

Handbook for Alabama County Commissioners

Eleventh Edition

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Hon. Ricky Harcrow, DeKalb County, President

Sonny Brasfield, Executive Director

County Commissioners:

The challenges of serving as a member of one of Alabama's 67 county commissions have expanded significantly in the last decade. County government now touches the lives of every Alabamian in a multitude of ways each and every day. For those chosen to be a member of a county governing body, this expansion of responsibilities has only increased the need for an accurate and timely resource document.

The eleventh edition of The Handbook for Alabama County Commissioners represents hours and hours of research on the legal responsibilities of county commissioners, the role county government plays in the quality of life in our state and the decisions that must be made by county commission members on a weekly, if not daily, basis. The content of the Handbook provides a comprehensive overview of the issues that confront Alabama's county governments as they work to serve the citizens who rely on the county's varying and important services.

Although the book is given to first-time county commissioners upon taking office, the handbook serves as a resource guide for veteran commissioners, administrators, engineers, EMA directors, revenue officers, 9-1-1 directors and others who serve in county government in Alabama. Because of the many changes in Alabama law, this edition includes extensive changes in almost every chapter.

On behalf of the Association of County Commissions of Alabama and its members, I wish to express our appreciation to the Alabama Law Institute, its director Othni Lathram, and Assistant Director Teresa Norman, whose guiding hand produced this eleventh edition of the handbook. We trust it will serve county government and its elected members well in the coming years.

Sincerely,

A handwritten signature in black ink that reads "Sonny Brasfield". The signature is written in a cursive, flowing style.

Sonny Brasfield
Executive Director

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INTRODUCTION

History of County Government

Counties are political subdivisions of our states, organized to assist in the local administration of state functions. Historically, they descend from local government areas established in early England -- the English county and, beyond that, the Saxon shire in existence before the Norman Conquest of 1066. They were first established in the American colonies during the 17th century and were especially important units of local government in the southern colonies. The counties proved more acceptable to American tastes than some colonial local governmental units, such as parishes and hundreds, and after the separation from England, spread virtually throughout the country as it was developed and formed into states,. There are now more than 3,000 counties in the United States, and (considering as counties the Louisiana "parishes" and Alaskan "boroughs") they exist as functioning units of government in every state except Connecticut and Rhode Island.¹

The average number of counties in the states is around 60, but Delaware, for example has only three counties, while Texas has 254, the biggest number found in any state. Variations throughout the country in the physical and economic characteristics of counties, and in the structure and responsibilities of county government, are similarly broad. It may be said, however, that the county is functionally less important in New England than elsewhere in the United States. In the New England states the town -- a distinctive governmental area in that region, which contains rural as well as urban territory -- has been a primary unit of local government since colonial times. Counties

¹This overview of county government in the United States is partially based on Clyde F. Snider, American State and Local Government (New York: Appleton-Century-Crofts, 1965), Part V, "Local Organization and Powers;" and New County, U.S.A. Center, National Association of Counties From America's Counties Today, 1973 (Washington, D.C., 1973).

are most important in the South and West. In other areas, especially some Middle Western and Middle Atlantic states, townships have been organized as governmental units and, although they are decreasing in importance, still share with counties responsibility for the administration of some local governmental functions.

Counties have been traditionally responsible for the local performance of such state functions as the administration of justice, law enforcement, road and bridge construction and maintenance, the recording of legal papers, property tax administration, poor relief, election administration, and education administration. But in more recent years they have been authorized to engage in many additional activities, including functions in connection with public health, agriculture, recreation, libraries, airports, and a broad program of public welfare. Moreover, some counties now provide services once considered wholly municipal in character, such as fire protection and public utility services. Modern counties may also engage in such other "municipal" activities as planning and zoning and the provision of public housing facilities. Primarily, these functional developments have occurred in response to service needs generated by relatively recent patterns of population shifts in the United States. It should be noted, however, that increased involvement with federal programs and sub-state regional units has added appreciably to the complexity of county administration.

Forms of government established for the administration of county functions vary considerably from state to state and even within states. But despite these structural differences the design of most county governments generally conforms to a broad pattern. Usually, there is no separate legislative body in the county government and no chief executive officer. Both the legislative and administrative powers normally are vested in an elective board or commission which, in a limited sense, functions as the county governing body. In addition to the governing body, there are found within the county a number of separate officers, boards, and other agencies administering various county functions. The county officers -- such as judges, sheriff, prosecuting attorney, coroner,

tax assessor, and tax collector -- are nearly always independently elected, and the primary county board normally has little power of supervision over the other boards and agencies conducting a part of the county's business. Thus the county government usually consists of a central board that serves as a governing body and, in addition, a group of officers and other boards and agencies, each operating in an assigned functional area with some degree of independence from the central board's control.

Although there has been, through the years, considerable growth in the functions of county government, a corresponding degree of change has not occurred in the areas or forms of government established for the administration of county functions. Not so long ago, county government was known as "the dark continent of American politics," but in recent years numerous studies have been made of the structure and functioning of American county government. Many of these studies have been critical, chiefly on the ground that the counties, having failed to adapt to modern conditions, are outmoded and inadequate as governmental units. Such critics often suggest further centralization as a means by which governmental services may be rendered on a more standardized basis to all the inhabitants of a state, regardless of county boundaries.

Others advocate a real and structural reorganization of county government to achieve the same goals through county reorganization rather than reallocation of functions. If such reorganizations are successful, they reason, the existence of effective county governments would provide little cause for the further transfer of important county functions to the state. While these reorganizations have never occurred on a general scale, notable developments have nevertheless taken place in some counties. In some instances, in order to attain more suitable or economical areas of local government, counties have been consolidated either with large cities located within them or with other counties. In an increasing number of counties either an elected executive office or an appointed administrative office (more commonly, the latter) has been established in an effort to obtain a further measure of coordination and central direction in

the administration of county affairs.² When some form of executive government is established, governmental powers are largely concentrated in the hands of the central county board, which then assumes general responsibility for the conduct of county affairs. The county board functions mainly as a legislative body, and the other agencies are subject, in varying degrees, to the administrative powers of the chief executive. This change is designed, of course, to unify the county's governmental structure. Such developments have occurred in only a relatively small proportion of America's counties, however, with the result that, structurally, county government in the United States remains today much as it has been in the past.³ While little physical integration of jurisdictional areas has taken place, much interest has been manifested in intergovernmental cooperation as a means of achieving greater coordination of effort without altering the basic local governmental structure.

In Alabama, the first county (Washington) was created in 1800, some two years after the territory now forming the states of Alabama and Mississippi was organized into the Mississippi Territory. The territorial Legislature, first of the Mississippi Territory and after 1817 of the Alabama Territory, created additional counties as the area was settled. By the time Alabama entered the Union (December, 1819), 29 counties had been organized. The state Legislature continued to establish new counties as the need arose, primarily in the 1830's and 1860's, so

²In Alabama, several counties (for example, Montgomery, Mobile, and Baldwin) have appointed a county administrator. A useful report dealing with this form of county administrative officer was published in 1973 by the National Association of Counties and the National Association of County Administrators. The report is entitled, National Survey of the Appointed Administrator in County Government.

