



# The Legal Viewpoint

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## 2010 Federal Decennial Census

The Census Bureau has released the final official results of the 2010 federal decennial census. A number of recent callers to the League have questioned the impact of the new population figures on the operation of municipal government. This article addresses those issues.

### Statutory Provisions

The Code of Alabama 1975, establishes two effective dates for the census, one for the collection of taxes and one for all other non-revenue related matters. Section 1-3-5, Code of Alabama 1975 provides:

“The one hundred twentieth day after the first day of the first regular legislative session held next after the publication by the federal government of the regular federal decennial population census for Alabama is hereby fixed as the date for any reclassification under any law requiring classification based on such said census. The provisions of this section shall not apply to any law which provides for the levying or collection of license taxes on a population basis or the distribution of state and county collected or administered revenue or funds on a population basis, and the population as disclosed by any federal decennial census, as soon as the same is proclaimed, published or certified by the Director of the United States Census Bureau, shall be used in administering any such law.”

In construing the first sentence of Section 1-3-5, the Alabama Supreme Court has determined that in using the word “publication” the Legislature meant a “final, formal, official publication.” *Harralson vs. State*, 71 So.2d 79 (1953). However, the Court also stated that by saying in the second sentence that the census figures take effect for revenue purposes when they are “proclaimed, published or certified,” the Legislature did not require any formal publication.

### Effect of the Census on Non-Revenue Matter

Municipalities with a mayor-council form of government have different organizational structures depending upon the population of the municipality. Municipalities with populations of 12,000 or more are governed by a council which operates without a vote of the mayor. While the mayor has no vote with the council, he or she has veto power over certain ordinances passed by the council. In municipalities with populations of

less than 12,000, the mayor sits as a voting member of the council and also serves as the presiding officer of the council. Therefore, once a municipality reaches a population of 12,000 or more inhabitants, the council procedures change. But exactly when does that change in municipal operation occur?

Section 11-40-6 of the Code of Alabama 1975, provides in part:

“At the next election more than four months after the one hundred twentieth day after the first day of the first regular business session of the legislature held next after the publication by the federal government of the regular federal decennial population census for Alabama, if the municipality shows a population which authorizes a change in its government under this title, the proper officers for such a city shall be elected and perform the duties prescribed in this title.”

Based on this, a change in the operation of the municipality as a result of a population change will not take place until the next municipal election which, in most of Alabama’s municipalities, will be in the summer of 2012. Further, municipalities with a population of 12,000 or more inhabitants are given the authority, within certain limitations, to establish the number of members on their council. See Section 11-43-40, Code of Alabama 1975. However, like the change in the operation of the council, these changes will not take place until the next municipal election. Similarly, only municipalities of more than 1,000 in population may become organized under the regular form of Commission Government set out in Article 1 of Chapter of 44 of Title 11, Code of Alabama 1975.

We often get calls from municipalities questioning whether their class of municipality changes when their population changes. Section 11-40-12 of the Code of Alabama 1975 establishes eight classes of municipalities based on population. Section 110 of the Official Compilation of the Alabama Constitution of 1901 (formerly Amendment 375), allows the Legislature to adopt legislation affecting one or more classes of municipalities based on the population classifications set out in Section 11-40-12. It is important to note, however, that the classifications found

in Section 11-40-12 are based on the 1970 federal decennial census and are not affected by subsequent census changes in population. Once a municipality is classified in a particular class, the class never changes even if the population of the municipality changes significantly.

In addition to potential changes in the form and operation of municipal government based on population, the municipal police jurisdiction is also affected by population changes. The police jurisdiction of municipalities having 6,000 or more inhabitants extends out 3 miles from the corporate limits and for municipalities with a population of less than 6,000 it extends out one and one half miles from the corporate limits. Section 11-40-10, Code of Alabama 1975. While there is no Alabama case interpreting the extension of the police jurisdiction as a result of a population change, it is the opinion of the League of Municipalities that the change would take effect on the date of reclassification set out by Section 1-3-5, Code of Alabama 1975 which is June 29, 2011.

Changes in population as a result of the census may also affect municipal court systems. The procedures for abolishing or re-establishing a municipal court are set out in Sections 12-14-17 and 12-14-19 of the Code of Alabama 1975. If a municipality takes such action on or after June 29, 2011, the waiting time prior to the change taking effect might be extended or shortened as a result of the 2010 census.

When it comes to the publication or posting of ordinances, population also matters. Section 11-45-8 of the Code of Alabama 1975, provides, in part, that all municipalities with populations of less than 2,000 as shown by the 1950 federal decennial census have the option of posting their ordinances or publishing them in a newspaper. Since this section refers specifically to the 1950 census, the 2010 census has no impact on this option.

