

CHAPTER I

HISTORICAL AND CONSTITUTIONAL DEVELOPMENT OF THE MUNICIPALITY IN MISSISSIPPI

Michael T. Allen

INTRODUCTION

Municipal government in Mississippi has a rich history. Mississippi's municipalities – cities, towns, and villages – have withstood the test of time and proudly faced the many challenges brought on over hundreds of years of changing governments, times, and technologies. Today, as in the past, they are a prominent part of the political and economic landscape and a place that many call home.

With the 1920 census it became evident for the first time in U.S. history that more Americans were living in cities than in rural areas.¹ This count showed that an enormous population shift had occurred from the time of the first census. The census, taken in 1790, reported just slightly more than four percent of the population living in a city.² The 2000 census reports that there were 19,372 municipal (city) governments and 16,629 township and town governments in the United States which were home to over 216 million people.³ With over 80 percent of the nation's population now living in a metropolitan area,⁴ the various types of municipal governments, usually called *municipalities*, *cities*, *towns*, *boroughs*, or *villages*, are the first form of government with which most Americans come into contact.

The U.S. Census Bureau reported that in 1997 nearly 164 million Americans lived in one of the 19,372 *municipal* (city) governments. About half of these cities had populations of fewer than 1,000 residents while 69 million people lived in cities with 100,000 or greater populations. The 16,629

¹Ernest S. Griffith, *The Modern Development of City Government in the United Kingdom and the United States* (College Park, MD: McGrath, 1969), p. xiii.

²Alexander B. Callow, Jr., ed. *American Urban History: An Interpretive Reader with Commentaries*. 2nd ed. (New York, NY: Oxford University Press, 1973), p. 3.

³U.S. Census Bureau. *2000 Statistical Abstract of the United States*. 120th ed. (Washington, D.C.: Government Printing Office, 2000), p. 299-300. "Townships" include "town" governments in the six New England States and in Minnesota, New York, and Wisconsin.

⁴*Ibid.*, p. 32.

towns and townships accounted for a much smaller percentage of the population. Only 6.9 percent had 10,000 or greater populations while 53 percent had populations of fewer than 1,000.⁵

In Mississippi, there are three classifications for municipalities: cities, towns, and villages. Cities have populations of 2,000 or greater, towns have 300 to 1,999, and villages have 100 to 299 people.⁶ Villages may remain in existence if their population drops to fewer than 100; however, they are automatically abolished if their population dips below 50.⁷ Only cities and towns may incorporate today.⁸

If small cities are categorized as having populations below 25,000 and large ones as exceeding that population, then the 2000 Census shows that Mississippi contains a far greater percentage of small cities compared to large ones. Of the State's 297 cities, 286 cities (96 percent) were small and the remaining eleven (4 percent) were by definition large. Of the eleven large cities, only three exceeded 50,000 residents. In fact, only 88 cities in Mississippi had populations of 2,500 or more and 140 had fewer than 1,000. Jackson, the largest, had 184,256 inhabitants and was the only city in Mississippi to exceed a population of 100,000. The State's total 2000 population was 2,844,658.⁹

Historically and legally, municipal governments throughout the nation have been viewed as "creatures" of their respective states. As such, they are subject to their state's constitution, legislature, and laws.¹⁰ While the history of the development of the city in Mississippi goes back almost two hundred years, the development of the municipal form of government in the United States goes back even farther. The next section of this chapter examines some of this history and how municipal government in the United States has developed through the centuries. Later sections provide a brief sketch of Mississippi's history and the constitutional development of municipal government in the State.

⁵U.S. Census Bureau. *1997 Census of Governments*. Volume 1, Government Organization. (Washington, D.C.: Government Printing Office, 1999), p. VI-VII.

⁶*Mississippi Code 1972 Annotated* § 21-1-1.

⁷*Mississippi Code 1972 Annotated* § 21-1-49.

⁸*Mississippi Code 1972 Annotated* § 21-1-1.

⁹U.S. Census Bureau. *1997 Census of Governments*, p. 9; U.S. Census Bureau. *Profiles of General Demographic Characteristics*. 2000 Census of Population and Housing: Mississippi. (Washington, D.C.: Government Printing Office, 2001), p. 1, 220. Some figures calculated by the author based on Census data. Mississippi's eleven largest cities in 2000, listed from largest to smallest populations, are as follows: Jackson, Gulfport, Biloxi, Hattiesburg, Greenville, Meridian, Tupelo, Southaven, Vicksburg, Pascagoula, and Columbus.

