

CHAPTER III

FORMS OF GOVERNMENT¹²⁰

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Under Mississippi's optional charter plan,¹²¹ municipalities are given a choice of the basic forms of municipal government found in the United States today: (1) the weak mayor-council form (known in Mississippi as the mayor-board of aldermen form), (2) the strong mayor-council form (known in Mississippi as the mayor-council form),¹²² (3) the commission form, and (4) the council-manager form.¹²³ These options, as they apply to Mississippi, are presented below in the order in which they were made available within the state.

¹²⁰Much of the material in this chapter is derived from Dana B. Brammer and John W. Winkle III, eds., *A Manual of Mississippi Municipal Government*, 4th ed. (Public Policy Research Center, The University of Mississippi, 1987), p. 18-32. The "comments" found at the end of the description of each form of government are extracted from Dana B. Brammer, "Forms of Municipal Government," in *Mississippi Municipal Profile* (Center for Policy Research and Planning, Mississippi State Institutions of Higher Learning; Public Policy Research Center, University of Mississippi; and Mississippi Municipal Association, 1991), p. 17-24. For this 2001 edition, co-editor P. C. McLaurin, Jr. made minor revisions to the text of this chapter.

¹²¹After going through periods of using private charters, the general charter, and the classification charter, Mississippi gradually evolved an optional charter system. Under this system, various forms of government are set out in the statutes and each municipality is free, within the options provided, to choose its particular form. With the exception of the twenty-three municipalities which elected to retain their private, special-act charters which characterized all Mississippi municipalities prior to the adoption of the *Mississippi Constitution of 1890*, the state's municipalities operate under charters granted by the general laws of Mississippi.

¹²²Strictly speaking, the distinction between the weak mayor-council and the strong mayor-council forms is a matter of degree rather than kind.

¹²³It should be pointed out that while the *Code* (§ 21-7-1 through § 21-7-19) provides a fifth option, "Council Form of Government," only Tupelo meets the population requirements for its adoption. Since Tupelo has abandoned the council form (essentially a weak-mayor form) in favor of the mayor-council form, the council option is meaningless.

MAYOR-BOARD OF ALDERMEN FORM¹²⁴

The mayor-board of aldermen form of government (also known as the “code charter” form) is today used by approximately 95 percent of Mississippi’s nearly 300 municipalities,¹²⁵ despite the fact that this governmental arrangement is the product of a period when the functions of municipal government were few and the desirability of a single executive was not recognized. Until 1908, when the commission form of government gained legislative approval, this form was all that was available within the state. Any newly created municipality may choose this form, and any municipality using an alternate form of government may acquire the mayor-aldermen form by a majority vote of the municipal electors in either a special or general election held for that purpose. If the proposal is defeated, another election on the question cannot be held for four (4) years.

The Governing Body

Under the mayor-board of alderman form of government, the governing body is comprised of a mayor and either five or seven aldermen: five if the municipality has fewer than 10,000 inhabitants, and seven if it has 10,000 or more. Although both the mayor and the board have powers and responsibilities that are theirs alone, the *Code* frequently (and interchangeably) uses the phrases “the governing authorities” and “the mayor *and* board of aldermen” in awarding power to municipal governments. It may be argued, in fact, that an examination of the statutes reveals that most of the municipal authority has been awarded to the mayor and the board of aldermen, acting as a body. Of particular significance is the fact that the five (5) “elective officers” (other than mayor and aldermen) established by law – municipal judge, marshal or chief of police, tax collector, tax assessor, and clerk¹²⁶ – may be made appointive at the discretion of the governing authorities. Where an elective officer is made appointive, the person appointed serves at the pleasure of the governing authorities. Moreover, it is discretionary with the governing authorities whether or not that person must reside within the corporate limits.

Qualifications and Selection of Mayor and Aldermen

The mayor and all members of the board of aldermen must be qualified electors of the municipality and must be chosen by election. The mayor is elected from the municipality at large, while the aldermen are elected either at large, by ward, or by some combination of ward and at-large voting

¹²⁴See *Code*, § 21-3-1 through § 21-3-25. (For general powers granted to all municipalities, regardless of the form of government they employ, see *Code*, § 21-17-1 through § 21-17-19.) It should be noted that private or special charter municipalities using the mayor-aldermen form of government may operate differently from those operating under a code charter.