³National Association of Counties, and International City Management Association, The County Year Book, 1878, indicates in Table 3 that 642 of the 3040 counties have either an appointed administrator or an elected executive. Table 4 notes 25 city-county consolidations that have taken place in the United States.

that the entire territory of the state was organized into 66 counties by the time the present Constitution was adopted in 1901. Houston County was created in 1903 from portions of Dale, Geneva, and Henry counties, as provided for in the Constitution, and, since 1903, the number of counties in Alabama has remained at 67. Meanwhile, refinements were taking place among the courts and offices comprising the county governments, so that the structure of county government attained virtually in modern form, also, by the turn of century. Major functions added during the 20th century were ordinarily assigned to new boards or offices authorized or created to perform the additional duties.

CHAPTER I

THE LEGAL STATUS OF THE ALABAMA COUNTY

A. LEGAL NATURE

Ala. Code § 11-1-2 states: "Every county is a body corporate, with power to sue and be sued in any court of record." A county, however, is a public corporation, as distinguished from a private corporation, since it performs governmental functions. While counties are not classified as full municipal corporations, they have been granted corporate status to enable them to carry out their governmental duties more effectively. There are differences between counties and cities, or municipal corporations, that the courts take into consideration in determining the legal status of each of these two types of political subdivisions. A municipal corporation is an entity created originally by the voluntary action of the citizens of a local community. As such, it has broad powers designed to enable the community to better serve its local needs. A county, on the other hand, is a political subdivision of the state created by statute to aid in the administration of state functions. Because counties possess only limited delegated powers, and function primarily as agents of the state, the judicial branch has defined their status not as municipal corporations, but as quasi-corporations.¹

This distinction in the legal nature of cities and counties has been responsible for certain important consequences. First, the legal liability of counties has been, historically, considerably less

¹*See, e.g.*, such decisions as *Walker County v. Allen*, 775 So. 2d 808 (Ala. 2000); *In re Opinions of the Justices*, 266 Ala. 363, 96 So. 2d 634 (1957); *Hous. Auth. of Birmingham Dist. v. Morris*, 244 Ala. 557, 14 So. 2d 527 (Ala. 1943); *Montgomery v. Athens*, 229 Ala. 149, 155 So. 551 (Ala. 1934); *James v. Conecuh County*, 79 Ala. 304 (Ala. 1885); *Askew v. Hale County*, 54 Ala. 639 (Ala. 1875).

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than that of cities. Both cities and counties function in some measure as agents of the state, and to the extent that they perform so-called governmental acts, the courts have included them within the legal immunity accorded the state.² However, the legal definition of the county as an arm of the state, created to assist locally in the administration of state programs, caused the courts until recently to look upon county functions, to a much greater degree than municipal functions, as governmental activities subject to the principle of sovereign immunity.

Counties may be sued upon contracts that lie within the scope of their lawful authority.³ A county may also be liable in tort actions to the same extent as municipal corporations whenever it engages in a proprietary function.⁴ In general, a proprietary function is one which provides a local service as opposed to a governmental function. In the traditional judicial view, counties were not subject to tort liability in the absence of a constitutional or statutory provision expressly declaring such liability. Alabama courts held that Ala. Code § 11-1-2, quoted above, which states that counties may sue or be sued in any court of record, was meant not to impose liability on counties but rather to confer on counties merely the corporate capacity to sue or be sued.⁵ Thus, under

²Ala. Const., § 14, provides: "That the State of Alabama shall never be made a defendant in any court of law or equity." *See also* U.S. CONST., Amend. XI.

³*See, e.g.,* Paul v. Escambia County Hosp. Bd., 283 Ala. 488, 218 So. 2d 817 (Ala. 1969); Bd. of Revenue & Road Comm'rs of Mobile County v. State *ex rel.* Drago, 172 Ala. 155, 54 So. 995 (Ala. Code 1911).

⁴Useful references include Berry v. Druid City Hospital Board, 333 So. 2d 796 (Ala. 1976); Clark v. Mobile County Hosp. Bd., 255 Ala. 26, 151 So. 2d 750 (Ala. 1963); Laney v. Jefferson County, 249 Ala. 612, 32 So. 2d 542 (Ala. 1947); Jones v. Jefferson County, 206 Ala. 13, 89 So. 174 (Ala. 1921).

⁵*E.g.,* Clark v. Mobile County Hosp. Bd., 255 Ala. 26, 151 So. 2d 750 (Ala. 1963); Laney v. Jefferson County, 249 Ala. 612, 32

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traditional judicial doctrine, Alabama's counties came to enjoy a broad immunity from tort liability with regard to their predominantly governmental functions.⁶

So. 2d 542 (Ala. 1947); *Moore v. Walker County*, 236 Ala. 688, 185 So. 175 (Ala. 1938); *Hamilton v. Jefferson County*, 209 Ala. 517, 96 So. 628 (Ala. 1923); *Jones v. Jefferson County*, 206 Ala. 13, 89 So. 174 (Ala. 1921); *Askew v. Hale County*, 54 Ala. 639 (1875).

The writer found only one instance in which, during the time under consideration here, counties were liable in tort because of the operation of a statute. An old Alabama statute, codified in the 1940 Code as Section 57 of Title 23 (now repealed), imposed upon counties liability for damages resulting from defective bridges and causeways constructed under contract with the county governing body. The county was not liable, it should be pointed out, unless the bridge was constructed by a private contractor under contract with the county and the injury was the result of an actual defect in the bridge. *See, e.g., Marshall County v. Cleveland*, 218 Ala. 104, 117 So. 621 (Ala. 1928); *Barbour County v. Reeves*, 217 Ala. 415, 116 So. 119 (Ala. 1928); *Phillips v. Tuscaloosa County*, 212 Ala. 357, 102 So. 720 (Ala. 1925). The courts held that this statute allowed recovery for damages sustained by injuries on defective bridges constructed under contract, no matter whether the bridge was erected on a public or a private road. *Barks v. Jefferson County*, 119 Ala. 600, 24 So. 505 (Ala. 1898).

⁶*Cf. Albert W. Copeland & Euel A. Screws, Jr., Governmental Responsibility for Tort in Alabama*, 13 ALA. L. REV. 296, 317 (1961) ("We can find no case wherein a county function which resulted in tortious injury was held to be 'corporate.'" As a practical matter, therefore, insofar as tort liability was concerned, "a county is but an arm or instrumentality of the state, all its functions are conclusively governmental and none are proprietary."). *See also Hudson v. Coffee County*, 294 Ala. 713, 321 So. 2d 191 (Ala. 1975); *Garner v. Covington County*, 624 So. 2d 1346 (Ala. 1993), *rehearing denied*.

1. COUNTY LIABILITY

In 1975, there was a major change in the law as it relates to the legal liability of Alabama counties. The Alabama Supreme Court rendered a set of decisions that abolished the principle of governmental immunity from tort liability as it related to the state's political subdivisions.⁷ Essentially, in these cases, the Court sustained damage suits against local governmental entities without regard to the governmental-proprietary distinction that formerly had been held to be governing in such situations. In the Court's opinion, this distinction had been improperly established through judicial misinterpretation of the statutes relating to local governmental liability and, therefore, should be abandoned through judicial action so that these statutes could be given their proper construction.

