

## CHAPTER IV

### OFFICERS, BOARDS, AND COMMISSIONS<sup>1</sup>

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In code charter municipalities using the mayor-board of aldermen form of government, the mayor and board may provide that the municipal judge, the marshal or chief of police, the tax collector, the tax assessor, and the city clerk be appointive rather than elective.<sup>2</sup> In addition, the mayor and board have the power and authority

to appoint a street commissioner, and such other officers and employees as may be necessary, and to prescribe the duties and fix the compensation of all such officers and employees. All officers and employees so appointed shall hold office at the pleasure of the governing authorities and may be discharged by such governing authorities at any time, either with or without cause.<sup>3</sup>

In 1976, mayor-board of aldermen cities were given specific authority to establish the position of chief administrative officer (CAO) of the municipality. The establishment of the CAO position requires a two-thirds vote of the mayor and board of aldermen, but the first CAO may not be appointed by the mayor and board until after the next general municipal election. The CAO may hold one or more other appointive positions in the municipality and may perform such administrative duties and functions as the mayor and board delegate to him.<sup>4</sup>

Under a commission government, the council (mayor and commissioners) possesses the power “to create, fill or discontinue any and all offices and employments. . . .”<sup>5</sup> This power includes the right to increase or decrease compensation at any time, to make and enforce rules and regulations governing officers and employees, and to remove any officer appointed by the council.<sup>6</sup>

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<sup>2</sup>*Code*, § 21-3-3.

<sup>3</sup>*Code*, § 21-3-5.

<sup>4</sup>*Code*, § 21-3-25(2) through § 21-3-25(5).

<sup>5</sup>*Code*, § 21-5-9.

<sup>6</sup>*Code*, § 21-5-9.

The laws governing council-manager government provide that all officers and employees of the municipality, except the mayor and councilmen, shall be appointive.<sup>7</sup> The city attorney, auditor, and police justice (if any) must be appointed by the council, but it is discretionary with the council whether they or the city manager shall appoint the city clerk and treasurer. All other department heads and municipal employees are appointed by the city manager.<sup>8</sup>

Under the mayor-council form of government, commonly referred to as the “strong mayor” form of government, all officers and employees other than the mayor and council must be appointed. The law allows the council to appoint a clerk of council (not subject to veto by the mayor). However, the city clerk and all other department heads must be appointed by the mayor with confirmation by the council. Subordinate officers and employees are to be appointed and removed by the directors of the various departments, subject to the restrictions of any civil service system which may be in effect. At the discretion of the council, and with its advice and consent, the mayor may appoint a chief administrative officer to coordinate and direct the operations of the various departments and functions of municipal government. The CAO shall serve at the pleasure of the mayor and shall be answerable solely to the mayor. He shall be excluded from any municipal civil service system.<sup>9</sup>

An interesting sidelight on the powers of a municipal governing body is the fact that it can arbitrarily increase or decrease the salary of any appointive officer during his term of office. The Attorney General of Mississippi in a situation involving a mayor-board of aldermen municipality has ruled:

I advise you that it is my opinion. . . [that] the governing authorities of a municipality have the power to fix the compensation of the appointive officers and employees at such amount as they deem proper and to change same from time to time as they see fit.<sup>10</sup>

Although this ruling concerned a mayor-board of aldermen municipality, it would apply equally to any other form of municipal government in Mississippi.

Officers to be elected to a municipal office must qualify as municipal electors.<sup>11</sup> The general laws provide that in all cases the governing body of a municipality shall be elective. Whether or not other officers are elective will depend upon the form of government and the ordinances of

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<sup>7</sup>*Code*, § 21-9-21.

<sup>8</sup>*Code*, § 21-9-29.

<sup>9</sup>*Code*, § 21-8-7, § 21-8-13, § 21-8-23, and § 21-8-25.

<sup>10</sup>Letter dated January 9, 1954, from Attorney General J. P. Coleman to Mr. A. C. Edmonson, Town Clerk, Edwards, Mississippi.