¹²⁵The overwhelming majority of municipalities using this form have a population of less than 10,000.

¹²⁶By ordinance, the office of clerk or marshal may be combined with the office of tax collector and/or tax assessor.

(all aldermen elected from and by wards must be residents of their wards). In municipalities where the population size mandates that there be five (5) aldermen, the five (5) may be elected either entirely at large, or one (1) may be elected at large and four (4) by ward. Where the population size mandates that there be seven (7) aldermen, six (6) are elected by ward and one (1) is elected at large.¹²⁷ Except for a few municipalities operating under a special or private charter which fixes a separate time for holding elections, mayors and aldermen are elected in a general municipal election held on the first Tuesday after the first Monday of June, 1985, and every four (4) years thereafter.¹²⁸ If an alderman moves from his ward, or if the mayor or an alderman elected at large moves from the municipality, the office is automatically vacated and is filled in the manner set out in *Code*, § 23-15-857.

Powers and Duties of Mayor

The mayor is vested with the “superintending control” of all officers and affairs of the municipality and is charged with seeing that the laws and ordinances are executed. He presides over all meetings of the board of aldermen (and thus recognizes its members for the purpose of making motions, speaking to motions, and so on) but is allowed to vote only in case of a tie. The mayor has power to veto any ordinance, resolution, or order adopted by the board of aldermen by returning the measure to the board, together with a written statement of his objections to all or any part of it, within ten days of its receipt.¹²⁹ The mayor is required to sign all commissions and appointments of officers chosen by the mayor and board of aldermen. In addition, the mayor (along with the clerk) is required to approve all bonds of municipal officers.

Powers and Duties of Board

Although the mayor presides over all meetings of the board of aldermen, only members of the board may make motions and cast votes (except in cases of equal division, where the mayor may cast the deciding vote). The board of aldermen is required to elect from among its members a mayor pro tempore to preside over its meetings and otherwise serve in the place of the mayor in cases of his “temporary absence” or “disability.” The board is also required to submit all its ordinances, resolutions, and orders to the mayor for approval or veto; and in the event the mayor vetoes any measure, the board may override the veto by a vote of two-thirds (2/3) of the members.

¹²⁷The provisions set out in the text above reflect pre-1962 statutes, since *Code*, § 21-3-7, as modified in 1962, was voided by a federal district court as “a purposeful device conceived and operated to further racial discrimination in the voting process.” *Stewart v. Waller*, 404 F. Supp. 206 (N.D. Miss. 1975).

¹²⁸*Code*, § 23-15-173. Municipal primary elections are held the first Tuesday in May preceding the general election; and if a second primary is required, it is held two weeks later. *Code*, § 23-15-171.

¹²⁹See *Code*, § 21-3-15, for conditions under which an ordinance may take effect without the mayor’s approval.

Powers and Duties Shared by Mayor and Board

Exercising appointive authority of governing body. One of the most important areas of shared power is that of appointing and dismissing various municipal officials and employees. As has already been noted, the mayor and aldermen share authority to make the municipal judge, marshal or chief of police, tax collector, tax assessor, and clerk “appointive” officers rather than “elective officers.”¹³⁰ And where that power is exercised, the officer serves at the pleasure of the mayor and board. In addition to these officers, the mayor and aldermen may appoint a street commissioner¹³¹ and such other officers and employees as may be necessary and may prescribe their duties and fix their compensation (they shall require a surety bond for all officers and employees handling public funds).¹³² In practice, the board of aldermen hires and fires subject to the mayor’s veto, while the mayor oversees the daily operation of municipal government and makes recommendations to the board.¹³³ Since 1976, the mayor and aldermen have had specific authority to establish the position of chief administrative officer, but the ordinance doing so requires a two-thirds (b) vote of the aldermen.¹³⁴

