

**DO'S AND DON'TS
WITH PUBLIC FUNDS
ALABAMA MUNICIPALITIES**



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December 2014**

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QUORUM

Definition of a Quorum

A quorum is the number of members required to be present before a board, commission, council, etc. can conduct business. A quorum is a simple majority of members, unless otherwise provided by law. An official meeting cannot be convened without a quorum because a quorum is necessary to conduct any official business, whether or not voting occurs. Even the act convening a meeting cannot occur without a quorum present.

Alabama's Open Meetings Act defines a quorum as "a majority of the voting members of a governmental body."

Alabama's Administrative Procedure Act defines a quorum this way, "No less than a majority of the members of a multimember agency shall constitute a quorum authorized to act in the name of the agency, unless otherwise provided by statute."

Necessity for a Quorum

The Alabama Supreme Court has ruled that quorum is, "a condition precedent to everything", and that "Until then there is an absolute incapacity to consider or act in any way upon any matter."

Penton v. Brown-Crummer, January 23, 1930. (Supreme Court)

In his Opinion No. 83-397, the Attorney General stated that actions taken without a quorum present are void. Void actions can be ignored or attacked in any proceeding.

Vacancies

In his Opinion No. 93-095, the Attorney General stated that if vacancies occur on a board, a majority of the remaining members constitute a quorum. However, if a quorum is required by law or regulation to be a specific number of members, that number is not changed by a vacancy.

Physical Presence

Attorney General's Opinion 2004-072 provides a good discussion of the issue of physical presence. The opinion states that:

- Physical presence of members is necessary.
- The presence of members cannot be made by the telephone, speakerphone, videoconferencing, teleconferencing, etc.

Because members must be physically present, the use of proxies or letters of intent are not allowed.

Also, Attorney General's Opinion 2006-071 states that to be counted towards establishing a quorum, board members attending meetings that are subject to the Open Meetings Act are required to be physically present.

PUBLIC RECORDS

What is a public record?

A public record is a record that is reasonably necessary to record the business and the status and condition of such business and activities can be known by the citizens.

Public records include records in all media, including electronic media.

Public records include records filed with or generated by the courts and their officers.

Who has access to public records?

The *Code of Alabama 1975*, Section 36-12-40 grants citizens the right to inspect and take a copy of any public record in Alabama, except as may be otherwise provided by statute.

Many of the rules regarding access to public records are derived from interpretations of the law by the Alabama Supreme Court and by the state's Attorney General. The Alabama Supreme Court has named some records that can be excluded from public access. These are:

- Recorded information received by a public officer in confidence
- Sensitive personnel records
- Pending criminal investigations
- Records the disclosure of which would be detrimental to the best interests of the public.

The law, the courts, and the Attorney General have taken the position that public disclosure of all records is required, unless information in the records is restricted, either directly in the law, or is restricted according to their opinions.

If there is a condition where disclosure of information in the records could create a liability, it would be advisable to seek legal counsel and possibly an Attorney General's Opinion before disclosing information in the records.

The Attorney General has issued numerous opinions as to whether a particular record is a public record. These can be accessed by searching the opinions section of the Attorney General's Internet website at <http://ago.alabama.gov/Opinions.aspx> using the search term "public record". For example:

- Opinion 2002-205 states that all documents pertaining to the award of a contract are public records.
- Opinion 2001-269 states that personnel records of former employees are subject to disclosure under the public records law.
- Opinion 96-0003 provides a good discussion of the kinds of personnel information that are required to be disclosed.
- Opinion 2003-052 contains a good discussion of exceptions to the open records law.
- Opinion 98-00157 states that information on a diskette is a public record, and that access cannot be denied because a person intends to use the record for personal gain.

- Opinion 2002-342 states that public records must be kept in the office where the records were created or in a depository approved by the Local Government Records Commission.
- Opinion 2000-077 states that a city does not have to provide a list of insurance companies delinquent in paying a tax, but that the statements filed by the insurance companies from which such a list could be made are public documents.

What restrictions can be imposed on the process of inspecting records?

Any office has the right to create reasonable rules for inspection of records, such as requiring:

- Inspection by appointment,
- Completion of a form naming the records to be inspected,
- Inspection of records at specific times.

