imposed upon all candidates seeking election as mayor of the City [Town] of _____, Alabama, except as hereinafter provided for.

Section 2. A qualification fee in the amount of \$_____ [not less than \$10 nor more than \$50] is hereby fixed and imposed upon all candidates seeking election as councilmember of the City [Town] of _____, Alabama, except as hereinafter provided for.

Section 3. Such qualification fee shall be paid to the city clerk and deposited to the general fund of the city at or prior to the time of taking out qualification papers by any such candidates.

Section 4. Any person desiring to qualify who is not financially able to pay the required fee may qualify provided such prospective candidate furnishes the clerk with an affidavit stating that he is financially unable to pay the required fee fixed by this ordinance.*

Section 5. This ordinance is adopted pursuant to Section 11-46-2 of the Alabama Code of 1975 and shall be effective in all elections, both general and special, for aforesaid offices from and after the date of adoption.

ADOPTED THIS THE ___ DAY OF _____, 20__.

Presiding Officer

ATTEST:

City [Town] Clerk

**Use the Sample Affidavit of Indigency*

SAMPLE AFFIDAVIT OF INDIGENCY

STATE OF ALABAMA

_____ COUNTY

CITY [TOWN] OF _____

I, the undersigned, being first duly sworn depose and say that I am a citizen of the City [Town] of _____ in said County, and reside at _____ in said City [Town]; that I desire to become a candidate for the office of _____ in said City [Town] for the term of four years at the election of such office to be held on _____ and at a runoff election, if necessary, to be held on _____; that I am duly qualified to hold such office if elected thereto; that I am indigent and financially unable to pay the qualifying fee established to become a candidate for such office and hereby request a waiver of this fee pursuant to ordinance of the City [Town] of _____, and I hereby request that my name be printed upon the official ballot at said election.

(Signed)

Subscribed and sworn to before me

said _____ on this

___ day of _____, 20__.

Style of Officer

**SAMPLE WRITTEN STATEMENT FROM MAYOR TO COUNCIL
NOTIFYING COUNCIL THAT ONLY ONE PERSON FILED A
STATEMENT OF CANDIDACY FOR A PARTICULAR OFFICE**

STATE OF ALABAMA

_____ COUNTY

To the Council of _____, Alabama

This is to certify that only one person filed a statement of candidacy for the office of _____
by 5:00 p.m. on the third Tuesday in July preceding the ____ day of August, 20__, the date set for an
election of municipal officers in the City [Town] of _____, Alabama, and the name of such person is
_____.

Mayor

ATTEST:

City [Town] Clerk

SAMPLE RESOLUTION FOR EACH OFFICER ELECTED WITHOUT OPPOSITION

STATE OF ALABAMA

_____ COUNTY

CITY OF _____

RESOLUTION

WHEREAS, Sections 11-46-20 through 11-46-73 of the Alabama Code of 1975, as amended, provide for and regulate general and special elections in cities and towns of this state, except those cities and towns which have a commission form of government, and

WHEREAS, Section 11-46-43 of the Alabama Code of 1975 prohibits write-in candidates in elections held under Sections 11-46-20 through 11-46-73 of the Alabama Code of 1975, as amended, and

WHEREAS, Section 11-46-26 of the Alabama Code of 1975, as amended, provides that if only one person has filed a statement of candidacy or has been nominated for an office for an election to be held pursuant to Sections 11-46-20 through 11-46-73 of the Alabama Code of 1975, as amended, at the time the deadline for qualification has passed, then such person shall, for all purposes, be deemed elected to such office, and the mayor or other chief executive officer shall not cause the name of such person or the office for which his candidacy was declared to be printed on the ballot, but he shall immediately file a written statement with the governing body of the municipality, attested by the clerk, certifying the fact that only one person filed a statement of candidacy or was nominated for the office preceding the deadline set for an election of municipal officers of the municipality and setting forth the name of such person, and

WHEREAS, said Section 11-46-26, as amended, provides that the governing body of the municipality, after receiving such statement, shall adopt a resolution declaring the person named in the statement duly elected to the office described in the statement, and shall issue a Certificate of Election to such person, and

WHEREAS, the Mayor of the City [Town] of _____ has filed a written statement with the governing body of the municipality, attested by the Clerk, certifying the fact that only one person filed a statement of candidacy for the office of _____ prior to the deadline and that the name of that person who filed such statement was _____,

continued next page

NOW, THEREFORE, BE IT RESOLVED by the City [Town] Council of the City [Town] of _____ that _____ be and he is hereby declared duly elected to the office of _____ in the City [Town] of _____ for the term of office commencing on the first Monday in November, 20__ , and

BE IT FURTHER RESOLVED, that the Mayor of the City [Town] of _____ be and he hereby is directed to issue a certificate of election to _____ for the office of _____ for such term pursuant to the provisions of Section 11-46-25, as amended.