Holding board meetings. The mayor and board of aldermen are required to hold regular meetings on the first Tuesday of each month, at a time and place fixed by ordinance (unless another day has been set pursuant to *Code*, § 21-17-17). A second regular meeting may be held when established by ordinance, but that meeting must take place not less than two (2) weeks, nor more than three (3) weeks, after the first meeting. If a regular meeting falls on a holiday, the board will meet the following day. A quorum for the transaction of business requires a majority of all the aldermen. By written notice, the mayor and two (2) aldermen may call a special meeting. All meetings are subject to the provisions of the Open Meetings Act (*Code*, § 25-41-1 through § 25-41-17). This act permits closed meetings under certain circumstances. (See Chapter V for a discussion of open meetings.)

¹³⁰An office may not be changed from elective to appointive within 90 days of a regular municipal election, nor may the change become effective during the term of office of any officer whose term shall be affected by the change.

¹³¹In municipalities of less than 15,000 population, the street commissioner may be appointed from among the aldermen.

¹³²For example, the governing authorities determine whether the mayor’s position is to be full time or part time and fix the compensation for both the mayor and aldermen. Because each governing body is allowed to determine its own salary scale, a wide variation exists.

¹³³Attorney General’s Opinion 90-0301, May 10, 1990.

¹³⁴*Code*, § 21-3-25. Members of the board of aldermen cannot exercise any administrative powers or duties delegated by ordinance to the chief administrative officer.

Comments

The position of mayor is truly a “weak” one in the mayor-board of aldermen form of government, since the mayor is given responsibility for superintending all officers and affairs and for seeing that the laws and ordinances are executed *but* is not given sufficient powers to do so. Not only may some administrative officers be elected by the voters, but the mayor has limited control over the appointment of nonelective officers. Where these officers are elected, they stand on a coordinate level with the mayor; where they are appointed they often look primarily to the aldermen for administrative supervision. Even so, a mayor who possesses competence, the ability to persuade others, and a strong personality can make much of the office, despite the fact that administrative power is so diffused as to make identification of responsibility and the coordination of activities difficult. Where the mayor and the board can forge a “partnership” – and where the public demand for services is not great and government is run largely on a part-time basis – the mayor-board of aldermen form appears to work reasonably well.

COMMISSION FORM¹³⁵

Whereas the mayor-board of aldermen plan is derived from the application of “separation of powers” and the doctrine of “checks and balances,” the commission plan unites legislative and executive power. The plan was born during the first part of the twentieth century, gained Mississippi legislative approval in 1908, and soon became the plan of choice among the state’s larger municipalities. While the form never had widespread acceptance in Mississippi, fourteen (14) municipalities at one time or another operated as commission cities. Today, primarily as a result of legal actions challenging the constitutionality of the at-large provisions common to the commission form, Clarksdale and Vicksburg are the only Mississippi municipalities operating as commission cities. Neither of them, however, is a commission city in the classic sense, inasmuch as the at-large electoral system has been modified by both municipalities to meet the requirements of the Voting Rights Act of 1965.

The material presented below summarizes the commission provisions contained in the *Code* and may differ somewhat from the current practice in both Clarksdale and Vicksburg.¹³⁶ Although the statutes authorize any city to replace its current form of government with the commission form, the provision is, for all practical purposes, meaningless in view of the form’s at-large electoral requirements.

¹³⁵See *Code*, § 21-5-1 through § 21-5-23. (For general powers granted to all municipalities, regardless of the form of government they employ, see *Code*, § 21-17-1 through § 21-17-19.)

¹³⁶This is especially true in Clarksdale, where the commission does not divide the executive and administrative duties and assign them to specific commissioners and where the mayor does not have the right to vote on all matters coming before the commission (he or she presides over the commission but may vote only in case of a tie).

The Governing Body

As set out in the *Code*, the governing body of a municipality with a commission form of government typically consists of a mayor and two commissioners¹³⁷ who are known collectively as the commission.¹³⁸ The commission, acting as a body, is empowered to perform all the corporate powers, duties, and obligations possessed by the municipality (acting separately, the mayor and commissioners serve as department heads). Each member of the commission, including the mayor, has the right to vote on all questions coming before the body. (See footnote 16.)