Can there be a charge for providing a copy of public records?

A custodian of public records may recoup reasonable costs incurred in making a copy of public records, however:

- The costs must be actual costs (no money can be made from the transaction)
- Access to records cannot be influenced by the intended use of information obtained from the records.
- Charges for copies cannot be influenced by the intended use of information obtained from the records.
- Costs must be limited to the costs of providing copies, not the cost of maintaining the record and providing access.

LOCAL GOVERNMENT RECORDS COMMISSION

This Local Government Records Commission is established by the *Code of Alabama 1975*, Section 41-13-22 to oversee the preservation and disposal of county, municipal and other local government records in Alabama. The *Code of Alabama 1975*, Section 41-13-23 states that, “No county, municipal, or other local government official shall cause any county, municipal, or other government record to be destroyed or otherwise disposed of without first obtaining the approval of the Local Government Records Commission.”

To obtain guidance concerning the preservation or disposition of records, the commission can be contacted through the Department of Archives and History at (334)242-4452 or by email at records@archives.state.al.us. The Internet website <http://archives.alabama.gov/officials/local00.html> provides information about the commission and its duties and authority. The Internet website <http://archives.state.al.us/officials/localrda.html> contains downloadable files that provide instruction on the retention and destruction of various types of local government records.

OPEN MEETINGS LAW

On October 1, 2005, Alabama's Sunshine Law was repealed and replaced by a new Open Meetings Law. The new law is located in Alabama law at the *Code of Alabama 1975*, Sections 36-25A-1 through 36-25A-11. The new law is far more specific than the old Sunshine Law. The new law requires that, except for executive sessions permitted by the law or as otherwise expressly provided by other federal or state statutes, all meetings of a governmental body must be open to the public, and no meetings of a governmental body (with some minor exceptions) may be held without providing prior notice.

The Attorney General has held training sessions on the Open Meetings Law around the state. General information about the law is available on the internet at open.alabama.gov.

Who is subject to the Open Meetings Law?

The Open Meetings Law applies to governmental bodies, as defined in the Open Meetings Law. Governmental bodies are defined in the law (*Code of Alabama 1975*, Section 36-25A-2(4)) as:

- All boards, bodies, and commissions of the executive and legislative departments of the state or its political subdivisions or municipalities which expend or appropriate public funds;
- All multimember governing bodies of departments, agencies, institutions, and instrumentalities of the executive and legislative departments of the state or its political subdivisions or municipalities, including, without limitation,
 - All corporations and other instrumentalities whose governing boards are comprised of a majority of members who are appointed or elected by the state or its political subdivisions, counties, or municipalities;
 - All quasi-judicial bodies of the executive and legislative departments of the state and all standing, special, or advisory committees or subcommittees of, or appointed by, the governmental body.

The following governmental bodies are exempt from the Open Meetings Law:

- Legislative party caucuses or coalitions.
- Alabama appellate or trial courts, except as required by the constitution of Alabama or any body governed by rules of the Alabama Supreme Court.
- Voluntary membership associations comprised of public employees, counties, municipalities, or their instrumentalities which have not been delegated any legislative or executive functions by the Legislature or Governor.

What is a Meeting?

Code of Alabama 1975, Section 36-25A-2(6)

Gatherings of a quorum of a governmental body subject to the Open Meetings Law may not always be meetings. Gatherings which are not meetings are not subject to the requirements for meetings provided in the Open Meetings Law. The Open Meetings Law defines a meeting as:

- A prearranged gathering of a quorum at a time and place which is set by law or operation of law, or

- A prearranged gathering of a quorum during which the body is authorized, either by law or otherwise, to exercise the powers which it possesses or approve the expenditure of public funds. [A governmental body may exercise its powers whenever a quorum is present], or
- A gathering, whether or not it was prearranged, during which a quorum deliberates specific matters expected to come before the body at a later date. [There can be no meetings to discuss matters preliminary to an “official meeting”. All meetings are “official” meetings.]