¹⁰Center for Policy Research and Planning, Public Policy Research Center, and Mississippi Municipal Association, *Mississippi Municipal Profile* (No publisher listed, 1991), p. 1.

DEVELOPMENT OF MUNICIPAL GOVERNMENT IN THE UNITED STATES

The American form of municipal organization and many of the municipal offices found in the United States had their origins in England.¹¹ Likewise, the development of municipal government in the United States can be traced back primarily to its English roots coupled with specific American innovations. An especially strong connecting principle was the “rule of law” fostered by the common legal basis between England and the American Colonies.¹²

Since the young Colonies were granted varying charters and legal provisions by different English rulers over many years there was much room for developmental variations. However, certain key municipal features remain similar between the English and American systems. Among these are the power of the mayor, the composition of the city council, the functions of the judiciary, the level of citizen participation, and the adoption of parliamentary procedures.¹³

Although most of the Colonial cities have been characterized as possessing a strong English tradition, legal status, and foundation, other significant influences came from other people groups. The Dutch are usually credited with initiating the strong Colonial emphasis on education and free public schools.¹⁴ The Spanish and the Dutch are also said to have developed and used an elaborate system of formal town planning. Puritans are recognized for encouraging social cohesion, agrarianism, religious comradery, and a strong sense of local identification.¹⁵

Of course, local innovations by the Colonists themselves played a strong developmental role as well. Americans have long been recognized for developing new levels of democratic involvement and local self-government, public service, and a unusually low amount of political corruption.¹⁶

Cities continued to grow rapidly after the United States gained independence. When George Washington became President in 1789 there were already two cities with populations over 25,000 – Philadelphia with 42,000 and New York with 33,000. As the new nation matured, it also became

¹¹Frank J. Goodnow, *Municipal Problems* (New York, NY: Macmillan, 1897), p. 1-2.

¹²Griffith, *The Modern Development of City Government in the United Kingdom and the United States*, p. 1-5.

¹³Ibid.

¹⁴Ibid., p. 7, 10.

¹⁵Howard P. Chudacoff, *The Evolution of American Urban Society* (Englewood Cliffs, NJ: Prentice-Hall, 1975), p. 1-2.

¹⁶Griffith, *The Modern Development of City Government in the United Kingdom and the United States*, p. 10-11.

more urbanized. By 1850, New York grew to be the first American city with over a half million inhabitants. At this time there were also five other cities with populations over 100,000.¹⁷

The municipal scene continued to change dramatically over the next century. Just before World War II, for example, there were five cities with over one million residents and nine others with over half a million. Seventy-eight others had populations exceeding 100,000 and almost one fourth of the populace lived in only 37 cities.¹⁸ In 1998, the number of American cities with populations of at least 100,000 had grown to 218 – nine of which had well over one million residents.¹⁹

A BRIEF MISSISSIPPI HISTORY

Long before a single municipal government existed in the land of the Anglo-Saxons, people were living in Mississippi who would influence the region for thousands of years to come. These people, called Indians by the European explorers, enriched Mississippi's history and supplied many of the names that were given to counties, cities, and rivers within the State. Even the name *Mississippi* came from the local Indians who called the land *Misi sipi* meaning "Father of Waters."

When European explorers first arrived in the region of *Misi sipi*, the people living there were of three major tribes and several smaller bands. The major tribes were the Natchez, the Choctaw, and the Chickasaw. It has been estimated that in the year 1700 these three tribes and the smaller bands had a total population of around 30,000. The Choctaws were the largest tribe with a population of somewhere between 5,000 and 10,000 at this time. The Alabamas, a smaller band living in what is now north-central Mississippi about the time the first European explorers arrived, later migrated eastward and settled in the present state of Alabama.²⁰

The first known European explorers to enter Mississippi were Spanish. Hernando DeSoto, the first Spanish *conquistador* to set foot in Mississippi, came in 1540 and became the first recorded European to see the Mississippi River. However, it was the French who, over 200 years after Columbus "discovered" the New World, established the earliest colonial settlements in the region.²¹

¹⁷Charles M. Kneier, *City Government in the United States*. Rev. ed. (New York, NY: Harper and Brothers, 1947), p. 1-3.

¹⁸Ibid.

¹⁹U.S. Census Bureau. *2000 Statistical Abstract of the United States*, p. 39-41. Note: Municipal boundaries from which these figures were derived were in effect December 1994.

²⁰John K. Betterworth, *Mississippi Yesterday and Today*, (Austin, TX: Steck-Vaughn Company, 1964), p. 2, 21.

²¹Ibid., p. 37-46.