The commission fixes the compensation of the mayor and other commissioners (subject to approval by the voters in a special election) and also establishes their office hours.

Qualifications and Selection of Mayor and Commissioners

The mayor and each commissioner must be a qualified elector and a bona fide resident of the municipality for a period of at least one year. The statutes provide that each of them are to be elected at large; but, as previously noted, this is not the current practice in either of the two existing commission cities. Instead, the mayor is elected at large, and the other commissioners¹³⁹ are elected by and from wards. All of them are elected in the general municipal election held every four (4) years.¹⁴⁰

Powers and Duties of Mayor

The mayor is the nominal head of the commission and is responsible for presiding over its meetings, but he is unable to veto any measure passed by the commission. “General supervision of all the affairs and departments of the city government” is vested in the mayor (as is responsibility for reporting to the commission in writing any matters requiring its action), but he is not empowered to hire and fire independently of the other commissioners. Unless the commission grants the mayor authority over personnel, finance, and other management functions, he is really little more than one of three equals.

¹³⁷In 1969, Clarksdale increased the size of its commission from three to five, including the mayor.

¹³⁸While the *Code* also refers to commissioners as “councilmen,” and to the mayor and commissioners as a “council,” all references in the text above will be to commissioners and the commission in order not to confuse the reader with the council employed in either the council-manager or the mayor-council form of government.

¹³⁹In Vicksburg, the commissioners are called aldermen.

¹⁴⁰See *Code*, § 23-15-171 and § 23-15-173.

Powers and Duties of Commission

Except as limited by law, the commission (acting as a body) exercises all executive, legislative, and judicial powers given municipal governing authorities either under the *Code* sections providing for the commission form of government or under general law. Specific powers include the following: power to organize various city departments and to assign each department to the mayor or commissioner who will “superintend” it; power to create, fill, or discontinue offices and employment; power to set the amount paid to a municipal officer or employee and to make and enforce rules and regulations governing the employment of such officers and employees; power to remove any officer or employee of the municipality (except as limited by law) and to appoint a successor; power to issue and sell bonds; power to make and enforce ordinances and resolutions; and power to elect a vice-president to preside over the commission in the mayor’s absence or inability.

Meetings of Commission

The commission is required to meet on the first Monday in July following the quadrennial municipal election (unless another day has been set pursuant to *Code*, § 21-17-17) and thereafter to meet at least twice a month. If the regular meeting falls on a holiday, the commission will meet the following day. Special meetings may be called at any time by the mayor or by two (2) commissioners. A majority of the commissioners constitutes a quorum for the transaction of business, and the affirmative vote of a majority of all commissioners is needed to adopt any motion, resolution, ordinance, or other measure. All meetings are subject to the provisions of the Open Meetings Act (*Code*, § 25-41-1 through § 25-41-17). This act permits closed meetings under certain circumstances. (See Chapter 5 for a discussion of open meetings.)

Comments

Like all forms of government, the commission form has both strengths and weaknesses. The major strengths generally attributed to the plan are these: (1) the government structure is simplified, and (2) power and authority are centralized in a few individuals who can be held accountable for their actions. Major weaknesses are: (1) power is too centralized, since the persons who make municipal policy are also responsible for its execution; (2) division of administrative authority among commissioners tends to narrow the focus of commissioners to the needs of their own departments rather than to the needs of the municipality as a whole; and (3) the absence of a chief executive lessens the likelihood of strong policy leadership.

COUNCIL-MANAGER FORM¹⁴¹

The council-manager form of government (made generally available to Mississippi's municipalities in 1952)¹⁴² is like the commission form in that it does not provide for the separation of executive and legislative powers between a mayor and a council. It differs from the commission form, however, in that it does recognize the separate but coordinate functions of politics and administration: an elected council is responsible for making policy, while administration is assigned to an appointed professional known as a manager. Even though council-manager government has been highly favored by municipal reformers over the years and is now being used by nearly half of the municipal governments in the United States, it has never been widely accepted in Mississippi. Today, it is found in only six municipalities: D'Iberville, Gautier, Grenada, Moorhead, Pascagoula, and Picayune.