The term “meeting” does not include:

- Occasions when a quorum attends social gatherings, conventions, conferences, training programs, press conferences, media events, or otherwise gathers so long as the body does not deliberate specific matters that, at the time of the exchange, the participating members expect to come before the governmental body at a later date.
- Occasions when a quorum gathers, in person or by electronic communication, with state or federal officials for the purpose of reporting or obtaining information or seeking support for issues of importance to the governmental body.

Which meetings must be open to the public?

Code of Alabama 1975, Section 36-25A-1(a)

All gatherings that meet the definition of meetings must be open to the public, except during executive (closed to the public) sessions held for reasons named in the law. Executive sessions cannot be held for reasons other than those named in the Open Meetings Law.

What are the reasons for which executive sessions can be held?

The reasons for which executive sessions can be held are listed in the *Code of Alabama 1975*, Section 36-25A-7(a)(1 through 9). No other reasons are acceptable.

There are some matters named in the law for which executive sessions are specifically prohibited.

- Discussions of the job performance of specific public officials or specific public employees must be discussed in public session if the person;
 - Is an elected or appointed public official,
 - Is an appointed member or a state or local board or commission,
 - Is a public employee who is one of the classification of public employees required to file a statement of economic interests with the Alabama Ethics Commission.
 With some exceptions, the salary, compensation, and job benefits of specific public officials or specific public employees must be discussed in public session.
- The advice of legal counsel can be received in executive session on matters of litigation to which the governmental body is or may be a party; however, once members begin deliberating which actions to take relating to pending or threatened litigation, the executive session must be terminated and the deliberations must be done in public session.

Are executive sessions required?

Code of Alabama 1975, Section 36-25A-7(a)

The Open Meetings Law itself does not require executive sessions, but allows executive sessions for the reasons named in the law. However, other law may cause an allowable executive session to be considered prudent or necessary.

Are there specific procedures for going into executive session?

Code of Alabama 1975, Section 36-25A-7(b)

The Open Meetings Law requires that a regular open session must first be convened. A vote must then be taken to determine whether or not to go into executive session. The reason for the executive session must be named and recorded within the motion calling for the executive session. The vote of each member on the motion must be recorded in the minutes.

Prior to calling the executive session to order, the presiding officer must state whether the governmental body will reconvene after the executive session and, if so, the approximate time the body expects to reconvene.

Particular attention should be paid to the *Code of Alabama 1975*, Section 36-25A-7(a)(1 through 9), which describes the allowable reasons for going into executive session. Going into executive session for some of the reasons requires additional specific actions.

Prior Notice for Meetings

Code of Alabama 1975, Section 36-25A-3

Governmental bodies, as defined in the Open Meetings Law, must post prior notice of every meeting. However, there is no notice requirement for meetings of advisory bodies created solely to make recommendations on public policy issues and composed of persons who do not receive compensation for their service from public funds.

How is prior notice to be given?

Requirements as to where and when prior notice is to be given is found in the Open Meetings Law in the *Code of Alabama 1975*, Section 36-25A-3. Notice requirements vary according to the type of governmental entity involved and the nature of the meeting for which notice is to be given.

The Attorney General has adopted the position that actions of a governmental body are invalid if taken at a meeting which was held without the appropriate prior notice.

When and how can voting occur during meetings?

Code of Alabama 1975, Section 36-25A-5

Voting can occur according to the parliamentary procedure adopted by the governmental body, so long as the procedure does not conflict with the law.

All votes must be taken in open session, unless otherwise provided by the state's constitution or by other law. The Open Meetings Law itself provides one exception in that a governmental body acting in a quasi-judicial capacity to consider evidence or testimony presented during a hearing may vote in executive session only if;

- It votes on its decision in an open meeting or
- It issues a written decision that may be appealed to a body which has the authority to conduct a hearing or appeal which is open to the public.

Voice votes are allowed.

Secret ballots are not allowed, unless specifically authorized by the state's constitution or by law applicable to the governmental body.

Attorney General's Opinions

The Attorney General issues opinions to public bodies on issues surrounding the law. A public body can request an opinion from the Attorney General on its prospective actions relative to the Open Meetings Act. The Office of the Attorney General may be contacted at (334) 242-7300.

The following are the Attorney General's conclusions excerpted from the full text of opinions concerning the Open Meetings Act. The full texts of the opinions below, as well as additional opinions, are available at www.ago.state.al.us.