With the elimination of the defense of governmental

Where tort liability has not been imposed upon counties, people sustaining damages caused by the wrongful acts of county officers and employees must seek relief in some manner other than by suit against the county. Such relief was usually obtained in Alabama through private acts of the Legislature.

⁷ *Lorence v. Hosp. Bd. of Morgan County*, 294 Ala. 614, 320 So. 2d 631 (Ala. 1975); *Harris v. Bd. of Water and Sewer Comm'rs of the City of Mobile*, 294 Ala. 606, 320 So. 2d 624 (Ala. 1975); *Jackson v. City of Florence*, 294 Ala. 592, 320 So. 2d 68 (Ala. 1975). *See also* *Rich v. City of Mobile*, 410 So. 2d 385 (Ala. 1982); *City of Birmingham v. Thompson*, 404 So. 2d 589 (Ala. 1981); *Neighbors v. City of Birmingham*, 384 So. 2d 113 (Ala. 1980); *Hudson v. Coffee County*, 294 Ala. 713, 321 So. 2d 191 (1975). Henry Henderson, *Risk Management -- Municipal, County and Personal Tort Liability*, PUBLIC SECTOR (Office of Public Service and Research, Auburn University October 1977); a series of articles by Perry C. Roquemore, Jr., *Alabama League of Municipalities*, ALA_MUNICIPAL J. (1975) (September, 1975, p. 16; October 1975, p. 16; and June 1977, p. 14).

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immunity, counties became exposed to the risk of damage suits and sought protection through the purchase of liability insurance. Concern soon arose, however, over such problems as the expense of liability insurance and difficulties in determining the adequacy of coverage. In response to these problems, the Legislature enacted a statute during its 1977 Regular Session that established monetary limits on the tort liability of local governmental entities. Under this statute, the amount of damages recoverable under a judgment against a local governmental unit is limited as follows \$100,000 for bodily injury or death of one person in a single occurrence; \$300,000 in the aggregate when more than two persons have claims on account of bodily injury or death arising from any single occurrence; and \$100,000 for damages or loss of property from any single occurrence. No local governmental unit may settle or compromise any claim for an amount that exceeds the prescribed limits.⁸

In one of the cases abolishing the tort immunity of Alabama's local governments, the Alabama Supreme Court had recognized the authority of the Legislature to enter this policy field and provide for the local governments any limitations or protections it deemed necessary. The resulting legislation, described above, was expected to alleviate the situation through reduction of premium costs and elimination of uncertainty as to adequacy of coverage. Moreover, the Association of County Commissions of Alabama established in January 1988 a self-insurance fund under an act of the same name, Ala. Code §§ 11-30-1 *et seq.*, as a means by which general liability insurance coverage might be made readily available to local governments. While these

⁸Association of County Commissions of Alabama, MR. COUNTY COMMISSIONER (1920) (March-April 1977, p. 16; May-June 1977, p.20); Ala. Code §§ 11-93-1 through 11-93-3. *See also* Benson v. City of Birmingham, 659 So. 2d 82 (Ala. 1995); Ne. Ala. Reg'l Med. Ctr. v. Owens, 584 So. 2d 1360 (Ala. 1991); St. Paul Fire & Marine Inc. Co. v. Nowlin, 542 So. 2d 1190 (Ala. 1988); Nowlin v. Druid City Hosp. Bd., 475 So. 2d 469 (Ala. 1985).

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steps provided assistance to counties, it should be observed that, in the long run, the fiscal impact of the decision to abolish local governmental tort immunity depends in no small measure on the counties themselves, specifically their competence in handling the broad problems of risk management now confronting them.⁹

In 1984, Congress enacted the Local Government Antitrust Act (15 U.S.C. §§ 34-36 (1984)), which eliminates certain damage suits under the Clayton Act: treble damage claims by "persons," single damage claims by the United States, and treble damage claims by States. Protection against such damage suits extends to local governments acting within their authority. The act dispenses with the test established in *Community Communications Co. v. City of Boulder*, 455 U.S. 40, 51 (1982), which demanded that a local government act in every instance pursuant to a "clearly articulated and affirmatively expressed" state policy.

Because the Clayton Act provides for awards of treble damages to prevailing plaintiffs, the passage of the Local Government Antitrust Act becomes significant. For example, in *Unity Ventures v. County of Lake*, 1984-1 Trade Cas. (CCH) P65,883, a jury awarded the plaintiffs \$9.5 million, which was then trebled under the Clayton Act, resulting in a \$28.5 million judgment. Although that case was later overturned on evidentiary grounds in *Unity Ventures v. County of Lake*, 841 F.2d 770 (7th Cir. 1988), it still shows how a jury award in such a case could otherwise bankrupt a county or municipality, or at least handicap a local government's ability to provide essential services.

An additional source of liability for the county is the

⁹Henderson, *Risk Management supra* note 7, at p. 9.

The Office of the Attorney General has ruled that counties are liable for property damage and can therefore legally pay the property damage deductible amount in connection with insurance coverage. See James W. Webb, *Legal Review*, MR. COUNTY COMMISSIONER, May-June 1977, p. 20.

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Americans With Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12101, et. seq. (Supp. II 1990). Under the provisions of the ADA, counties (in their capacities as employers) are prohibited from discriminating against a "qualified individual with a disability" regarding the terms, conditions, and privileges of employment. The county may not consider the disability when making employment decisions as long as the applicant or employee can perform the "essential functions" of the job in question. Further, when making this determination, the employer must take into account any reasonable accommodations that could be made to enable the employee to perform the work. Counties thus must make such accommodations unless it would work an undue hardship upon them. However, due to the broad definition of a disabled person and the high standards involved in showing an undue hardship, counties should be aware not only of the costs of accommodation that the ADA imposes, but also of the potential for litigation in the coming years to better define the terms of the ADA.

Another source of liability for the county is the Family and Medical Leave Act of 1993 (FMLA) 29 U.S.C.A. § 2601 (1988 & Supp. II 1993). Under the provisions of FMLA, counties are prohibited from taking certain actions against an employee when the employee is absent from work due to family illness or medical emergencies. Failure to comply with FMLA can lead to civil liabilities such as damages for lost wages and benefits, as well as court costs and attorney's fees. Further, an employee who is unlawfully terminated can seek reinstatement to his/her former position.

County officials also should be wary of potential liability under the Medical Support Health Care Access Act. A 2002 amendment requires employers, including counties, to include children in employees' health care plans when a court orders a parent to provide such coverage. Noncompliance subjects an employer to personal liability to the person obligated to pay support "up to the amount of contributions which were not

withheld.” Ala. Code § 27-21B-10.

2. COMMISSIONERS' CIVIL LIABILITY

a. Judicial vs. Ministerial Acts

The nature and extent of county commissioners' civil liability for acts or omissions while in office varies widely according to circumstance. In different situations, this liability may result in the assessment of damages against the county treasury, the commissioner personally, the surety on the commissioner's official bond, or a combination thereof.

It is useful to note first those acts and omissions for which the commissioner may not be held liable in any way. No public official in Alabama may be held liable for the performance, nonperformance, or wrongful performance of judicial duties, as opposed to ministerial duties.¹⁰ Judicial duties have been defined as those duties which confer upon officials the power to exercise judgment or discretion in deciding how to perform them. An example of such a duty is the power to appoint the members of various boards. A commissioner is not liable for the actions of his or her appointees because of the discretion given commissioners in their selection.