The Governing Body

The governing body of a council-manager municipality is a six-member council consisting of a mayor and five councilmen, except that any municipality which prior to September 30, 1962, had a larger or smaller number of councilmen is permitted to retain that number by adopting an appropriate ordinance.¹⁴³ The council exercises all legislative power, and the mayor serves as the "titular head of the city for ceremonial purposes and for all processes of law." Neither the mayor nor the other councilmen may exercise any administrative power.

Qualifications and Selection of Mayor and Councilmen

The mayor and councilmen, all of whom must be qualified electors of the municipality, are chosen in the general municipal election held every four (4) years.¹⁴⁴ Under the authorizing statute, the mayor is elected at large, while councilmen may be elected either at large or one (1) at large and the others by ward (although the *Code* allows at-large election of all councilmen, that electoral system has been overturned where it has been challenged in the federal courts). Each councilmen elected by ward must be a resident of the ward he represents.

¹⁴¹See *Code*, § 21-9-1 through § 21-9-83. (For general powers granted to all municipalities, regardless of the form of government they employ, see *Code*, § 21-17-1 through § 21-17-19.)

¹⁴²Meridian adopted the council-manager form of government in 1948 (legislation applied only to municipalities in a specific population class), but abandoned it in favor of the mayor-council form in 1985. Grenada adopted the form in 1952 through an amendment to its private charter.

¹⁴³Counting the mayor, the council has six members in D'Iberville, Gautier, and Picayune, eight in Grenada, five in Moorhead, and seven in Pascagoula. A six-member council makes it possible to produce evenly divided votes, but there is no mechanism for breaking ties.

¹⁴⁴See *Code*, § 23-15-171 and § 23-15-173. Provisions are made for holding special elections under certain circumstances.

Powers and Duties of Mayor

In addition to being the titular head of the city, the mayor is president of the council and has a voice and vote in all its proceedings. He, however, has neither the veto power nor administrative powers. Moreover, the mayor is not required to maintain an office or to keep office hours.

Powers and Duties of Council

As has already been noted, the council performs the legislative duties of municipal government, but none of the administrative duties. It is responsible for appointing a city manager (this position will be discussed below), as well as the city attorney, the auditor, and the municipal judge, if any. At its discretion, the council also may appoint the city clerk and treasurer. All other municipal employees are appointed by the city manager, and both the council and the mayor are specifically prohibited from directing or dictating either their appointment or removal. Except for seeking information or advice, all contact between the council and administrative services must be through the manager. While neither the council nor the mayor may give orders to any subordinate of the municipality, the council is empowered to investigate any part of municipal government and may compel the attendance of witnesses and the production of evidence. On the recommendation of the manager, the council may create new departments, fix their duties and powers, and set compensation. The council fixes the hours of service of all officers and employees and sets its own compensation, as well as the compensation of the mayor and manager. It may appoint one of its members to act in case of the absence or disability of the mayor, and it also may appoint a qualified person to temporarily perform the duties of city manager in case of his absence or disability. It is required to appoint “without delay” an acting manager should that office become vacant. Like the mayor, members of the council are not required to maintain an office or to keep office hours. Except as otherwise provided by law, members of the council are specifically prohibited from serving on any board or commission appointed by the council or under its jurisdiction.

The council is responsible for adopting an annual budget, for securing an annual financial examination of the municipality (like all municipalities, council-manager municipalities are subject to the provisions of the Municipal Budget Law)¹⁴⁵, and for requiring a surety bond for all municipal officers and employees handling public funds. Under the statute authorizing council-manager government, the council is given special privileges with respect to bond and tax rate limitations.¹⁴⁶

City Manager

The city manager is the chief administrative officer of the municipality and must be appointed at a regular meeting of the council. He must be selected solely on the basis of “experience and administrative qualifications” by no less than a majority vote of the total membership of the council. The manager may not engage in any other business or profession while employed as manager, and

¹⁴⁵See *Code*, § 21-35-1 through § 21-35-33.