ADOPTED THIS THE ____ DAY OF _____, 20__.

Presiding Officer

ATTEST:

City [Town] Clerk

NOTE: A separate resolution should be adopted for each officer of the city or town who is elected without opposition. A separate certificate of election should also be adopted.

SAMPLE RESOLUTION APPOINTING ELECTION OFFICERS (PAPER BALLOT POLLS)

RESOLUTION

WHEREAS, a regular municipal election has been called to be held on the ___ day of August, 20___, and a runoff election, to be held if necessary, on the ___ day of October, 20___, and

WHEREAS, Section 11-46-27 of the Alabama Code of 1975, as amended, provides, in part, that the municipal governing body, not less than 15 days before the holding of any municipal election, appoint from the qualified electors of the municipality, officers to hold the election as follows: where paper ballots are used, one returning officer for each ward and three inspectors and two clerks for each box at each voting place.

NOW, THEREFORE, BE IT RESOLVED by the City [Town] Council of the City [Town] of _____, Alabama, that the election officers for said election shall be as follows:

WARD OR VOTING DISTRICT 1

Returning Officer
Inspectors Box No. 1

Clerks Box No. 1

Inspectors Box No. 2

Clerks Box No. 2

WARD OR VOTING DISTRICT 2

Returning Officer
Inspectors Box No. 1

Clerks Box No. 2

Mayor

ATTEST:

(NOTE: If the municipality of under 10,000 pop. has adopted an ordinance 6 months prior to the election providing for the appointment of additional election officers to receive, count, and return absentee ballots – see *sample Ordinance Establishing Procedure for the Appointment of Additional Election Officers for Absentee Ballots* -- then these officials should be included in this resolution. Note also that one of the additionally appointed officers shall be named as the inspector.)

SAMPLE RESOLUTION APPOINTING ELECTION OFFICERS (VOTING MACHINE POLLS)

RESOLUTION

WHEREAS, a regular municipal election has been called to be held on the ___ day of August, 20 __, and a runoff election to be held, if necessary, on the ___ day of October, 20 __, and

WHEREAS, Section 11-46-27 of the Alabama Code of 1975, as amended, provides, in part, that the municipal governing body, not less than 15 days before the holding of any municipal election, shall appoint from the qualified electors of the municipality, officers to hold the election as follows: where voting machines are used, an inspector, chief clerk and a first and second assistant clerk for each voting machine,

NOW, THEREFORE, BE IT RESOLVED by the City [Town] Council of _____, Alabama, that the election officers for said election shall be as follows:

VOTING MACHINE NO. 1

Inspector
Chief Clerk
Assistant Clerks

VOTING MACHINE NO. 2

Inspector
Chief Clerk
Assistant Clerks

Mayor

ATTEST: _____

City [Town] Clerk

(NOTE: If the municipality of under 10,000 pop. has adopted an ordinance 6 months prior to the election providing for the appointment of additional election officers to receive, count, and return absentee ballots – see sample Ordinance Establishing Procedure for the Appointment of Additional Election Officers for Absentee Ballots -- then these officials should be included in this resolution. Note also that one of the additionally appointed officers shall be named as the inspector.)

SAMPLE RESOLUTION APPOINTING ELECTION OFFICERS (ELECTRONIC VOTE COUNTING SYSTEMS)

RESOLUTION

WHEREAS, a regular municipal election has been called to be held on the ___ day of August, 20___, and a runoff election to be held, if necessary, on the ___ day of October, 20___, and

WHEREAS, Section 11-46-27 of the Alabama Code of 1975, and regulations adopted pursuant thereto provide, in part, that the municipal governing body, not less than 15 days before the holding of any municipal election, appoint from the municipality, officers to hold the election as follows: where electronic ballot counters are used, at least one inspector and three clerks,

NOW, THEREFORE, BE IT RESOLVED by the City [Town] Council of _____, Alabama, that the election officers for said election shall be as follows:

Inspector _____

Registration List Clerk _____

Poll List Clerk _____

Ballot Clerk _____

Mayor

ATTEST: _____
City [Town] Clerk

(NOTE: The municipality may employ additional poll officials to serve at any precinct and at a central ballot counter or memory pack tabulator where these are used. These officials should be included in this resolution.)