Ministerial duties, on the other hand, may be defined as those duties which must be carried out in obedience to the mandate of law. The distinction between judicial and ministerial duties is difficult to draw in general terms. One example of a ministerial duty that will be further discussed below is the statutory duty of commissioners to maintain the public roads in a safe condition. Judgment and discretion are used in deciding how best to accomplish this duty, but the duty itself is not discretionary. One

¹⁰U. S. Fid. & Guar. Co. v. Bass, 619 F.2d 1057 (5th Cir. 1980). *Accord* Scott v. Ryan, 115 Ala. 587, 589, 22 So. 284, 285 (Ala. 1897).

way of looking at the problem is to recognize that in fulfilling a judicial duty, the commissioner chooses among alternatives that are all equally acceptable under the law. For instance, statutes provide only that commissioners appoint persons to serve on boards. Once such appointments are made, the commissioner has fulfilled his or her duty under the law and cannot then be made to answer for the appointment. In fulfilling the ministerial duty to keep the roads safe, however, the commissioner has an ongoing, non-discretionary task to perform. The essence of this duty is not that the commissioner has chosen a method to maintain the roads -- if this were so, then the duty would be judicial -- but this duty is rather more specific because the commissioner must at all times achieve safe roads. In this sense the duty is not discretionary but ministerial because the final, specific result is required by statute.¹¹ If, however, the only result called for by statute is that the commissioner make a choice among equally acceptable alternatives, then the duty will be deemed judicial, and the county treasury, the commissioner personally, or the surety on the official bond may not be held liable for damages ensuing from acts committed in furtherance of the duty.

b. Official Liability

Several Alabama Supreme Court decisions have expanded the scope of commissioners' liability for tortious conduct in performing (or failing to perform) ministerial duties. Damages awarded to injured parties in such cases are assessed not against the commissioner personally, but against the surety on the official bond, the county treasury, or both. These two sources are jointly liable (see the section below on official bonds). This is so because even though the commissioners themselves are sued, they are treated under the law as the county's corporate officers when they are fulfilling "corporate functions" (official duties). Corporation law, therefore, applies and the suit is, in substance, against the county. In such cases, commissioners are being sued in their

¹¹See *Ex parte Harris*, 52 Ala. 87, 91 (Ala. 1875).

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official capacities.

In 1999, the Alabama Supreme Court held that there was a legal distinction between the county itself, as a suable entity, and the county commissioners in their official capacities. (This holding, by the way, is contrary to the way federal courts view counties and county commissioners in their official capacities. In the eyes of the federal court there is no distinction.) Although *Smitherman v. Marshall County Commission*¹² does create another entity that may be sued – the county commissioner in his official capacity in addition to the county itself – there is a “silver lining” to the ruling. The case also held that both the county and the county commissioners in their official capacities are protected by the same cap on damages. The cap is found in Ala. Code § 11-93-2. Although *Smitherman* did not address the issue of recovery, a strong argument might be made that regardless of whether the county and the county commissioners in their official capacity are separate entities, there is only one source of recovery, the county treasury. In other words, there are no accounts or funds under the name “county commissioner in his official capacity.”

It has been held that a sheriff is not an employee of a county for purposes of imposing liability on the county under a theory of *respondeat superior*. A sheriff is an executive officer of the state who is immune from suit under Article I, § 14 of the Alabama Constitution.¹³ The principle that Alabama sheriffs are state officials rather than county officials, for purposes of liability, was accepted by the United States Supreme Court in *McMillian v. Monroe County Alabama*.¹⁴ Further, since a deputy is legally an extension of the sheriff, the deputy enjoys the same immunities to which the sheriff would be entitled.¹⁵

¹²746 So.2d 1001 (Ala. 1999).

¹³*Parker v. Amerson*, 519 So.2d 442 (Ala. 1987). *See also* *Turquitt v. Jefferson County*, 137 F.3d 1285 (11th Cir. 1998).

¹⁴520 U.S. 781 (1997).

¹⁵*Carr v. City of Florence*, 916 F.2d 1521 (11th Cir. 1990);

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Sometimes an elected official is sued in an official capacity for the acts of an assistant or clerk. In such cases, the general rule in Alabama is that officials are not liable for the defaults and misfeasances of their clerks or assistants, even though appointed by them and under their control.¹⁶ However, there are two exceptions to the rule: an official may be held liable in an official capacity for negligence or other fault "in failing to exercise proper care and prudence in selecting the assistant or clerk" and for failure "to properly supervise and superintend the acts and services of such employe[e]."¹⁷ In 2011, Ala. Code §§ 14-6-1 and 36-22-3 were amended to grant the same immunities and protections granted to the sheriff to persons employed by the sheriff to assist in operating a jail and supervising inmates as long as they are acting within the line and scope of their duties. In addition, in 2007 the Legislature granted statutory immunity to all election officials performing their duties in good faith under Alabama's voter identification procedures. Ala. Code § 17-17-28.

In sum, official liability seems to have been extended to improper performance and nonperformance of all ministerial duties where some fault is shown on the part of the commissioner. The cases show that official liability is most often found where the official has failed to perform a ministerial duty, or has performed that duty incompletely. The Alabama Supreme Court has held that in such cases, damages may be assessed only in amounts required to compensate victims for actual injuries.¹⁸

A suit against a county for personal injury, death or property damage must be brought in the defendant county or where

Hereford v. Jefferson County, 586 So. 2d 209 (Ala. 1991).

¹⁶State v. Kolb, 201 Ala. 439, 440, 78 So. 817, 818 (Ala. 1918). *Accord*, Franks v. Thompson, 59 F.R.D. 142, 144-45 (M.D. Ala. 1973).

¹⁷Kolb, 201 Ala. 439, 440, 78 So. 817, 818 (Ala. 1918).

¹⁸Gay v. Burgess, 59 Ala. 575 (Ala. 1877).

the act occurred.¹⁹ While the noncompensated officer of a not-for-profit board is not subject to civil liability except for fraud, willful misconduct or gross negligence,²⁰ a 2000 judicial decision should, however, alert county officials of a possible reluctance of the Court to allow reliance upon administrative rulings or Attorney General's Opinions as a preclusion to the imposition of liability.²¹ Although *Tuscaloosa County v. Teaster* did not impose liability upon the county official, the Court held that reliance upon "official statement[s] of the law other than statute, or the latest judicial decision of the highest state or federal court which has decided on the matter"²² was not sufficient to support a defense of ignorance or mistake of law. Although the Court was addressing criminal culpability for a private individual, county officials should note the possibility of the importation of the insufficiency of reliance upon Attorney General's Opinions and administrative rulings as a preclusion of liability into civil proceedings. County officials should also take adequate measures to ensure that their actions are in compliance with the Alabama Code and current judicial decisions beyond mere reliance upon administrative rulings or Attorney General's Opinions, which may not be sufficiently authoritative statements of the law.

c. Personal Liability

County commissioners generally cannot be held liable in their individual capacities for torts committed while acting within their duties as commissioners.²³ A county commissioner who acts within the general scope of his authority is not subject to tort liability for an administrative act or omission if he is engaged in the exercise of a discretionary function. This is commonly referred

¹⁹Ala. Code § 6-3-11.