Examples of Attorney General Opinions

Attorney General's Opinion 2006-068 – Deliberations by regional planning and development commissions concerning credit and financial records of applicants for revolving fund loans must be conducted in open public meetings under the Alabama Open Meetings Act. There is no specific exemption in the Alabama Open Meetings Act or under federal law that allows the commissions to enter into executive session to discuss credit and financial records of applicants.

Attorney General's Opinion 2006-071 – To be counted towards establishing a quorum, board members attending meetings that are subject to the Open Meetings Act are required to be physically present.

Attorney General's Opinion 2006-088 – The Open Meetings Act permits governmental boards to convene an executive session to interview current public employees in connection with promoting these employees to fill vacant positions when those positions do not require the interviewee to file a Statement of Economic Interests with the Alabama Ethics Commission and

only those portions of the meeting that involve the general reputation and character, physical condition, professional competence, mental health, and job performance of the employee are discussed in executive session. The professional competence of a person may be discussed in executive session only when that person's position qualifies as a profession as specified in Section 36-25A-2(8) of the Code of Alabama.

Attorney General's Opinion 2006-108 – A volunteer fire department certified by the Alabama Forestry Commission is subject to the Open Meetings Act.

A county volunteer fire association is subject to the act.

A quorum of the governing body of a committee or subcommittee of a certified volunteer fire department or county fire association at a prearranged gathering required by law; a prearranged gathering at which it can exercise its powers or approve the expenditure of public funds; or a gathering at which it deliberates specific matters expected to come before the body, committee, or subcommittee at a later date, is a meeting subject to the act.

Attorney General's Opinion 2006-122 – A county hospital board, the meetings of which are appointed by the county governing body, is subject to the Open Meetings Act of 2005.

ETHICS LAW

Alabama's Ethics law is found in the *Code of Alabama 1975*, Sections 35-25-1 through 36-25-30. The law seeks to protect the public interest against conflicts of interest and to establish appropriate ethical standards for public officials where such conflicts exist. The law creates a state agency under the direction of a five-member Ethics Commission to carry out the provisions of the state ethics law. Ethics Commission members are appointed by the Governor, the Lieutenant Governor and the Speaker of the House of Representatives.

Conflict of Interest

A conflict of interest on the part of a public official or public employee is a conflict between private interests and official responsibilities. (*Code of Alabama 1975*, Section 36-25-1(8))

More specifically, a conflict of interest is:

- Any action,
- Any inaction,
- Any decision by a public official or public employee in the discharge of his or her official duties which would materially affect;
- His or her financial interest
- The financial interest of family members
- The financial interest of any business with which he or she is associated. The term "business with which he or she is associated" is defined in the *Code of Alabama 1975*, Section 36-25-1(2) as "Any business of which the person or a member of his family is an officer, owner, partner, board of director member, employee or holder of more than five percent of the fair market value of the business."

However, if the material financial effect will be felt generally and uniformly rather than disproportionately to the public official or public employee or his or her family or associated business, there is no conflict of interest.

Use of Public Position for Personal Gain is Prohibited

Code of Alabama 1975, Section 36-25-5

No public official or public employee can use his or her official position to obtain personal gain for himself or herself, or his or her family or any business with which he or she is associated, unless specifically authorized by law.

- A public official or employee who is a member of a body that has legislative powers (county commission, city council, city commission, town council, or municipal council or commission, and any their committees or subcommittees) cannot vote on matters in which he or she has a conflict of interest.
- A conflict of interest exists when a member controls an interest greater than five percent of the value of any business which is uniquely affected by the outcome of proposed or pending issues that come before him or her.
- No public official or public employee can, other than in the ordinary course of business, solicit a thing of value from a subordinate or from a person or business that he or she directly inspects, regulates, or supervises.
- No public official or public employee can use equipment, facilities, time, materials, human labor, or other public property for his or her private or business benefit, the benefit of any other person, or the benefit of his or her principal campaign committee, in a way that would materially affect his or her financial interest, except as may be allowed by law.

Disclosure of Confidential Information for Personal Gain

Code of Alabama 1975, Section 36-25-8

No public official, public employee, former public official or former public employee, for a period of two years, can disclosure confidential information gained from his or her position in a way that could result in financial gain for himself or others.