(NOTE: If the municipality of under 10,000 pop. has adopted an ordinance 6 months prior to the election providing for the appointment of additional election officers to receive, count, and return absentee ballots – see *sample Ordinance Establishing Procedure for the Appointment of Additional Election Officers for Absentee Ballots* -- then these officials should be included in this resolution. Note also that one of the additionally appointed officers shall be named as the inspector.)

SAMPLE ORDINANCE ESTABLISHING PROCEDURE FOR THE APPOINTMENT OF ADDITIONAL ELECTION OFFICERS FOR ABSENTEE BALLOTS IN MUNICIPALITIES UNDER 10,000 POP.

AN ORDINANCE

BE IT ORDAINED BY THE CITY [TOWN] COUNCIL OF _____, ALABAMA, AS FOLLOWS:

Section 1. At the time all other election officials are appointed pursuant to law, there shall be appointed three* additional election officials who shall meet on the day of the election at the place and hour as provided for all election officials for the purpose of receiving, counting, and returning the absentee ballots cast in the election.

Section 2. The absentee election officials appointed pursuant to this ordinance shall be in addition to other election officials required by law and shall be appointed in the same manner as other election officials.

Section 3. When the absentee election officials are appointed pursuant to this ordinance, one of them shall be designated as the inspector.

Section 4. This ordinance shall remain in effect until repealed by a subsequent ordinance adopted at least six months prior to an election.

Section 5. This ordinance is adopted pursuant to Section 11-46-27 of the Alabama Code of 1975 and shall be effective in all elections, both general and special, for aforesaid offices from and after the date of adoption.

ADOPTED THIS THE ___ DAY OF _____, 20__.

Presiding Officer

ATTEST:

City [Town] Clerk

** Section 11-46-27 of the Code of Alabama 1975 requires a minimum of three absentee election officials with one being designated as inspector. A city may appoint more than three if needed.*

SAMPLE NOTICE OF APPOINTMENT OF ELECTION OFFICERS

NOTICE OF APPOINTMENT OF ELECTION OFFICERS

Notice is hereby given that the following persons have been appointed by the City [Town] Council of _____, Alabama, to serve as election officers at the regular municipal election to be held on August __, 20 __, and at a runoff election, if necessary to be held on September __, 20 __.

[SET OUT OFFICERS IN SAME MANNER AS IN RESOLUTION OF APPOINTMENT]

Given under the hand at _____, Alabama, on this day _____, 20 __.

Mayor

ATTEST:

City [Town] Clerk

SAMPLE RESOLUTION ESTABLISHING THE USE OF ELECTRONIC VOTE COUNTING DEVICES

STATE OF ALABAMA
 _____ COUNTY
 CITY OF _____

RESOLUTION

WHEREAS, Chapter 7 of Title 17 of the Alabama Code of 1975, and the regulations adopted pursuant thereto by the Alabama Electronic Voting Committee, provide for the use of Electronic Vote Counting Systems; and

WHEREAS, Section 17-7-21 of the Code of Alabama 1975 provides that a municipality may, in its discretion, by adoption of an appropriate resolution, authorize, adopt, and direct the use of electronic vote counting systems for use in all elections held in such municipality;

NOW, THEREFORE, BE IT RESOLVED by the City [Town] Council of the City [Town] of _____ that for all elections held subsequent to the passage of this resolution, the use of _____ (insert type of electronic vote counting system) _____, a system which complies with Section 17-7-21 of the Code of Alabama and any regulations adopted pursuant thereto, is hereby authorized for the reporting, counting, and tabulating of any and all election results.

BE IT FURTHER RESOLVED, that the Mayor of the City [Town] of _____ is hereby directed to file a copy of this resolution with the Secretary of State as provided in Section 17-7-21 of the Code of Alabama 1975.

ADOPTED THIS THE ____ DAY OF _____, 20__.

 Presiding Officer

ATTEST:

 City [Town] Clerk

SAMPLE RESOLUTION FOR CANVASSING ELECTION RESULTS

RESOLUTION

WHEREAS, the general election for the City [Town] of _____ was duly and legally held on _____, as provided by law, and

WHEREAS, the municipal governing body of the City [Town] of _____ met on this ___ day of _____, 20___, all members thereof being present [or a quorum thereof being present], at ___ o'clock a.m., and has canvassed the returns, and has ascertained and determined the number of votes received by each candidate, and

WHEREAS, the said municipal governing body has ascertained and determined the result of said election as follows:

NAME OF CANDIDATE

BOX OR MACHINE NUMBER

TOTAL VOTE

(This is done for each Council place)

NOW, THEREFORE, BE IT RESOLVED by the City [Town] Council of the City [Town] of _____, Alabama, as follows:

1. That _____ received a majority of the votes cast for the office of Mayor and is hereby declared duly elected to that office for the term beginning on the first Monday in November, 20___.