²⁰Ala. Code § 10A-20-16.03.

²¹*Tuscaloosa County v. Teaster*, 770 So. 2d 602 (Ala. 2000).

²²Ala. Code § 13A-2-6(b).

²³*Smitherman v. Marshall County Comm'n*, 746 So.2d 1001 (Ala. 1999); *Cook v. St. Clair County*, 384 So.2d 1 (Ala. 1980).

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to as discretionary function immunity.²⁴ The law of discretionary function immunity was thoroughly and broadly restated in the case of *Ex parte Cranman*.²⁵ Although the case involves a state employee, the principle applies to county officers when they are performing a state function, like the collection of state taxes.²⁶ In that case, a county license inspector was granted discretionary function immunity when he mistakenly had an arrest warrant issued. Although there was no probable cause for arrest, it was within the inspector's authority to make judgment calls, and he could not be liable personally when he exercised his judgment or discretion. It appears that discretionary function immunity already had been made available to all county officials, even without a state function.²⁷ Therefore, the situation of most concern to county commissioners involves commission of a tortious act that has no relation to any ministerial or judicial duty imposed on the office by law. The commissioner may be personally sued and held liable for damages in this situation, as may all government officials in Alabama. In the case of *Elmore v. Fields*,²⁸ the Alabama Supreme Court held a prison warden liable in trespass for cutting timber that belonged to a private individual. Similarly, in *Finnell v. Pitts*, the state highway commissioner was held personally liable to a farmer whose land the department had flooded with no legal authority.²⁹

²⁴*Cranman v. Maxwell*, 792 So.2d 392, 2000 WL 772850, 11-12 (Ala. 2000); *See also* *McCluskey v. McCraw*, 672 So.2d 805, 808 (Ala. Civ. App. 1995); *Roden v. Wright*, 646 So.2d 605, 610 (Ala. 1994).

²⁵ 792 So. 2d 392 (Ala. 2000).

²⁶*See Ex parte Tuscaloosa County*, 796 So. 2d 1100 (Ala. 2000).

²⁷*See McCloskey v. McGraw*, 672 So. 2d 805 (Ala. Civ. App. 1995) (granting a county engineer discretionary function immunity).

²⁸153 Ala. 345, 45 So. 66 (1907), *overruled in part by Ex parte Cranman*, 792 So. 2d 392 (Ala. 2000).

²⁹222 Ala. 290, 132 So. 2 (1930), *overruled in part by Ex parte Cranman*, 792 So. 2d 392 (Ala. 2000).

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The court reasoned that the property had been converted without prior payment as required by the state Constitution, and that the commissioner was negligent in not rechecking the design of the project before flooding the land. Thus, the court held that "an individual cannot justify a tort on the contention that it is for the state, if the state had no such right."³⁰ The commissioner was therefore made to pay damages to the farmer, even though the land was diverted not to his own use, but to the use of the state. In this particular instance, the state Legislature decided to reimburse the commissioner for the damages assessed against him, but the rule is still law in Alabama.³¹ Stated more bluntly, "an officer who acts illegally is not acting as an officer ... when he acts in excess or violation of his authority, ... but stands in the same light as any other trespasser."³² This formulation of the rule is instructive of the distinction between official liability and personal liability. Note that personal liability occurs when the officer acts in excess or violation of authority, and official liability is held upon the non-performance or improper performance of a duty that is required by law. Thus, the Alabama Supreme Court held a complaint to be valid where the plaintiff alleged that the mayor, electrical inspector, and fire marshal did "maliciously, illegally, and wrongfully order and direct the Alabama Power Company" to disconnect the electricity to his business.³³ The court reasoned that the complaint was properly made against the defendants in their personal, not official, capacities because it alleged that they acted

³⁰*Id.* at 293, 132 So. at 4.

³¹*See* Hunt v. Grissom, 42 Ala. App. 176, 157 So. 2d 682 (Ala. Civ. App. 1963) *See also* Cranman v. Maxwell, 792 So. 2d 392 (Ala. 2000) (modifying and restating the rule of immunity from *Elmore* and *Finnell* and holding that the immunity of county officials in their judicial roles does not extend to physicians at a student health center administered by a state agency).

³²*St. Clair County v. Town of Riverside*, 272 Ala. 294, 296, 128 So. 2d 333, 334 (Ala. 1961).

³³*Carter v. City of Gadsden*, 264 Ala. 544, 546, 88 So. 2d 689 (Ala. 1955).

"without legal right."

In sum, the county commissioner who is concerned about personal liability for an act should ask the following question: Could the act or omission complained of be described as relating to the non-performance or improper performance of a legally imposed duty or function of the office of county commissioner? If so, then the commissioner probably will not be personally liable in damages to injured parties.

Another area of interest to the commissioner concerns those instances in which the surety on the commissioner's official bond will be held liable for damages resulting from an act or omission by the commissioner. Under prior law in Alabama, bonds for county officials and employees were set so low that even if forfeited, they would not adequately reimburse public funds for mistakes or improper activities. Alabama Act No. 2009-744, which took effect in May 2009, set reasonable bond amounts, clarified when and how bonds are purchased and filed, and provided more properly for deposit of forfeiture payments. Additionally, this law allowed for the requirement of bonds for appointed board members and their employees, and set forth specific provisions providing for bonding of county employees. *See Ala. Code* §§11-2-1, 11-2-4 through 11-2-7, 11-2-20 and 11-2-21.

Every county commissioner must execute an official bond for the faithful performance of his/her duty. Ala. Code § 11-2-1. Official bonds must be made by a surety or guaranty company and should be filed with the county no later than the date the commissioner takes office or, in the case of appointment, within 5 working days of the date the appointment is made. Ala. Code § 11-2-6. The bond for county commissioners, sheriffs, coroners, and constables is one-half of one percent of the portion of the county budget associated with the activities of the official. For county commissioners, the bond is one-half of 1% of the general fund budget of the county; however, the bond is capped at \$50,000. *See Ala. Code* § 11-2-20 (a). These bonds must be renewed or new

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official bonds executed anytime the original bond expires. Ala. Code § 11-2-6.

County employees may also be required by law or the county commission to execute official bonds for the faithful performance of their duties. Ala. Code § 11-2-1(b). The amount of the bond for county employees required to post bond is set by the county commission. Ala. Code § 11-2-20. In the alternative, the county commission may execute a blanket bond covering all county employees in an amount determined by the county commission to adequately protect the county. Ala. Code § 11-2-20. The county commission may also require bonds for any persons appointed by the commission to a county board or commission. Ala. Code § 11-2-1(c)(1).

Additional bonds may be required for county officials or county employees pursuant to a resolution of the county commission if the commissioners determine that current bond amounts are inadequate. Ala. Code § 11-2-20 and 11-2-21. In such case, the resolution must be signed by the chairman and personally served on the county official or employee required to give additional bond. Ala. Code § 11-2-21. The additional bond must be given within 15 days of the date specified in the resolution and the penalty for failure to meet the additional bond requirement is vacation of office for officials or loss of employment for employees. Ala. Code § 11-2-21.

Bond premiums on all county officials and county employees (with the exception of county tax officials and probate judges) are paid by each respective county out of the county's general fund. Ala. Code § 11-2-4. For tax officials, bonds are executed payable to the State of Alabama (*see Ala. Code §§ 40-4-1 and 40-5-3*) and the cost of these premiums is shared by entities receiving non-educational ad valorem taxes (with the exception of the General Fund). Ala. Code § 11-2-4.