<sup>11</sup>Qualifications for municipal electors may be found in Chapter VI.

the particular municipality.<sup>12</sup>

***Appointments by the Governing Body.*** The governing authorities shall elect all officers to be elected by them at the first regular meeting of the group after each regular municipal election. The officers so elected will take the oath of office, and all officers and employees handling money or having custody of public funds shall give bond, with sufficient surety, in a penalty not less than \$10,000.<sup>13</sup> At the discretion of the governing authorities, municipalities may purchase “errors and omissions insurance” for municipal officers and employees.<sup>14</sup>

***Appointment of City Attorney.*** Annually, the governing authorities may appoint an attorney-at-law, prescribe his duties and determine his compensation. In the event legal work that goes beyond that anticipated in the contract is needed by the municipality, the governing authorities, by a unanimous vote, may increase the attorney’s salary commensurately. Additional legal assistance or financial advice may also be obtained by the governing authority of the municipality over and above the services supplied by the regular attorney. In the case of the city attorney or any other attorney serving the municipality in the matter of issuing or refunding bonds, he may not be compensated at a rate higher than 1 percent (1%) of the bonds issued or refunded.<sup>15</sup>

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<sup>12</sup>For additional information on elective and appointive officers, see Chapter III.

<sup>13</sup>*Code*, § 21-15-3; and §§ 21-3-5, 21-5-9, 21-8-23, and 21-9-21. The premium on the surety bond shall be paid by the municipality.

<sup>14</sup>*Code*, § 21-15-6; see also Chapter II.

<sup>15</sup>*Code*, § 21-15-25.

## DUTIES OF CERTAIN MUNICIPAL OFFICERS

**Clerk.** The clerk of a municipality serves as auditor,<sup>16</sup> bookkeeper,<sup>17</sup> custodian of the official seal,<sup>18</sup> clerk of the police court,<sup>19</sup> registrar of voters,<sup>20</sup> and *ex officio* treasurer<sup>21</sup> (in municipalities not having depositories); and he shall certify building, plumbing, electrical, sanitary, and like codes (together with the mayor), which have been adopted and cited in an ordinance by the governing body of the municipality and file same as a part of the permanent records of the clerk's office;<sup>22</sup> shall keep the "Municipal Minutes" in which he shall record the proceedings and all orders, ordinances and judgments of the governing authorities, and shall record the proceedings and all orders, ordinances and judgments of the governing authorities, and shall keep the same fully indexed alphabetically, so that all entries on the minutes can be easily found ("All official actions of the governing authorities of a municipality shall be evidenced only by official entries duly recorded on such minute book");<sup>23</sup> shall, in municipalities of 2,000 or more, or in others so ordering, keep a "Docket of Claims,"<sup>24</sup> shall keep the "Municipal Docket" upon which he shall enter each subject, other than claims and accounts, to be acted upon by the governing authorities at the next meeting ("After each meeting he shall make up such docket for the next regular meeting and he shall examine the statutes of the state and the ordinances of the municipality to ascertain the subjects required or proper to be acted upon at the following meeting and shall docket all such matters"),<sup>25</sup> shall make monthly financial reports to the

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<sup>16</sup>See additional information in Chapter VIII.

<sup>17</sup>See additional information in Chapter VIII and *Code*, § 21-35-11 and § 21-39-5.

<sup>18</sup>*Code*, § 21-15-17.

<sup>19</sup>See Chapter XII.

<sup>20</sup>*Code*, § 23-15-35. The clerk of the municipality shall be the registrar of voters and shall be authorized to register applicants as county electors. As to registration of municipal electors based on receipt of a copy of the application for registration by the county registrar, see *Code*, § 23-15-39(3).

<sup>21</sup>*Code*, § 21-3-5 and § 21-39-19.

<sup>22</sup>*Code*, § 21-19-25.

<sup>23</sup>*Code*, § 21-15-17. The minutes are valid only if they are signed by the mayor or a majority of all the members of the governing body, as provided in *Code*, § 21-15-33.