The first French explorers were led by Robert Cavelier de La Salle and arrived in Mississippi around 1682. La Salle claimed the entire Mississippi Valley for the King of France in March of that year. Seventeen years later in 1699, Frenchman Pierre le Moyne d'Iberville established the first European colony in Mississippi and built *Fort Maurepas* near the site of present-day Ocean Springs in Jackson County. The settlement was called Biloxi after the friendly Biloxi Indians of the area.²²

Other settlements began to spring up as more explorers arrived. In 1716, d'Iberville's brother, Jean Baptiste le Moyne de Bienville, who had participated in the 1699 expedition that established the Biloxi colony, traveled up the Mississippi River to the present site of Natchez in Adams County. There he set up an important outpost named *Fort Rosalie*, and was later commissioned Governor of French Louisiana. Part of this territory was later to become the Mississippi Territory.²³

After the French and Indian War (1755-1763), French Louisiana was divided between Spain and England. England received the land east of the Mississippi River, including much of the territory that was to become the State of Mississippi. The English called this region British West Florida. Spain gained New Orleans and all French territory west of the Mississippi River. In 1779, during the American War for Independence, Spain seized control of British West Florida. About fifteen years later, under the Treaty of San Lorenzo in 1795, Spain gave up its land north of the 31st parallel to the new United States government. In 1798, the Spanish left Natchez, and Natchez became the capital of the newly formed Mississippi Territory.²⁴

The U.S. Congress officially designated the region as the Mississippi Territory on April 7, 1798. Congress enlarged the Territory in 1804 and again in 1812 to encompass the land areas of the present States of Mississippi and Alabama. At this time, the greatest population concentration was in the western portion (Adams County area) of the Territory.²⁵ It was here that Natchez became the first Mississippi community to incorporate when it adopted a charter in 1803.²⁶

Before any communities were incorporated, on May 10, 1800, the U.S. Congress authorized the Mississippi Territory to elect a general assembly. The resulting Territorial Legislature first convened on September 22, 1800. The Mississippi Territory's population had increased to 40,000

²²Ibid., p. 37-46; Mississippi, Secretary of State, *Mississippi Official and Statistical Register 1988-1992*, by Dick Molpus, (1989), p. 19.

²³Mississippi, Secretary of State, *Mississippi Official and Statistical Register 1988-1992*, p. 19.

²⁴Ibid., p. 19-20.

²⁵Gordon K. Bryan, "County Government and Administration in Mississippi" (Ph.D. dissertation, University of California, Los Angeles, 1949), p. 6, 13-14.

²⁶Center for Policy Research and Planning, Public Policy Research Center, and Mississippi Municipal Association, *Mississippi Municipal Profile*, p. 10.

by 1810. By 1816, the southwestern portion of the Mississippi Territory contained fourteen communities with charters, and was ready to be admitted to the Union as the State of Mississippi.²⁷

The first stage in the quest for statehood began on December 27, 1814 when the Territorial Legislature approved a petition to the U.S. Congress for permission to hold a constitutional convention. This request was submitted to Congress on January 21, 1815 and sought approval to hold a constitutional convention and to draft a constitution suitable for admission of a new state into the Union. On March 1, 1817, after Congress passed and President James Monroe signed an enabling act, the Mississippi Territory was authorized to hold a constitutional convention, to adopt a constitution, and to set the boundaries for the proposed State of Mississippi. The enabling act also reorganized the eastern portion of the Territory as the Alabama Territory.²⁸

The rationale behind splitting the Territory into two states was an attempt by Southern congressmen to strengthen the region's position in the U.S. Senate.²⁹ Thus Congress divided the Territory into two pieces in 1817 and authorized the western section to seek statehood first.³⁰

Accordingly, in July 1817, the forty-eight elected delegates met in a Methodist church for Mississippi's first constitutional convention. The convention, held in the town of Washington in Adams County, lasted for six weeks and produced an eighteen-page constitution that was adopted on August 15, 1817. Congress approved the constitution and on December 10, 1817 formally admitted the State of Mississippi as the twentieth state of the Union. (Mississippi escaped being named Washington by a mere six votes in the 1817 constitutional convention.)³¹ Two years after Mississippi's statehood, on December 14, 1819, Congress admitted the eastern portion of the Territory to the Union as the twenty-second state, the State of Alabama.

Natchez, capital of the Mississippi Territory, became a temporary capital under statehood. In 1822, the Mississippi Legislature designated the city of Jackson as the state's new capital. The capital

²⁷Bryan, "County Government and Administration in Mississippi," p. 15; Robert B. Highsaw and Charles N. Fortenberry, *The Government and Administration of Mississippi* (New York: Thomas Y. Crowell, 1954), p. 1, 328.