2. That _____ received a majority of the votes cast for the office of Alderman [Councilmember] **Place No. 1** and is hereby declared duly elected to that office for the term beginning on the first Monday in November, 20___.

[Repeated for each council place.]

3. That no candidate received a majority of the votes cast for the office of _____ [Place No. ___], and that _____ and _____ received the most and second most votes cast for that office, therefore, a runoff election between said candidates is hereby ordered to be held on Tuesday, _____ [month/day], 20___, pursuant to the requirements of Section 11-46-20 et seq., of the Alabama Code of 1975, as amended.

[The declaration of results is continued for each office in this manner.]

ADOPTED THIS ___ DAY OF _____, 20___.

[It is customary for each member of the council to sign the resolution of canvass. However, there is no legal requirement to that effect as long as the minutes show the roll call vote upon adoption.]

SAMPLE CERTIFICATE OF ELECTION

STATE OF ALABAMA

_____ COUNTY

CITY [TOWN] OF _____

The undersigned hereby certify that the official canvass of the votes cast in the general municipal election held in the City [Town] of _____, Alabama, on _____, shows that _____ was duly elected to the office of _____ of the City [Town] of _____, Alabama, for the term commencing on the first Monday of October, 20__.

Given under our hands pursuant to the requirements of Sections 11-46-20 et seq. of the Alabama Code of 1975, as amended, this ___ day of _____, 20__.

(Signed)

Mayor [where mayor is member of council]

Councilmember

Councilmember

Councilmember

Councilmember

Councilmember

SAMPLE OATH OF OFFICE

STATE OF ALABAMA

_____ COUNTY

CITY [TOWN] OF _____

I, _____ solemnly swear [or affirm, as the case may be] that I will support the Constitution of the United States and the Constitution of the State of Alabama, so long as I continue a citizen thereof; and that I will faithfully and honestly discharge the duties of the office upon which I am about to enter, to the best of my ability, so help me God.

Signed)

Sworn to and subscribed before me this ___ day of _____, 20__.

(Signed) _____
[Title of officer administering oath]

SAMPLE FORM TO USE IF CANDIDATE FAILS OR REFUSES TO FILE STATEMENT OF ECONOMIC INTERESTS AT THE SAME TIME AS STATEMENT OF CANDIDACY

I, ___(print candidate's name here)___, candidate for municipal election in the City/Town of _____, for the municipal election to be held in August, 20___, hereby certify that I have been informed of the state law requirement in Section 36-25-15, Code of Alabama, 1975, that I file a Statement of Economic Interests with the municipal election officer at the time I file my statement of candidacy. I understand that the Statement of Economic Interests must be forwarded to the Ethics Commission within five (5) days of filing by Statement of Candidacy and that the failure to file the Statement with the municipal election official may result in the removal of my name from the municipal ballot. I am not able or willing to file the Statement at this time. I understand that this does not relieve me of the duty to file the Statement of Economic Interests with the municipal election official.

(Signed)

(Candidate for Election)

DATE: _____

(Signed) _____
(Municipal Employee Receiving Form –
Name Should be Printed Below Signature)

(NOTE: Only candidates who fail or refuse to file the Statement of Economic Interests at the time they file their Statement of Candidacy should be required to fill out *and sign* this form. The clerk should retain this form in a file for possible future use if needed. *This form is not required by Alabama law, but is recommended by the League.*)

SAMPLE ORDINANCE TO HIRE MAYOR AS UTILITY SUPERINTENDENT

AN ORDINANCE

BE IT ORDAINED BY THE CITY [TOWN] COUNCIL OF THE CITY [TOWN] OF _____, ALABAMA, AS FOLLOWS:

Section 1. The Mayor of the City [Town] of _____, Alabama, _____ [insert name of mayor], is hereby required to act as the _____ [full-time or part-time] Superintendent of the _____, [insert name of utility system] and as such shall serve as purchasing agent for such system, make all purchases authorized by the City [Town] Council therefor, keep a check on meter readings and billings for service and collection thereof, see that the system is kept in proper repair and operation, keep an inventory showing the supplies and equipment on hand for such system, keep a full and complete monthly financial statement of all operating costs and receipts, keep a proper inventory of the physical assets of such system, and have all such data and information relative to such system available for the City [Town] Council on its first meeting in each calendar month.