¹⁴⁶See *Code*, § 21-9-57.

no member of the council may be appointed city manager during the term for which he was elected. The term of the manager's appointment is fixed by the council, but no single term may exceed four (4) years (the council may reappoint the manager for successive terms if it so desires). The manager can be removed at any time by a majority vote of the membership of the council, provided he or she is given a written copy of charges. The manager is entitled to a public hearing before the council, but he can be suspended pending the outcome of the hearing. The statute authorizing council-manager government expressly excludes the manager from the provisions of any civil service act.

As chief administrative officer, the manager is responsible to the council for the entire administration of the city government. In addition, the manager (1) prepares and recommends an annual budget to the council; (2) administers and secures the enforcement of all laws and ordinances of the city; (3) appoints and removes all department heads and employees (except for a few officers named above under "Powers and Responsibilities of Council"); (4) supervises and controls all department heads and other employees and their subordinates; (5) negotiates contracts and makes purchases, subject to approval of the council; (6) enforces franchises and other contracts; (7) makes reports and recommendations he deems "expedient and necessary," as well as those requested by the council (must submit an annual report of his work and the financial condition of the municipality); and (8) performs other duties required by ordinance or resolution of the council.

Meetings of Council

The council is required to meet regularly on the first Tuesday of each month at a time it has established (unless another day has been designated pursuant to *Code*, § 21-17-17). If the regular meeting falls on a holiday, the council will meet the following day. Special meetings may be called at any time by the mayor or two (2) councilmen, but at least two (2) day's notice must be given to the mayor and each member of the council. Special meetings also may be called on the written consent of the mayor and all councilmen. At all meetings a majority of the council membership constitutes a quorum, and an affirmative vote by a majority of all members is required for the passage of any measure (unless a greater number is specifically required). The manager and other officers approved by the council may attend meetings and may participate in discussions, but they may not vote. All meetings are subject to the provisions of the Open Meetings Act (*Code*, § 25-41-1 through § 25-41-17). This act permits closed meetings under certain circumstances.

Comments

Students of municipal government have both praised and criticized the council-manager form of government. On the positive side, control over the administration of municipal affairs is centered in a single individual who is expected to be a professional manager; government is organized along the lines of modern business, with the city manager corresponding to the corporate manager and the council corresponding to the board of directors; and professional administration tends to provide a more effective and cost-efficient delivery of municipal services. Major criticisms of the plan are that strong policy leadership is made difficult by the fact that the council, including the mayor, is a body of equals; the six-member council established under Mississippi law makes legislative deadlock a very distinct possibility; the elected council may tend to rely too heavily upon the

judgment of the appointed manager, even though the law properly subordinates the manager to the council.

MAYOR-COUNCIL FORM¹⁴⁷

The mayor-council form of government attempts to remedy the failure of the traditional mayor-board of aldermen form to clearly separate administrative and legislative duties and to concentrate responsibility for coordination of governmental activities in the mayor. The form is not a distinctly new one, however, for it differs from the mayor-board of aldermen arrangement primarily in degree. Nationally, this “strong mayor” form began its development in the last two decades of the nineteenth century, but it did not become an option for Mississippi municipalities until 1976.¹⁴⁸ Today, the mayor-council form is employed by nine municipalities: Bay St. Louis, Biloxi, Greenwood, Gulfport, Hattiesburg, Jackson, Laurel, Meridian, and Tupelo. (It should be noted that some of the information presented below is not applicable to the operation of the mayor-council form of government in Greenwood and Laurel, due to litigation altering some of the powers and functions of the mayor vis-a-vis the council.)

The Governing Body

Each municipality operating under the mayor-council form of government is governed by an elected mayor and an elected council consisting of either five (5), seven (7), or nine (9) members.¹⁴⁹ Except as may be otherwise provided by general law, the legislative authority of the municipality is exercised by the council while the executive power is exercised by the mayor.

¹⁴⁷See *Code*, § 21-8-1 through § 21-8-47. (For general powers granted to all municipalities, regardless of the form of government they employ, see *Code*, § 21-17-1 through § 21-17-19.)

¹⁴⁸The mayor-council form of government was authorized by the legislature in 1973, but did not become effective until August 1976 when the U.S. Attorney General interposed no objection under the Voting Rights Act of 1965.