²⁸Bryan, "County Government and Administration in Mississippi," p. 16-18; Tip H. Allen, Jr., "The Enduring Traditions of the State Constitutions," in *Mississippi Government and Politics: Modernizers Versus Traditionalists*, Politics and Governments of the American States, Dale Krane and Stephen D Shaffer (Lincoln: University of Nebraska Press, 1992), p. 44.

²⁹Allen, "The Enduring Traditions of the State Constitutions," p. 43-44.

³⁰Highsaw and Fortenberry, *The Government and Administration of Mississippi*, p. 1.

³¹Bryan, "County Government and Administration in Mississippi," p. 16-18; Allen, "The Enduring Traditions of the State Constitutions," p. 44.

city, named in honor of General Andrew Jackson, overlooks the Pearl River on a site once known as LeFleur's Bluff.³²

After statehood was achieved, Mississippi experienced rapid population growth and economic development. With the introduction of a superior Mexican variety, cotton soon became the state's primary crop. High cotton prices coupled with inexpensive land and good harvests caused enormous economic expansion in Mississippi.³³ This change brought calls to overhaul or replace the 1817 state constitution to make it more suitable for business. In December of 1830, the Legislature submitted to the voters the question of whether to call a state constitutional convention. The vote occurred in August 1831 and authorized a second constitutional convention to be convened. The convention began in September 1832 and by the middle of the next month (October 16, 1832) had completed its work. The electorate ratified the new constitution that year.³⁴

The 1850s have been called the "Golden Age of the Cotton Kingdom" and were made possible by the agricultural development of the Mississippi Delta. During this time, Mississippi was known as one of the wealthiest states in the nation; however, this period was short-lived. On January 9, 1861, Mississippi became the second state to secede from the Union.³⁵

Mississippi was a totally independent state for nearly three months before joining the Confederate States of America on March 29, 1861. Jefferson Davis, a Mississippian, was elected President of the Confederacy. Mississippi became heavily involved in the ensuing War Between the States. Of the 78,000 Mississippi soldiers who fought for the Confederacy, over 59,000 were killed or wounded. Many battles were fought in the state and when the War finally ended, Mississippi was deeply impoverished and the economy was in shambles.³⁶

After the War and during the Reconstruction Era (1870-1876), there was much upheaval as Mississippians tried to return to their normal lives. Readmitted February 23, 1870, Mississippi became the first Confederate state to return to the Union.³⁷ Taxes were high and moods were low for many during this time. However, able leaders, some of whom were recently-freed black Mississippians, made the transition period more bearable. For example, in 1870, Mississippi sent Hiram Rhodes Revels to the U.S. Senate as the first black Senator in the nation. In 1875, another

³²Mississippi, Secretary of State, *Mississippi Official and Statistical Register 1988-1992*, p. 20.

³³*Ibid.*, p. 20.

³⁴Bryan, "County Government and Administration in Mississippi," p. 22.

³⁵Mississippi, Secretary of State, *Mississippi Official and Statistical Register 1988-1992*, p. 20.

³⁶*Ibid.*, p. 20.

³⁷John W. Winkle III, *The Mississippi State Constitution: A Reference Guide*. Reference Guides to the State Constitutions of the United States, no. 12 (Westport, CT: Greenwood Press, 1993), p. 8.

black Senator, Blanche K. Bruce, was elected. In the Mississippi Legislature, John R. Lynch became Speaker of the House before he was later elected to two terms in the U.S. House of Representatives.³⁸

CONSTITUTIONAL DEVELOPMENT OF MUNICIPAL GOVERNMENT IN MISSISSIPPI

In Mississippi, municipal power currently descends from the *Mississippi Constitution of 1890* (cited in this book as *Const.*, § ...), the Legislature, and state law. This legal status has not changed during the entire history of statehood or under any of the four state constitutions (1817, 1832, 1869, and 1890). Under this arrangement, the Mississippi Supreme Court declared that the state's cities owe their very existence to the Legislature, which the Court said has "absolute power over municipalities":

Municipal corporations are now, as they have always been in this state, purely creatures of the legislative will; governed, and the extent of their powers limited, by express grants; invested, for purposes of public convenience, with certain expressed delegations of governmental power; their granted powers subject at all times to be enlarged or diminished, having no vested rights in their charters, which are subject at all times to amendment, modification, or repeal; their powers, their rights, their corporate existence, dependent entirely upon legislative discretion, acting as it may deem best for the public good.³⁹

Since Mississippi cities are creations of the Legislature, the Legislature has delineated specific areas of political and administrative authority (referred to as "governmental powers" and "proprietary powers") to act as agents of the state.⁴⁰ The role of the city as an agent of the state and operating solely under state legislative authority is referred to as *Dillon's Rule*.⁴¹ (The legal term for this principle originated in the late 1800s following an Iowa State Supreme Court ruling, with Judge John F. Dillon presiding, that upheld the principle of state supremacy over municipalities.)⁴²

A more recent principle of municipal authority officially operating in Mississippi and in most other states is called *municipal home rule*. The primary purpose of municipal home rule is to allow cities

³⁸Ibid., p. 21.