Section 2. In addition to the salary now fixed and paid to the Mayor of the City [Town] of _____, Alabama, there shall be paid to the Mayor for his services as Superintendent of the utility system named in Section 1 of this ordinance the sum of \$___ per month payable on the ___ day of each calendar month out of the receipts of such utility system.

Section 3. The City [Town] Council of the City [Town] of _____, Alabama, may at any regular meeting or special meeting called therefor, discontinue the services of the Mayor as Superintendent of the utility system, and in the event of such discontinuance of his services as such Superintendent of such system, all compensation authorized to be paid in Section 2 hereof shall lapse.

Section 4. This ordinance shall become effective on _____ and shall expire on _____, and sooner if the present mayor shall vacate the office.

ADOPTED THIS THE ___ DAY OF _____, 20__.

Mayor

ATTEST: _____
Clerk



U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

SEP 18 1989

Honorable Don Siegelman
Attorney General
State of Alabama
11 South Union Street
Montgomery, Alabama 36130-1601

Dear Mr. Attorney General:

This refers to Act No. 88-873, the Fair Campaign Practices Act (FCPA), for the State of Alabama, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your letter notifying us of your inability to submit further information regarding this act on August 22, 1989. Supplemental information was received from the Alabama Secretary of State on August 30, 1989. Although the State of Alabama has still not provided all of the additional information requested in our letters of December 16, 1988, and March 7, 1989, we are concerned that further delays may prevent implementation of important legislation. Accordingly, we set forth herein a determination under Section 5 of each voting change occasioned by the FCPA which is clearly identified in currently available materials. If you subsequently determine that the act adopts other changes that affect voting or that our present understanding of the changes is in error, such matters should be raised for future determination.

With this understanding, the Attorney General does not interpose objection to the following changes: the requirements that candidates report campaign contributions and expenditures at certain times before elections as well as on a yearly basis afterwards; the requirements respecting the formation and duties of political committees; the format of required reports; and, the various penalties for noncompliance. These are all changes affecting voting which we have been able clearly to identify as such from the original submission or from the additional written materials provided by you or the Alabama Secretary of State. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. In addition, as authorized by Section 5, the Attorney General reserves the right to reexamine any of these changes if additional information

continued next page

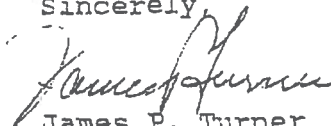
- 2 -

that would otherwise require an objection comes to his attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

With regard to the remainder of the submission now before us, we note that certain provisions of the predecessor Corrupt Practices Act of 1915 do not appear to have analogues in the Fair Campaign Practices Act, and the State has failed to discuss whether the repeal of those provisions effects actual changes in practices or procedures affecting voting. Accordingly, to the extent these repeals occasion substantive changes affecting voting, they are not evaluated herein because the State has not identified them in an "unambiguous and recordable manner" (Allen v. State Board of Elections, 393 U.S. 544, 571 (1969)) as required by the Act. See also McCain v. Lybrand, 465 U.S. 236, 243-50 (1984); United States v. Board of Commissioners, 435 U.S. 110, 136 (1978).

Finally, State officials have yet to agree on the scope of changes relating to candidates' financial reporting requirements imposed by the FCPA. It seems that all officials agree that the FCPA requires every individual who receives contributions or makes expenditures in excess of certain amounts identified in the FCPA, e.g., \$1,000 for local offices, \$3,000 for district offices, and \$10,000 for other state offices, must comply with new reporting requirements. We interpose no objection to this change. However, your office and that of the Secretary of State seem to disagree on whether those who qualify as candidates under state law and who receive or expend less than the identified amounts must also comply with the FCPA reporting requirements. Accordingly, should the State wish to enforce such a reporting requirement it will be necessary to clearly set forth the change in an appropriate submission to the Attorney General or bring the matter before the District Court for the District of Columbia for the required declaratory judgment. Such changes are unenforceable unless and until Section 5 preclearance requirements have been satisfied. See 28 C.F.R. 51.10.

Sincerely,



James P. Turner
Acting Assistant Attorney General
Civil Rights Division



Disclaimer: This elections manual is provided as a service to persons involved in the general municipal election to be held on August 28, 2012, with a runoff on October 9, 2012, if necessary. **The use of this manual and any accompanying ordinances, calendars or other information is at the sole risk of the user.** It is the responsibility of the user to verify any information included in this manual prior to use or reliance thereon. The Alabama League of Municipalities; its officer and employees; and the municipality and/or official which may distribute this manual disclaim any responsibility of liability for failure to comply with any filing requirement or any other election law.

**Alabama League of Municipalities
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334-262-2566
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www.alalm.org**