Although it is not possible to list all of the state laws governing municipalities that are affected by the 2010 federal decennial census, following is a list of the major ones that will take effect as of June 29, 2011:

- Article 3 of Chapter 42 of Title 11, Code of Alabama 1975, creates a method of annexation available to municipalities having a population of 25,000 or more inhabitants.
- Section 11-40-6 of the Code of Alabama 1975, that all municipalities with less than 2000 inhabitants shall be known as “towns, “ while those with 2000 or more inhabitants shall be known as “cities.”
- Article 4 of Chapter 6 of Title 14, Code of Alabama 1975, gives the Department of Corrections the authority to inspect and supervise municipal jails in all cities with a population of more than 10,000. Municipalities whose populations reach this figure will be subject to the jurisdiction of the Department of Corrections effective June 29, 2011.
- Section 25-5-13 of the Code of Alabama 1975 requires all municipalities of more than 2,000 in population to provide worker’s compensation for their employees.
- Sections 11-86-1 through 11-86-6 of the Code of Alabama 1975, provide for the creation of unincorporated recreation boards by municipalities of 100,000 population or less.
- Section 16-11-1 of the Code of Alabama 1975, gives all municipalities with a population of 5,000 or more the authority to establish a city board of education.
- Sections 11-43-180 through 11-43-190 of the Code of Alabama 1975, require all municipalities of 5,000 or more to have a personnel system for their law enforcement officers.
- Section 3-7-7 of the Code of Alabama 1975, requires all municipalities over 5,000 in population, in which a county animal shelter is not located, to maintain a suitable animal shelter.
- Article 1 of Chapter 2A of Title 28, Code of Alabama 1975, authorizes municipalities with populations of 1,000 or more to conduct an election upon the petition of 30% of the number of voters voting in the last preceding general election of the municipality to determine whether a dry municipality goes wet or vice versa for alcoholic beverage sales.



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- Section 1-2A-8 of the Code of Alabama 1975 exempts municipalities with a population of 1000 or less from the requirement that the Alabama State Flag be flown at municipal buildings.
- Section 11-43-5.1 of the Code of Alabama 1975, authorizes municipalities with a population of 5,000 or less to establish or abolish a civil service/merit system for municipal employees.
- Section 11-47-231 of the Code of Alabama 1975, authorizes municipalities with a population of 34,000 or more to plan, build and operate parking facilities.
- Section 11-49-40 of the Code of Alabama 1975, provides that municipalities with a population of more than 35,000 “have full power and authority to require railroad companies to construct and maintain within the city limits viaducts, bridges, and tunnels or parts of viaducts, bridges, and tunnels and their approaches over, along, or under the tracks at their own expense, such bridges and their approaches, tunnels or other conveniences at public crossings and such viaducts and their approaches over their tracks where the same cross or extend along public highways or streets.”
- Section 32-5A-171 of the Code of Alabama 1975, prohibits municipalities with a population of less than 19,000 from enforcing speed limits on interstate highways.

### Effect of the Census on Revenue

Many municipal revenue sources are affected by population. Section 1-3-5 of the Code of Alabama 1975, quoted above, provides that the decennial census figures can be used to determine all revenues based on population as soon as the census is proclaimed, published or certified by the Director of the U.S. Census Bureau. Municipalities which gain in population can expect an increase in revenues and those which lose population can expect decreases in revenues.

While not an exhaustive list, taxes affected by population include: ABC Board profits; automobile tag tax receipts; state gasoline taxes; privilege tax on oil and gas production; capital improvement fund monies; and municipal license taxes which may be based on population (such as licenses on telephone companies, telegraph companies, insurance companies other than fire and marine, express companies and railroads, waste grease collection).

The new census figures will have no effect on a municipality's share of certain other revenues including the financial institutions excise tax, TVA payments, the coal severance tax and the state taxes on beer and table wine as these taxes are not based on population.

### Effect of the Census on Re-Districting

One final aspect of the census warrants discussion, and that is the impact of the census on municipalities which elect their officials from districts. Section 11-46-23 of the Code of Alabama 1975 authorizes a municipal governing body to divide the municipality into districts for the election of officers. This adjustment must be made more than three months prior to the election. Additionally, a number of Alabama municipalities were divided by court order.

A shifting municipal population may require redrawing these district lines. If the current district lines no longer eliminate the problems sought to be redressed by districting, these lines will have to be redrawn. Further, if a municipality was redistricted pursuant to a court order, it is possible that the court has retained jurisdiction and that the new lines must receive court approval before taking effect. All districted municipalities should closely examine their current districts and determine if they should be adjusted as a result of population shifts.

### For More Information

While this article is a simple overview of the impact of the 2010 federal decennial census on Alabama's municipalities, it is our hope that it assists our members in better understanding some of the effects of population changes and shifts. Any questions should be directed to the Legal Department of the Alabama League of Municipalities. ■

## Congratulations to the 2011 Officers of the Alabama Association of Municipal Clerks and Administrators



*Pictured left to right: Laura Carmack, Lincoln, Treasurer; Lynn Porter, Trussville, Secretary; Gina Antolini, Columbiana, President-Elect; Peggy Shadix, Sylvan Springs, President; and Lynnette Ogden, Immediate Past- President*