³⁹*Adams v. Kuykendall*, 35 So. 830, 83 Miss. 571 (1904) as cited in Center for Policy Research and Planning, Public Policy Research Center, and Mississippi Municipal Association, *Mississippi Municipal Profile*, p. 1.

⁴⁰Center for Policy Research and Planning, Public Policy Research Center, and Mississippi Municipal Association, *Mississippi Municipal Profile*, p. 1, 5.

⁴¹Ibid, p. 7.

⁴²Blake R. Jeffery, Tanis J. Salant, and Alan L. Boroshok, *County Government Structure: A State by State Report* (Washington, D.C.: National Association of Counties, 1989), p. 2.

more freedom and flexibility in handling their own internal affairs and actions as they see fit. The Mississippi Legislature allows such flexibility within broadly defined constitutional and statutory parameters.⁴³ In reality though, Mississippi's municipal home rule statute allows only limited home rule.

Since the first municipality was incorporated in Mississippi in 1803, over 300 others have been incorporated. However, all 300 cities are not in existence today since some have been legally dissolved and others have voluntarily surrendered their charters.⁴⁴ Historically, the number of municipalities in Mississippi has fluctuated. Two years after the adoption of the 1890 Constitution, there were 325 active municipalities. Thirty years later, this total was down to 313. By the middle of the twentieth century, there were only 263 active municipalities.⁴⁵ Today there are 297 municipalities in Mississippi with the newest one (Farmington in Alcorn County) incorporating in 1997.

Before 1892, municipalities were all created by special charters from the Legislature. The charter gave the city its name, established its boundaries, designated its form of government, and provided specific political and corporate powers.⁴⁶ The 1890 *Constitution* changed this special charter process and established a standardized method to be employed by the Legislature (found in § 88 [General Laws]). All municipalities in existence at that time were given the opportunity to retain their special private charters by means of a special vote. If they did not vote to retain their private charters, they were automatically included under the new municipal provisions. Only a few cities acted to retain their private charters.⁴⁷

In addition to § 88, the *Constitution* recognizes the existence of cities or municipal corporations in other sections as well. For example, § 101 (designates the City of Jackson as the capital), § 104 (statutes of limitations), § 110 (rights of way and private roads), § 183 (associations with railroads, corporations, etc.), § 192 (exemptions from municipal taxation), § 209 (conflict of interest involving public contracts), and § 245 (municipal elections qualifications), among others, all specifically address municipalities in some manner. However, even though cities are recognized as legal entities, the *Constitution* in § 88 empowers the Legislature to create, amend, and abolish such political subdivisions at their discretion:

⁴³Dana B. Brammer, ed., "Municipal Home Rule: Flexibility for Mississippi's Cities." *Public Administration Survey* 31, 4 (1984), p. 1-3.

⁴⁴Center for Policy Research and Planning, Public Policy Research Center, and Mississippi Municipal Association, *Mississippi Municipal Profile*, p. 10.

⁴⁵Highsaw and Fortenberry, *The Government and Administration of Mississippi*, p. 328.

⁴⁶*Ibid.*, p. 329.

⁴⁷*Ibid.*

The legislature shall pass general laws, under which local and private interest shall be provided for and protected, and under which cities and towns may be chartered and their charters amended, and under which corporations may be created, organized, and their acts of incorporation altered; and all such laws shall be subject to repeal or amendment.

Because § 88 of the *Constitution* has empowered the Legislature as such, state law has dictated the process of municipal incorporation and development since 1890. Likewise, state law forms the predominant authority upon which Mississippi's cities operate on a day-to-day basis today. Most laws relevant to municipal government can be found in Volume 6 of the *Mississippi Code 1972 Annotated* § 21-1-1 to § 21-47-5 (hereinafter cited in this book as *Code*, § x-x-x).

Because the *Constitution* says little about cities and municipal corporations, elected and appointed officials do themselves and their constituents a great service by becoming familiar with all applicable legal provisions. To this end, the remainder of this book addresses many of the laws, issues, and special arrangements for municipalities.