<sup>24</sup>*Code*, § 21-39-7; see also Chapter VIII.

<sup>25</sup>*Code*, § 21-15-19.

governing body at its regular meeting;<sup>26</sup> shall keep the ordinance book;<sup>27</sup> shall copy the assessment rolls;<sup>28</sup> shall certify and publish the levy for municipal taxes;<sup>29</sup> shall certify certain tax levy information to the State Tax Commission;<sup>30</sup> shall issue warrants;<sup>31</sup> and may certify copies of ordinances whenever proof of their existence is needed in judicial proceedings.<sup>32</sup> For additional information about the many varied financial duties of the clerk, see Chapter VIII.<sup>33</sup>

Legal responsibility for preserving public records of the municipality rests with the governing authorities, but in practice the clerk assumes this duty. For a detailed account of record management, see Appendix 4.

***Deputy Clerk.*** Every municipality may appoint one or more deputy clerks who shall have all of the powers and responsibilities of the clerk. His pay is to be set by the governing authorities and he is removable from office at the pleasure of such authorities. He takes the same oath of office as does the clerk and the certificate of his appointment is made a part of the permanent records of the office of the clerk.<sup>34</sup>

### ***Marshal or Chief of Police.***

The marshal or chief of police shall be the chief law enforcement officer of the municipality and shall have control and supervision of all police officers employed by said municipality. The marshal or chief of police shall be an ex-officio constable within the boundaries of the municipality, and he shall perform such other duties as shall be required of him by proper ordinance. Before performing any of the duties of his office, the marshal or chief of police shall give bond, with sufficient surety, to be payable, conditioned and approved as provided by law, in an amount to be determined by the municipal governing authority

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<sup>26</sup>*Code*, § 21-35-13.

<sup>27</sup>*Code*, § 21-13-13 and § 21-15-17.

<sup>28</sup>*Code*, § 21-33-41.

<sup>29</sup>*Code*, § 21-33-47.

<sup>30</sup>See Chapter VIII and *Code*, § 21-33-47.

<sup>31</sup>*Code*, § 21-39-13; see also Chapter VIII.

<sup>32</sup>*Code*, § 21-13-17.

<sup>33</sup>Within the discretion of the governing authorities of any municipality with 75,000 or more inhabitants (Jackson), a fiscal or financial department may be established and its director shall be authorized to act in all financial matters as the city clerk is authorized to act. *Code*, § 21-17-15.

<sup>34</sup>*Code*, § 21-15-23.

(which shall be not less than Fifty Thousand Dollars (\$50,000.00)). The premium upon said bond shall be paid from the municipal treasury. If any marshal or chief of police shall fail to perform any of the duties of his office, it shall be the duty of the district attorney or county attorney upon receiving notice thereof to immediately file quo warranto proceedings against such official.<sup>35</sup>

**Tax Collector.** “The tax collector shall collect municipal taxes during the time and in the same manner and under the same penalties as the state and county taxes are collected.” He shall be governed by the general revenue laws of the state and must make the required reports to the governing authorities. The full amount of his collections shall be paid to the municipality, and his compensation and commissions shall be determined by the governing authorities and paid by the issuance of warrants.<sup>36</sup>

**Mayor.** Irrespective of the form of municipal government, each Mississippi mayor:

shall from time to time communicate, in writing, to the governing body such information and recommend such measures as in his opinion may lead to the improvement of the finances, the police, health, security, ornament, comfort and general prosperity of the municipality.

. . . shall be active and vigilant in enforcing all laws and ordinances for the government of the municipality, and he shall cause all other officers to be dealt with promptly for any neglect or violation of duty.

. . . shall have power, when he deems it proper, to require any officer of the municipality to exhibit his accounts or other papers, and to make report to the governing body, in writing, touching any subject or matter he may require pertaining to his office.

. . . is authorized to call on every male inhabitant of the municipality over twenty-one (21) years of age and under sixty (60) years to aid in enforcing the laws.