Revolving Door Law

Code of Alabama 1975, Section 36-25-13

For two years after leaving employment or office,

- No public official or employee can serve for a fee as a lobbyist or otherwise represent clients, including his or her employer before the body or organization in which he or she served or was employed.
- No public official or employee who negotiates or approves contracts, grants, or awards can enter into, solicit, or negotiate a contract, grant, or award with the governmental agency of which he or she was a member or employee. This includes, but is not limited to such

positions as public officials, directors, assistant directors, division chiefs, purchasing agents, etc.

- No public official or public employee who personally participates in the direct regulation, audit, or investigation of a private person or business can solicit or accept employment with the private person or business.

Notice of Contract to be filed with the Ethics Commission

Code of Alabama 1975, Section 36-25-11

If a public official or employee, or a member of their households, or a business with which they are associated contracts with a state or local governmental entity,

and,

The contract is required to be bid according to Alabama's competitive bid laws,

and,

The contract is to be paid in whole or in part with state, county, or municipal funds,

Then

A copy of the contract must be filed with the Ethics Commission within 10 days after the contract has been entered into.

Statements of Economic Interest

Code of Alabama 1975, Section 36-25-14

The ethics law provides for the filing of a statement of economic interests with the Ethics Commission by persons holding certain positions no later than April 30 of each year covering the period of the preceding calendar year, including,

- 1) All elected public officials at the state, county, or municipal level of government or their instrumentalities.
- 2) Other officials or employees whose base pay is \$75,000 or more annually.

Additional persons must file whether or not elected and whether or not paid \$75,000 or more annually (partial list)

- All full-time non-merit employees, other than those employed in maintenance, clerical, secretarial, or other similar positions.
- Chief clerks and chief managers
- Chief county clerks and chief county managers
- Chief administrators
- Chief county administrators
- Any public official or public employee whose primary duty is to invest public funds
- Chief administrative officers of any political subdivision
- Chief and assistant county building inspectors

- Any county or municipal administrator with power to grant or deny land development permits
- Chief municipal clerks
- Chiefs of police
- Fire chiefs
- City and county school superintendents and school board members
- City and county school principals or administrators
- Purchasing or procurement agents having the authority to make any purchase
- Chief financial and accounting directors
- Chief grant coordinators

Reporting of Violations

Code of Alabama 1975, Section 36-25-17:

If you are a governmental agency head and you become aware of a possible ethics violation, there are specific reporting requirements that you must follow or you can be charged with violation of the Ethics Law. The law requires governmental agency heads to file a report with the Ethics Commission within 10 days on any matters that come to his or her attention in his or her official capacity which constitute a violation of the state ethics law. The law further requires governmental agency heads to cooperate in every possible manner in connection with any investigation or hearing conducted by the Ethics Commission.

Ethics Commission Opinions

Code of Alabama 1975, Section 36-25-4(9)

The Ethics Commission issues opinions to public bodies relative to the state's ethics laws. These opinions are posted on the commission's Internet website at <http://ethics.alabama.gov> and can be downloaded. A public body can obtain an opinion from the Ethics Commission concerning real or hypothetical circumstances which might violate the ethics law.

The Ethics Commission offers training on the ethics law. The commission can be contacted at (334)242-2997 or by e-mail at info@ethics.alabama.gov.

Examples of Ethics Commission Opinions

The following excerpts were obtained from Ethics Commission opinions downloaded from the commission's Internet website. The full text of the opinions can be found there.

Ethics Commission Opinion 2006-03 – A former Engineering Technician with the City of Huntsville's Engineering Division may, upon his retirement, contract back with the City of Huntsville's Engineering Division to inspect bridges on an as-needed basis, when prior to his retirement from the City of Huntsville, he did not hold a position of authority, did not have the authority to make purchases, approve or grant contracts, nor was involved in the hiring process.

Ethics Commission Opinion 2006-04 – A member of the Enterprise City Council, who owns a health care related business, may contract with the city-owned health care facility to provide health care services and products; provided that the business is done through some type of bid process; and, that the council member does not vote to appoint or otherwise participate in the appointment of Health Care Authority Board members, when he has a contract pending between his business and the Health Care Authority, should appointments arise during the contract negotiation period.