Prior law provided that in the event of forfeiture, bond

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proceeds were paid to the state. Pursuant to Ala. Code § 11-2-1(d), any bond proceeds from forfeiture are now distributed to the state or county fund, whichever is entitled to reimbursement for the loss.

Legislation also allows county commissioners and numerous other county officials of whom an official bond is required to get surety coverage under the state blanket bond if the commission, the Governor, and the Finance Director approve of such an insurance program. Ala. Code § 41-4-302. Pursuant to Ala. Code § 36-5-18, the surety is liable in an action on the official bond in the following situations:

For every breach of the condition during the time the officer continues in office or discharges any of the duties thereof. ["The condition" is set forth in the next two paragraphs.]

The faithful discharge of any duties which may be required of such officer by any law passed subsequently to the execution of such bond, although no such condition is expressed therein; and

The use and benefit of every person who is injured, *as well by any wrongful act committed under color of office* as by failure to perform or the improper or neglectful performance of those duties imposed by law. [Emphasis added.]

The words "for the use and benefit of every person injured," as used [above], shall include all persons having a direct and proximate interest in the official act or omission and all persons connected with such official act or omission, by estate or interest.³⁴

The surety is jointly liable with the county treasury for the

³⁴Ala. Code § 36-5-18.

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"failure to perform or improper or neglectful performance" of official duties. This liability is exactly the same as that defined as "liability in an official capacity" for ministerial duties.

The italicized portion above reflects a statutory extension of the traditional liability to cover those acts described in the preceding section for which the commissioner is jointly liable in a personal capacity, with one difference. As noted above, the commissioner is personally liable for acts in "excess or violation" of authority while the surety is jointly liable in such situations if the act was committed under "color of office." An act is committed under "color of office" when it is done under "pretended authority of law" or "arrogated authority of the office" even though the act is not authorized by law.³⁵ One example of such an act committed under color of office occurred when a probate judge attached and sold property to satisfy a judgment although the property was not properly the subject of attachment. Since the judge acted without legal authority, he was treated as any other trespasser and was personally liable for the damages. The surety on his official bond, however, was jointly liable because the judge was pretending to act under the statute authorizing him to attach and sell property legally subject to this action.³⁶ Another example would be the act of a sheriff in arresting and imprisoning a person for an "offense" that does not constitute a crime. Several parties may have standing to sue on an official bond.³⁷

It must be remembered that there are acts for which only the commissioner personally is held liable, without joint liability of either the county treasury or the surety on the official bond. The following statement by the Alabama Supreme Court best

³⁵*Pickett v. Richardson*, 223 Ala. 683, 138 So. 274 (Ala. 1931); *Albright v. Mills*, 86 Ala. 324, 5 So. 591 (Ala. 1889); *McElhaney v. Gilleland*, 30 Ala. 183 (Ala. 1857).

³⁶*See McElhaney*, 30 Ala. 183.

³⁷*See Dixon v. Am. Liberty Ins. Co.*, 332 So. 2d 719 (Ala. 1976).

summarizes the issue: "a mere private act of an officer, not pertaining to any function or duty which the law imposes, and not done under the color of office, incurs no official responsibility or liability on his official bond, though such act may incur personal responsibility or liability on the actor."³⁸

3. COMMISSIONERS' CRIMINAL LIABILITY

In addition to incurring civil liability, a county commissioner can also incur criminal liability in at least one circumstance. Ala. Code § 11-3-5 makes it a misdemeanor for a commissioner to engage in nepotism. That statute prohibits any county commissioner from employing or awarding contracts for county-related work to relatives, by blood or marriage, within four degrees of kinship. According to an advisory opinion of the Alabama Supreme Court, the statute also prohibits the commissioner from participating when the commission is considering or voting on any contract bid submitted by that commissioner's relative.³⁹ The statute was not construed, however, to prohibit relatives of county commissioners from participating in county work; the Court simply ruled that the commissioner must remove himself from the decision-making process in such a situation.

An additional avenue of criminal liability is a violation of the Code of Ethics for Public Officials, Employees, Etc., codified at Ala. Code §§ 36-25-1 through 36-25-29. The Code of Ethics prevents the influencing of public officials from corrupt means by prohibiting unethical contributions, solicitations, receipt of things of value, and bars those in public office from contemporaneously representing clients before boards or other regulatory bodies. The Code of Ethics also requires candidates to submit financial disclosures and requires lobbyists to register. The Code also

³⁸See *Pickett*, 223 Ala. 683, 138 So. 274.

³⁹*Garrison v. Sumners*, 24 Ala. App. 281, 134 So. 672, 674 (Ala. Civ. App. 1931).

prohibits various types of supervisor discrimination. Penalties for a violation of the Ethics Code range from a Class A misdemeanor to a Class B felony. The Code also provides for the imposition of administrative penalties.

4. LIABILITY FOR CIVIL RIGHTS VIOLATIONS UNDER 42 U.S.C. § 1983

Suits against public employees for exceeding or abusing their position are often called “1983 suits.” These fall under 42 U.S.C. § 1983, which was originally passed as Section 1 of the Civil Rights Act of 1871. This Act was also known as the Klu Klux Klan Act of 1871. Section 1983 was passed pursuant to Section 5 of the Fourteenth Amendment to the United States Constitution to enforce the provisions of the Fourteenth Amendment. 42 U.S.C. § 1983 states, in relevant part:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State ... subjects, or causes to be subjected, any citizen of the United States ... to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress ..."

Section 1983 "is not itself the source of substantive rights," but provides a cause of action for the deprivation of federal rights conferred by the United States Constitution and federal statutes. *Graham v. Connor*, 490 U.S. 386, 393 (1989); *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979). The federal rights which are commonly at issue in actions against counties and county officials are derived from the First Amendment (freedom of speech and expression), Fourth Amendment (unreasonable searches and seizures), Eighth Amendment (cruel and unusual punishment), and Fourteenth Amendment (deprivation of life, liberty, or property without due process of law) of the United States Constitution.

a. Background

Section 1983 was largely dormant as a theory of recovery against local governmental entities until 1978. In that year, the United States Supreme Court in *Monell v. Department of Social Services*, 436 U.S. 658 (1978), held that local governmental entities are "persons" within the meaning of Section 1983 and therefore can be sued. *Monell* thus opened the door for municipal liability under Section 1983. Section 1983 has become popular among plaintiffs' attorneys because of the choice of forum (federal or state court) and the availability of attorneys' fees under 42 U.S.C. § 1988. The most common causes of action against counties under 42 U.S.C. § 1983 involve personnel decisions; lawsuits by inmates of the county jail over conditions of confinement, denial of medical attention and denial of access to courts; and excessive force and false arrest claims for acts of law enforcement officers.

b. Local Government Liability Under *Monell v. New York City Department of Social Services*