. . . shall have the power to remit fines and forfeitures, and to vacate and annul penalties of all kinds, for offenses against the ordinances of the municipality, by and with the consent of the governing body. However, a fine, forfeiture or penalty shall not be remitted, vacated or annulled unless the reasons therefor be entered on the minutes by the clerk, together with and as a part of the order so doing.<sup>37</sup>

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<sup>35</sup>*Code*, § 21-21-1.

<sup>36</sup>*Code*, § 21-35-53; see also Chapter VIII.

<sup>37</sup>*Code*, § 21-15-7 through § 21-15-15.

## BOARDS, COMMISSION, AND AUTHORITIES

The general laws of Mississippi provide for the creation of municipal commissions, boards, or authorities for the management and control of schools, parks, public utilities, ports, hospitals, libraries, civil service administration, municipal employees retirement and police and firemen's relief and disability funds, elections, zoning adjustment, public housing, and public health.<sup>38</sup>

***The School Board.*** In 1986, the Mississippi Legislature enacted a "uniform school law."<sup>39</sup> This law, was designed to reorganize and simplify the management of school districts throughout the state. Municipal school districts will continue to be governed by a board of five trustees chosen for overlapping five-year terms.<sup>40</sup>

Where the school district boundaries are coterminous with the boundaries of the municipality, the trustees will be elected by the governing body of the municipality. If fifteen percent (15%) or more of the pupils enrolled in a municipal separate school district reside in added territory outside the corporate limits, then at least one (1) member of the board of trustees of such school district shall be a resident of the added territory outside the corporate limits. In the event the added territory of a municipal separate school district furnishes thirty percent (30%) or more of the pupils enrolled in the schools of such district, then not more than two (2) members of the board of trustees can be residents of the added territory outside the corporate limits.<sup>41</sup>

***The Park Commission.***<sup>42</sup> At the discretion of the governing authorities of any municipality, a park commission may be created, composed of three (3) to five (5) members, to manage and control all of the parks, playgrounds, and swimming pools established and maintained by the municipality. The "park commissioners" must be qualified electors of the municipality and must not hold any other municipal office.

In a municipality operating under the mayor-council form of municipal government, the governing authorities, in their discretion, may create an advisory park and recreation commission which shall serve as an advisory board on all such matters. The board should consist of five (5) to nine (9) members, depending on the number of wards within the municipality, and providing that at least One (1) resident of each of the wards in the municipality be appointed to the commission.

The governing authorities of the municipality determine what, if any, compensation the park

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<sup>38</sup>See Chapter VI for information on the electoral process and Chapter XI for information on zoning adjustment and public housing.

<sup>39</sup>*Code*, §§ 37-6-1 *et seq.*

<sup>40</sup>*Code*, § 37-6-7 and § 37-7-203.

<sup>41</sup>*Code*, § 37-7-203.

<sup>42</sup>*Code*, § 21-37-33 through § 21-37-43.

commissioners will receive. When first appointed by the governing authority (appointed by the mayor and confirmed by the city council in municipalities operating under a mayor-council form of government), the terms of office of the park commissioners shall be one (1) for one (1) year, one (1) for two (2) years, and so on for the number of members on the park commission. Thereafter, the term of each commissioner shall be for as many years as the number of members on the commission. (In a municipality operating under a mayor-council form of government, the governing authorities set a term of office for park commissioners by ordinance.) A member of a park commission may be removed by the governing authorities for inefficiency, incompetency, or any other cause.

The governing authorities of the municipality appropriate and pay to the park commission, annually, the amount of funds necessary, in the opinion of the governing authorities, to properly operate and maintain the municipality's parks, playgrounds, and swimming pools. Any funds derived from other sources by the park commission must be spent on park and recreational facilities and activities. If they create a park commission, the governing authorities may levy and collect, annually, an ad valorem tax not to exceed two (2) mills to construct, support, and maintain parks and playgrounds and for other recreational purposes. All funds in the hands of the park commission must be placed in the municipal depository and shall be considered municipal funds.