Mayor-council government is available to any municipality, regardless of the form of government under which it is operating. See *Code*, § 21-8-1 through § 28-8-5, setting out the procedures for adoption of the mayor-council plan. If a municipality adopts the mayor-council form, all statutes in conflict with that form are repealed, but all provisions of the general law which are not inconsistent with the form remain applicable (*Code*, § 21-8-33 through § 21-8-43). Existing civil service laws apply, as does “the disability and relief fund for firemen and policemen;” and the organization of the police court and the public schools are not affected by the change to mayor-council government.

¹⁴⁹Only the mayor and the councilmen are elected; all other officers and employees are appointed.

Qualifications and Selection of Mayor and Councilmen

The mayor and each of the councilmen must be qualified electors of the municipality. The mayor is elected from the municipality at large, and councilmen are elected either by ward, or by some combination of ward and at-large voting. Where there are five (5) councilmen, all five (5) may be elected by ward, or four (4) may be elected by ward and one (1) may be elected at large. Where there are seven (7) councilmen, all seven (7) may be elected by ward; or either six (6) may be elected by ward and one (1) at large, or five (5) may be elected by ward and two (2) at large. Where there are (9) nine councilmen, all nine (9) may be elected by ward, or seven (7) may be elected by ward and two (2) at large. The number and method of election of councilmen shall be contained in the petition calling for the election to adopt the mayor-council form. If a councilman moves from his ward, or if the mayor or a councilman elected at large moves from the municipality, the office is automatically vacated and is filled in the manner set out in *Code*, § 23-15-857. Except as otherwise provided, the mayor and councilmen are elected in the regular municipal election held every four (4) years.¹⁵⁰

The elected municipal officials holding office at the time of the election to adopt the mayor-council form of government continue to serve until their terms are completed; and the governing authorities in office at the time of the adoption of the mayor-council plan, draw the first wards. Thereafter, the existing board, council, or commission establishes the wards to be used in the new government. Thereafter, wards must be redrawn by the council to reflect population changes following each decennial census and annexation of territory.¹⁵¹

Powers and Duties of Mayor

As the possessor of the executive power of the municipality, the mayor is charged with enforcing the charter and ordinances of the municipality, as well as all applicable general laws. He is responsible for supervising all departments of municipal government and for requiring them to make an annual report and such other reports as are deemed desirable. Subject to confirmation by a majority of the council members present and voting, the mayor appoints department heads (directors) and members of any municipal board, authority, or commission. Although department heads are protected by any civil service provisions in effect at the time a city changes to the mayor-council form, all directors appointed subsequently are excluded from civil service protection and may be removed at the mayor's discretion. (Subordinate officers and employees of the municipality are appointed by the department heads and, with the approval of the mayor, may be dismissed by them, subject to any civil service provisions.) Where the council has made provision for a "chief administrative officer" to coordinate and direct the operations of the various departments and functions of municipal government, that officer shall be appointed by the mayor (with the advice and consent of the council) and shall be answerable solely to him and shall serve at his pleasure.

¹⁵⁰See *Code*, § 23-15-171 and § 23-15-173. Provisions are made for holding special elections under certain circumstances.

¹⁵¹See *Code*, § 21-8-7, for provisions related to redistricting.

The mayor may attend all council meetings, may take part in discussions, and may make recommendations for actions he considers to be in the public interest; but the mayor may not vote except in case of a tie on the question of filling a vacancy in the council.¹⁵² He must review ordinances, resolutions, orders, and other official actions of the council (excluding procedural actions governing the conduct of council meetings, appointing a clerk of the council, and exercising the council's investigative functions). The mayor may veto ordinances of the council, but the veto may be overridden by two-thirds (b) of the council present and voting.¹⁵³ The mayor is required to maintain an office at city hall.

Whenever the mayor shall be prevented from attending to the duties of office, he is required to appoint a member of the council to assume the duties of mayor (the person so appointed retains his right to vote in the council). *Code*, § 21-8-19, details specific procedures for filling a vacancy in the mayor's office.