In *Monell*, the United States Supreme Court held that local governments can be sued for damages when "the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers. Moreover, ... local governments ... may be sued for constitutional deprivations visited pursuant to governmental 'custom,' even though such a custom had not received formal approval through the body's official decision making channels." 436 U.S. at 690-91. Even though a county cannot be held liable solely because it employs a person who commits a wrong, it may be held liable under Section 1983 if under color of some official policy it causes an employee to violate another's constitutional rights. *Id.* at 692; *Collins v. City of Harker Heights*, 503 U.S. 115, 121 (1992) (plaintiff's harm must be caused by constitutional violation for which the governmental entity is

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responsible); *City of Los Angeles v. Heller*, 475 U.S. 796 (1986) (if there is no constitutional violation, there can be no municipal liability).⁴⁰ Additionally, the Eleventh Circuit held that counties cannot be liable for liability arising out of the daily operation and administration of the jail. Of course, the county can still be held liable for injuries resulting from a failure to provide for a safe, secure, and well-administered jail structure.⁴¹

While local governments are subject to compensatory damages under Section 1983, local governmental entities are absolutely immune from punitive damages. *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 271 (1981). Under state legislation enacted in 2002, counties also are immune from lawsuits brought by inmates injured while working outside the county jail in a work-release program or other such program, unless “the county or community corrections agency, or employee thereof, is willfully negligent in carrying out their responsibilities.” Ala. Code § 14-8-40.

c. Liability of Commissioners

Individual officials may be held liable under Section 1983 for both compensatory and punitive damages. County commissioners however, when engaged in a legislative function, are entitled to absolute legislative immunity for conduct in furtherance of their legislative duties. *Healy v. Town of Pembroke Park*, 831 F.2d 989, 993 (11th Cir. 1987). When commissioners are engaged in administrative duties or other actions which are considered of an executive nature, absolute legislative immunity is not available. For example, in *Woods v. Gamel*,⁴² the Eleventh

⁴⁰See e.g., *Bd. of Comm’rs of Bryan County v. Brown*, 520 U.S. 397 (1997) (emphasizing how difficult it is to establish a case against a policy maker).

⁴¹See *Turquitt v. Jefferson County Comm’n*, 137 F.3d 1285 (11th Cir. 1998).

⁴²132 F.3d 1417 (11th Cir. 1998).

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Circuit held that county commissioners, in their individual capacities, cannot be held personally liable for insufficiently funding the jail through their budgetary voting. Such a vote is protected by the doctrine of legislative immunity. Commissioners still may be entitled to qualified immunity from suit. While not absolute, qualified immunity does protect an official as long as he does not violate a clearly established constitutional right of which a reasonable official should have known. *See Anderson v. Creighton*, 483 U.S. 635, 638-639 (1987).

B. LEGISLATIVE-COUNTY RELATIONSHIPS

Local legislation generally is that which applies to a particular place, such as one city or county, as distinguished from legislation that applies to the state as a whole. Because Alabama's Constitution does not authorize "home rule" by counties except by legislative act and, in many instances, by constitutional amendment, the Legislature spends much of its time dealing with issues that apply only to local matters.

Amendment 621 to the Alabama Constitution provides that no general law or state executive order that requires a new or increased expenditure of funds from a county governing body shall become effective as to any county until approved by an ordinance enacted, or a resolution adopted, by the governing body of the affected county or until, and only as long as, the Legislature appropriates funds for that purpose to the affected county and only to the extent and amount that the funds are provided or until a law provides a local source of revenue for the stated purpose for the affected county. This amendment does not apply to (1) local laws, (2) executive orders requiring expenditures by a school board, (3) an act defining a new crime or amending the definition of an existing crime, (4) laws or orders adopted before the ratification of this amendment, (5) laws adopted to comply with federal mandates, (6) acts adopted by two-thirds of those voting in each house of the Legislature, (7) acts that have an aggregate insignificant fiscal impact (less than \$50,000 annually), and (8)

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acts prescribing minimum compensation of officials. This constitutional amendment was ratified in 1998.

Amendment 474 provides that any Alabama law which provides for new or increased expenditures of county funds is not effective until the first day of the fiscal year following the passage of the act, except when the law is approved by the county commission or when the law provides sufficient additional funding. Amendment 621 does not expressly supersede this requirement; therefore, those unfunded mandates regulated by Amendment 621 would not go into effect until approved by the county commission or where additional funding is provided. Those mandates that are not subject to Amendment 621, such as those directing expenditures by a school board or those with a financially insignificant impact, would not become effective until the first day of the next fiscal year unless approved by the county commission or when the law provides for additional funding for its enactment.

1. RESTRICTIONS ON LEGISLATION RELATING TO COUNTIES

The Alabama Constitution contains numerous provisions that regulate the exercise of legislative authority over counties. Some of these provisions are directed toward prohibiting or limiting legislative action in specific fields; others are phrased in more general terms and apply principally to local and private legislation. Among the specific constitutional restrictions upon legislative action may be found the following:

1. Provisions that forbid the Legislature to authorize counties to impose property taxes or incur indebtedness above certain prescribed maximum amounts. [§§ 215 (as amended), 217, 269, and Amendments 3, 59, 72, 111, 202, 208, 269, 325, 373, concerning property taxes; § 224, and Amendment 342, concerning the debt limitation].

2. Provisions that prohibit any increase or reduction in

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the compensation of public officers, including county officers, during their terms of office, and provisions that seek to maintain uniformity in the fees, allowances, and commissions of public officers, and in the costs of court proceedings. [§§ 68, 96, 104(24), 281, and Amendment 92].

3. Provisions prohibiting the Legislature to authorize any political subdivision of the state to lend its credit, or to grant any public money or thing of value in aid of any private individual, association, or corporation, or to become a stockholder in any such enterprise. [§§ 94 (as amended) and 253].⁴³

4. Certain restrictions related to county boundaries and

⁴³The Supreme Court has held, however, that the state may authorize appropriations of public funds for the payment of just and righteous demands that constitute moral obligations, though not legally enforceable. The court went on to say that appropriations for the payment of such claims were for a public purpose and were not donations violative of § 94. *Bd. of Revenue and Road Comm'rs of Mobile County v. Puckett*, 227 Ala. 374, 149 So. 850 (Ala. 1933). The case provided the constitutional basis for the passage of relief acts of the Legislature authorizing counties to appropriate funds for the payment of compensation, for example, to people damaged by actions of the county, or, as was the situation in *Puckett*, for compensation to the widow of a county employee killed during the performance of his official duties.

It might be noted, too, that following the general line of reasoning that the payments are for a public purpose, a number of Attorney General's Opinions have authorized certain payments to the Alabama Association of County Commissions. *See, e.g.*, the opinion to Hon. James Record, dated July 26, 1974. In 1975, however, statutory authority was conferred upon counties to join national and state associations of county commissions and to make appropriate payments for the maintenance and support of such associations. Ala. Code § 11-1-15. *See also* *Slawson v. Ala. Forestry Comm'n*, 631 So. 2d 953 (Ala. 1994) (affirming *Puckett*).

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county seats. [§§ 39, 40, 41, 104(11)].

5. Provisions that regulate the enactment of legislation authorizing bond issues by political subdivisions of the state. [§§ 104(17), 222].

6. A constitutional provision that delays the effective date of legislation that requires additional county expenditures until the beginning of the next fiscal year [Amendment 474].

It is important to emphasize that a host of local amendments exempt specific counties from many of the constitutional restrictions listed above. These amendments authorize such actions with respect to named counties as imposing additional taxes, placing the county officers on a salary, or, for purposes of industrial development, assuming relationships with private businesses generally prohibited by Section 94 of the Constitution.