Ethics Commission Opinion 2006-06 – The Jefferson County Commission may not, for a period of two years after her retirement, re-employ the former Principal Accountant, as she held a position of authority prior to her retirement.

Ethics Commission Opinion 2006-13 – “Ditch dirt” not otherwise reusable by Calhoun County or appropriate for resale, may be disposed of on property owned by Calhoun County public officials, employees or their family members: provided, that they have no opportunity to obtain this “ditch dirt” that is not available to all residents of Calhoun County, who may desire having the dirt disposed of on their property.

AUDITS

Municipalities are required to have annual audits. The basic *Code* section is Section 11-43-85 which is reproduced below. This section places the responsibility to arrange for an audit with the Mayor. There are some other *Code* sections in Title 11 of the *Code of Alabama* that address audits of certain type municipalities which may apply to a specific municipality rather than 11-43-85.

§ 11-43-85. Financial examinations.

“In cities and towns, the mayor, at least once a year, shall appoint an independent public accountant or the department of examiners of public accounts to conduct an examination in accordance with general accepted auditing standards of all books and accounts of the city or town since the preceding examination and to make a full report thereof in writing, under oath, to be submitted to the council at its first meeting after the completion of such report, and the same shall be spread upon the minutes of the council. For his service said independent public accountant or the department of examiners of public accounts shall be paid such sum as may be agreed upon.”

Code 1907, § 1229; Code 1923, § 1953; Code 1940, T. 37, § 445; Acts 1961, No. 569, p. 669

REPOSITORY LAW

In 1994 the Legislature established a repository of audit reports for entities receiving or disbursing public funds with the Department of Examiners of Public Accounts. The purpose was to facilitate public disclosure and access to audit reports. A copy of each audit report should be forwarded to the Department in order to comply with Act 94-414. The act is reproduced below.

HOUSE JOINT RESOLUTION

ESTABLISHING THE DEPARTMENT OF EXAMINERS OF PUBLIC ACCOUNTS AS A REPOSITORY FOR AUDIT REPORTS OF ENTITIES RECEIVING OR DISBURSING, OR BOTH, PUBLIC FUNDS.

WHEREAS, the Legislature of Alabama annually appropriates millions of dollars to various entities to provide services and programs for the benefit of the citizens of Alabama; and

WHEREAS, the accountability of these entities is of paramount importance to the Legislature, and

WHEREAS, audits are an integral part of the accountability of these entities to the citizens; and

WHEREAS, the Legislature desires that audit reports of entities receiving or disbursing, or both, public funds be available to the public to the maximum extent possible; and

WHEREAS, the Department of Examiners of Public Accounts issues public audit reports on the entities that it audits; now therefore,

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That all entities receiving or disbursing, or both, public funds forward a copy of every audit report issued on the entity to the Department of Examiners of

Public Accounts at the time of its receipt by the entity; and that the Department of Examiners of Public Accounts shall establish a repository of audit reports received, provide notice to the public weekly of reports received by the repository, and provide copies of audit reports in the repository to the public upon request.

Approved April 12, 1994

LEAGUE OF MUNICIPALITIES

The League is a state association of municipalities. They have attorneys on staff to assist municipalities with legal questions and also offer other services on programs to benefit municipalities.

GASOLINE TAXES

Municipalities receive distributions from the State Department of Revenue for their share of the various highway gasoline excise taxes. The municipalities may use the proceeds from these gasoline excise taxes as provided in Section 8-17-91(a)(2)c 5 of the *Code of Alabama, 1975*. Other uses of the proceeds that were previously permitted by statute have been repealed in Section 40-17-78(3) (repealed in 2012) and Section 40-17-224(3) (repealed in 2013). In most cases these funds may not be commingled with any other funds.

MUNICIPAL COURTS

Minimum Accounting Requirements for municipal courts were codified as Rule 43 in the Judicial Administration Rules effective October 1, 2002. These minimum accounting requirements provide that municipal courts have:

- Written procedures for internal controls over cash collections.
- Written procedures for maintenance and control of court records similar to those procedures required for circuit and district courts.
- Separate bank accounts for municipal court receipts and a prohibition against the commingling of court receipts with other municipal funds. Municipalities are not to use court receipts for operating purposes but are to distribute collections monthly to the agencies due these funds.
- Prescribed forms and logs for municipalities issuing parking tickets similar to those required for uniform traffic tickets.