Given their charge to manage and control recreational facilities for a municipality (except in the case of a park commission in a municipality operating under a mayor-council form of government where their role is advisory, as noted above), a park commission has a full range of powers, duties, and responsibilities – personnel administration, fiscal control, establishment of regulations pertaining to use of the municipality's recreational facilities, etc. The park commission must report quarterly to the governing authorities on the fiscal condition of the park commission and all commission activities. An annual report must also be made to the governing authorities in the form of a detailed statement covering the entire management and operation of the municipality's park and recreational facilities.

***Public Utilities Commissions.***<sup>43</sup> The governing authorities of a municipality may create a public utility commission to control and manage a waterworks system; water supply system; a sewerage system; a sewerage disposal system; a gas producing, generating, transmission or distribution system; an electric producing, generating, transmission or distribution system a garbage disposal system; a rubbish disposal system, including incinerators; or any combination of the above named utilities, plus a motor vehicle transportation system. Three (3) to five (5) public utility commissioners are appointed by the governing body of the municipality. Their terms vary from three (3) to five (5) years in length and compensations is fixed and determined in a manner similar to that of the park commissioners. Where there are three (3) members of the commission, the term of office shall be for a period of three (3) years, where there are four (4) members the term of office shall be for a period of four (4) years, and where there are five (5) members the term of office shall be for a period of five (5) years. However, for the first appointment of commissioners at the formation of the commission, one (1) commissioner shall be appointed for

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<sup>43</sup>Code, § 21-27-11 and § 21-27-13.

a term of one (1) year, one (1) commissioner for a term of two (2) years, one (1) commissioner for a term of three (3) years and, where necessary, one (1) commissioner for a term of four (4) years, and one (1) commissioner for a term of five (5) years, so that thereafter the term of office of one (1) commissioner shall expire each year. Where the governing authorities of the municipality do not elect to create a commission, then any system or systems owned and operated by the municipality shall be controlled and managed by the governing authorities of the municipality, who shall have all the power and authority conferred upon the public service commission. (Under the council-manager form of government, the commission is appointed by the mayor and council and not the manager.)

**Port Commissions.**<sup>44</sup> Any municipality which is designated a port of entry by the United States government must set up a port commission to exercise jurisdiction over the port and terminals, vessels and wharves, common carriers, and public utilities using the port. The commission must be composed of five (5) members appointed for terms of four (4) years. The commissioners must be residents of the municipality in which the port is located. The governor will appoint one member; the county board of supervisors will appoint one member—both of whom must be skilled and experienced in maritime affairs. The governing body of the municipality appoints three (3) members, only one of whom must be skilled and experienced in maritime affairs. However, in Natchez, Greenville, and Vicksburg, the municipal governing body serves as the port commission.<sup>45</sup> Any municipal port commission may apply to the Mississippi Development Authority (MDA) to transfer the ownership of the port to the State.

**Board of Trustees of a Municipal Hospital.**<sup>46</sup> The governing body of any municipality operating a municipally owned “community hospital” (defined as: any hospital, nursing home and/or related health facilities or programs, including without limitation, ambulatory surgical facilities, intermediate care facilities, after-hours clinics, home health agencies and rehabilitation facilities, established and acquired by boards of trustees or by one or more owners which is governed, operated and maintained by a board of trustees<sup>47</sup>) must appoint a board of trustees to manage the hospital or facility. The board shall be made up of either five (5) or seven (7) members, as the municipality chooses; and they shall serve for a term of five (5) years from the date of their appointment. They will be appointed by the governing body of the municipality. Each appointee must be a citizen or resident of the municipality and shall not hold any other political office, elected or appointed. The first board members shall be appointed for terms which will permit staggered appointments in the future. Where a municipality and a county or other political subdivision share ownership of a hospital or related health facility, the board of trustees shall be appointed by the respective owners on a pro rata basis comparable to the ownership interests.

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<sup>44</sup>Code, § 59-5-17.

<sup>45</sup>Code, § 59-1-1 and § 59-1-3.

<sup>46</sup>Code, § 41-13-39.

<sup>47</sup>Code, § 41-13-10.