Powers and Duties of Council

In mayor-council municipalities, the council is the legislative body. It elects one (1) of its members to serve as its president and another to serve as vice president (the president, or in his absence the vice president, presides over council meetings and may vote even when presiding¹⁵⁴). In addition, it appoints a "clerk of the council" and any necessary deputy clerks to compile the minutes and records of its proceedings, its ordinances and resolutions, and to perform such duties as may be required by law.¹⁵⁵ Whenever the mayor is unable to appoint a councilman to serve as acting mayor, the council may do so.

The council may establish a department of administration and such other departments as it finds desirable; and it shall allocate and assign all administrative powers, functions, and duties (except those vested in the clerk) among and within the departments. While the mayor appoints department heads and directors, they are confirmed by the council. The council is specifically authorized to adopt an ordinance creating and setting the qualifications for a chief administrative officer to be appointed by the mayor and confirmed by the council. Other specific powers and duties of the council include these: setting the compensation for the mayor and councilmen (where the salary is increased, it does not become effective until the next elected mayor and council take office); setting

¹⁵²See *Code*, § 21-8-7(5), for provisions governing the filling of vacancies in the council.

¹⁵³See *Code*, § 21-8-17, for provisions relating to veto and to conditions under which an ordinance may take effect without the mayor's approval.

¹⁵⁴In the event of the absence of the president or the vice president, the council designates another of its members to preside.

¹⁵⁵The clerk of the council and the city clerk are two separate positions, although the same person may be appointed to fill both positions (the city clerk is appointed by the mayor subject to confirmation by the council).

the salary of all municipal officers and employees; redistricting the municipality after every decennial census and after an annexation; requiring any municipal officer to prepare and submit sworn statements regarding his official duties; causing a full and complete audit of the municipality's finances to be made at the end of the fiscal year; investigating the conduct of any municipal department, office, or agency; appropriating money for the operation of government; overriding vetoes of council actions; appointing a council member to serve as acting mayor in the event the mayor is incapacitated; calling a special election to fill a mayor's unexpired term; and requiring all officers and employees handling public funds to give surety bond.

Except in cities with a population in excess of 190,000, council members are not required to maintain individual offices at city hall (the clerical work of members of the council are performed by municipal employees at municipal expense). Legislation authorizing mayor-council government prohibits the council from seeking to dictate or require either the appointment or removal of any employee of the municipality. Except for seeking information or advice, the council must deal with departments and employees through the mayor.

Meetings of Council

The council is required to hold regular meetings on the first Tuesday after the first Monday in July following the election of council members and at least monthly thereafter on the same day (or at such other times as the council may set). Special meetings may be called at any time by either the mayor or a majority of the members of the council. At any meeting of the council, a quorum shall consist of a majority of the members elected. Where a quorum exists, a majority of the members present may adopt any motion, resolution, or ordinance, unless a greater number is specifically required. All meetings are subject to the provisions of the Open Meetings Act (*Code*, § 25-41-1 through § 25-41-17). This act permits closed meetings under certain circumstances. (See Chapter V for a discussion of open meetings.)

Comments

Persons favoring the mayor-council form of government generally agree that the form has the following strengths: (1) in combination with a system of checks and balances, the executive and legislative powers of government are divided logically between the mayor and the council; (2) administrative power is not diffused as it is in the mayor-board of aldermen form, but is consolidated under a single individual who is elected at large and given sufficient appointive and removal powers to make him accountable for implementing established policy (under the council-manager form, administrative power is consolidated under an appointed individual); (3) the council can focus on major policy needs, since it is not burdened with day-to-day administration; and (4) the mayor is placed in a position to provide both strong administrative leadership and strong policy leadership.

Individuals who oppose the mayor-council arrangement usually note these weaknesses: (1) the separation of legislative and executive powers, together with a system of checks and balances, offers many opportunities for conflict and deadlock between the mayor and council; and (2) a politically strong mayor may not possess the qualities essential to a good administrator. The difficulties that

result from the second weakness can be lessened, however, by the passage of an ordinance allowing the mayor to appoint a chief administrative officer.