Municipal courts collect significant revenue for the State of Alabama. The Department of Examiners of Public Accounts periodically reviews the amounts remitted to the State by municipalities and visit selected municipalities to review the collection and remittance of court fees to the State.

CONSTITUTION OF ALABAMA SECTION 94

Municipalities not to grant public money or lend credit to private persons or corporations.

“The legislature shall not have power to authorize any county, city, town, or other subdivision of this state to lend its credit, or to grant public money or thing of value in aid of, or to any individual, association, or corporation whatsoever, or to become a stockholder in any such corporation, association, or company, by issuing bonds or otherwise.”

This section prohibits:

- Loans to employees
- Loans to private organizations
- Unsettled travel advances

BORROWING FUNDS

At times it is necessary for municipalities to borrow funds for capital improvements. When this is necessary the municipality should consult their attorney to research the many laws that govern a municipality’s ability to issue warrants. Municipalities may issue general obligation warrants or limited obligation warrants. Limited obligation warrants usually require the pledge of a specific revenue source. Proceeds from the issuance warrants should always be spent in accordance with the provisions of the bond indenture. Municipalities should be financially responsible in insuring that debt repayment schedules do not extend past the useful life of the assets acquired.

SAFE PROGRAM (COLLATERALIZATION OF FUNDS)

Municipalities, including its agencies, departments, boards, school districts, commissions, and courts, are required to deposit their funds in financial institutions that have been designated as qualified public depositories under the SAFE Program include: Time Deposits (savings accounts), demand deposits and all certificates of deposit (negotiable and non-negotiable). Securities and other investment vehicles (i.e., bonds, notes, bills, warrants, common trust funds, money market mutual funds and other mutual funds, investments trusts), repurchase and reverse purchase agreements and similar instruments are considered investments and are not covered under the SAFE program.

Listing of financial institution that have been designated as qualified public depositories can be found by visiting the State Treasurers’ website at <http://treasury.alabama.gov> . This website also contains rules and regulations for the operation of the SAFE Program, including the responsibilities of qualified public depositories and covered public entities.

INVESTMENT OF MUNICIPAL FUNDS

Generally, investments by municipalities are governed by the provisions of the *Code of Alabama 1975*, Sections 11-81-19 and 11-81-21. There may also be local laws, which govern investments by municipalities. Generally, Municipal Funds (*Code of Alabama 1975*, Section 11-81-21) not presently needed may be invested in any obligation in which sinking funds may be invested to include:

- Direct obligations of the U.S. Department of Treasury
- Obligations of Federal Agencies (FHA, GSA, U.S. Maritime Administration, SBA, GNMA, HUD, and Federal Housing Administration)
- U.S. Dollar denominated deposit accounts and certificates of deposits that are fully insured by the FDIC or pledged collateral
- Pre-funded public obligations*
- Interests in any common trust fund or other collective instrument maintained by a national or state chartered bank, trust company or savings and loans association – mutual funds would be included in this category* (Note: there are limitations on the composition of investments in this category)

*See applicable *Code* Section for complete description and understanding of these items.

LEVY OF MUNICIPAL AD VALOREM TAXES

Municipal governing bodies are required “during the month of May of each year, by resolution or ordinance, to levy a tax on the property situated in such municipality for the next succeeding tax year at a rate in no event in excess of the constitutional limit authorized to be levied by such municipality on the value of such property as assessed for state taxation as shown by the books of assessment for the state and county tax year ending September 30 next succeeding the levy.” (*Code of Alabama 1975*, Section 11-51-42.) The levy once made is required to be certified and delivered on or before June 1 next succeeding the levy to the Tax Assessor of the County, along with a copy resolution or ordinance passed by the governing body.

COMPETITIVE BID LAW AND PUBLIC WORKS LAW

Competitive Bid Law

- **Code** 41-16-50 et seq. Article 3
- Applies to County Commissions, County and City Boards of Education, Municipalities
- Applies to the purchase or lease of materials, equipment, supplies or other personal property
- Applies to the expenditure of funds for labor and services

Public Works Law

- **Code** 39-1-1 et seq.
- Applies to any governmental board, commission, agency, body, authority, instrumentality, department, or subdivision of the state, its counties and municipalities.
- Applies to any construction, repair, or renovation of public buildings, structures, sewers, waterworks, roads, bridges, docks, underpasses, and viaducts as well as any other improvement to be constructed, repaired, or renovated on public property and to be paid, in whole or part, with public funds or with financing to be retired with public funds in the form of lease payments or otherwise.

Expenditure Thresholds

Competitive Bid Law

\$15,000

\$15,000 for repair parts/
repairs per incident

\$5,000 per month per equipment
rental not to exceed \$15,000 per
month for all such rentals

Public Works Law

\$50,000

Advertising Requirements

Competitive Bid Law

Post notice on bulletin
board outside purchasing
department

Mail or Electronic notice
required to those requesting
notice for sealed bids

Governing body can mandate
advertisement in newspaper

Public Works Law

Advertise in a newspaper
of general circulation in the
county – once each week for
3 consecutive weeks

Additional requirement for contracts
Over \$500,000 – once in 3
newspapers of general circulation
throughout the state

Bid Lists

Competitive Bid Law

All vendors who have requested to bid

Public Works Law

All vendors who have requested to bid

Bid Bonds/Cashier's Checks

Competitive Bid Law

Awarding authority may require bidders to furnish a bid bond

Public Works Law

Must be drawn on an Alabama bank or surety company

No guidance in law as to amount of bond - 5% to 10% of contract recommended

At least 5% of bid, not to exceed \$10,000

Performance Bonds

Competitive Bid Law

No requirement in law

Public Works Law

A bond (from an Alabama Surety Co.) equal to 100% of the contract must be furnished within 15 days of the contract being presented to the bidder for signature

Payment Bond

Competitive Bid Law

No requirement in law

Public Works Law

A bond equal to 50% of the contract plus reasonable estimate of attorney's fees

Only One Bid Received

Competitive Bid Law

May negotiate downward

Public Works Law

May negotiate downward

Length of Contract Terms

Competitive Bid Law

Purchase or service contracts -
limited to 3 years

Leasing of motor vehicles
by local governing bodies –
limited to 5 years

Lease-purchase contracts –
limited to 10 years

Public Works Law

No term limits

Provision for In-County Vendors

Competitive Bid Law

City may accept a bid
from a vendor having a
place of business within
the county (or SMSA) if
the bid is no more than 3%
greater than the bid of the
lowest responsible bidder

Public Works Law

No provision

Provisions for Mistakes by Vendors

Competitive Bid Law

No provisions

Public Works Law

Clerical or calculation errors –
low bidder must provide written
notice of withdrawals within 3 days

City has 10 days after receipt
to reach decision

Withdrawing bidder cannot work
on project in any way

Project Completion

Competitive Bid Law

No provisions

Public Works Law

Contractor must give notice of
project completion by advertising
4 successive weeks in a newspaper
of general circulation published in
the county

Provisions for Retainage

Competitive Bid Law

No provisions

Public Works Law

No more than 5% of estimated work done and value of materials shall be retained up to 50% of work completed

No additional retainage withheld after 50% of work completed

Retainage held until project completion and acceptance

Professional Services

Competitive Bid Law

Architects, Engineering Project Management Services – exempted from the bid process

Public Works Law

Architects, Engineering, Project Management Services - exempted from the bid process

Emergencies

Competitive Bid Law

No advertising required

Must still follow other bid law requirements – per ruling by the State Supreme Court (General Electric Co. vs. City of Mobile 1991)

Public Works Law

No advertising required

Must still follow other requirements – per Code 39-2-2(e)

Sole Source

Competitive Bid Law

No bid required

Public Works Law

Satisfaction of State Building Commission

Recommended by Architect or Engineer

Maintain documentation for public inspection

Force Account

Competitive Bid Law

Not applicable

Public Works Law

If city uses own labor and equipment, materials and supplies fall under regular bid law