In addition to the limitations stated above, Section 104 of the Alabama Constitution prohibits the Legislature from passing a special, private, or local law in any of the following cases:

- (1) Granting a divorce;
- (2) Relieving any minor of the disabilities of nonage;
- (3) Changing the name of any corporation, association, or individual;
- (4) Providing for the adoption or legitimizing of any child;
- (5) Incorporating a city, town, or village;
- (6) Granting a charter to any corporation, association, or individual;
- (7) Establishing rules of descent or distribution;
- (8) Regulating the time within which a civil or criminal action may be begun;
- (9) Exempting any individual, private corporation, or association from the operation of any general law;

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- (10) Providing for the sale of the property of any individual or estate;
- (11) Changing or locating a county seat;
- (12) Providing for a change of venue in any case;
- (13) Regulating the rate of interest;
- (14) Fixing the punishment of crime;
- (15) Regulating either the assessment or collection of taxes, except in connection with the readjustment, renewal, or extension of existing municipal indebtedness created prior to the ratification of the Constitution of 1875;
- (16) Giving effect to an invalid will, deed, or other instrument;
- (17) Authorizing any county, city, town, village, district, or other political subdivision of a county, to issue bonds or other securities unless the issuance of said bonds or other securities shall have been authorized before the enactment of such local or special law, by a vote of the duly qualified electors of such county, township, city, town, village, district, or other political subdivision of a county, at an election held for such purpose, in the manner that may be prescribed by law; provided, the Legislature may, without such election, pass special laws to refund bonds issued before the date of the ratification of this Constitution;
- (18) Amending, confirming, or extending the charter of any private or municipal corporation, or remitting the forfeiture thereof; provided, this shall not prohibit the legislature from altering or rearranging the boundaries of the city, town, or village;
- (19) Creating, extending, or impairing any lien;
- (20) Chartering or licensing any ferry, road, or bridge;
- (21) Increasing the jurisdiction and fees of justices of the peace or the fees of constables;
- (22) Establishing separate school districts;
- (23) Establishing separate stock districts;

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- (24) Creating, increasing, or decreasing fees, percentages, or allowances of public officers;
- (25) Exempting property from taxation or from levy or sale;
- (26) Exempting any person from jury, road, or other civil duty;
- (27) Donating any lands owned by or under control of the state to any person or corporation;
- (28) Remitting fines, penalties, or forfeitures;
- (29) Providing for the conduct of elections or designating places of voting, or changing the boundaries of wards, precincts, or districts, except in the event of the organization of new counties, or the changing of the lines of old counties;
- (30) Restoring the right to vote to persons convicted of infamous crimes, or crimes involving moral turpitude; and
- (31) Declaring who shall be liners between precincts or between counties.

Other important limitations are found in Sections 105 and 106 of the Constitution. Section 105 provides that no special, private, or local law, except a law fixing the time of holding court, may be enacted in any case which is provided for by a general law, or when the relief sought can be given by the courts. The courts, rather than the Legislature, are directed to judge whether the matter of the law is provided for by general law, or whether the relief sought can be given by the courts. Moreover, the Legislature is admonished not to enact local, special, or private legislation indirectly by the partial repeal of a general law.

In addition to these constitutional provisions, the Alabama Code also contains restrictions. For example, Ala. Code § 29-5-12 requires that a fiscal note be attached to any general bill or resolution which would otherwise require expenditures of county or municipal funds, thereby providing an estimate of the amount of money involved.

2. ADVERTISING REQUIRED FOR LOCAL BILLS

Section 106 of the Alabama Constitution (as amended by Amendment 341) provides that no local, private, or special law may be passed, except a law fixing the time of holding court, unless notice of the intent to introduce such a law has been published, without cost to the state, in any county to be affected by the act. The notice must state the substance of the proposed law and must be published at least once a week for four consecutive weeks in some newspaper published in the county or (in the event a county has no local newspaper) by posting the notice for two consecutive weeks at five different places in the county before the introduction of the bill. Ala. Code § 11-13-6.

Ala. Code § 11-13-6 requires counties to pay for the cost of advertising local bills out of the county treasury. There are, however, instances where the county is entitled to reimbursement. If a bill is for the benefit of one or more municipalities, then the county is entitled to reimbursement for advertising. Ala. Code § 11-13-6(a). Reimbursement from more than one municipality is done based on an amount which bears the same ratio to total advertising cost as the municipality's population to the total population of affected municipality. Ala. Code § 11-13-6(a). The county is also entitled to reimbursement when a proposed local law raising revenue for a public or private local entity other than the county commission becomes law. Ala. Code § 11-13-6(b). If more than one public or private entity receives the proceeds of the revenue, then the cost of advertising is reimbursed by those entities on a pro-rated basis. Ala. Code § 11-13-6(b).

A bill advertised for one legislative session does not meet the notice requirement for introduction in a successive legislative session. Even if the bill is exactly like the bill that failed to pass, it is in fact a new bill that must be advertised again according to the

constitutionally prescribed manner.⁴⁴ House and Senate rules also require that all bills, including local bills, be submitted to the Legislative Reference Service for review before being introduced to the Legislature.

3. MODIFICATION OF PROCEDURE FOR GENERAL BILLS OF LOCAL APPLICATION

It should be noted that much legislation also has been enacted on the basis of "general bills of local application."⁴⁵ These are measures that are general in form, because of their application to all local governments within a given population classification, but are local in effect, since the population range used in the classification is so narrowly drawn as to make the law applicable to only a single city or county. However, in the case of *Peddycoart v. City of Birmingham*,⁴⁶ the Alabama Supreme Court ruled that a general act of local application predicated on an arbitrary population classification is unconstitutional. In response to the *Peddycoart* decision, Amendment 375 was adopted, amending Section 110 of the Alabama Constitution. The amendment defines "general law" as one which applies to either the whole state or a class containing one or more municipalities and the Legislature is given authority to establish eight classifications of municipalities, based on population, to which such general laws may apply. See *Ala. Code* § 11-40-12. However, Section 110 does not apply to counties.

The Legislature also proposed a constitutional amendment to protect all general acts of local application enacted prior to the

⁴⁴*City of Adamsville v. City of Birmingham*, 495 So. 2d 642 (Ala. 1986).

⁴⁵For further information, see John P. Adams, *Legislation by Census: The Alabama Experience*, 21 ALA. L. REV. 401 (1969).

⁴⁶354 So. 2d 808 (Ala. 1978), superseded by statute, Ala. Const. Art. IV, § 110, as stated in *Phalen v. Birmingham Racing Com.*, 481 So. 2d 1108 (Ala. 1985).

Peddycoart decision. This proposed amendment was ratified by Alabama voters as Amendment 389. As a consequence of the *Peddycoart* ruling, many acts that at one time could be enacted as general acts of local application now must be enacted as local legislation in accordance with advertisement requirements of Section 106 of the Alabama Constitution.

C. COUNTY BOUNDARIES

Section 38 of the Alabama Constitution confirmed and ratified the county boundaries as they existed at the time of the adoption of that instrument in 1901. The Constitution provided for the creation of new counties and for the alteration of county boundaries but stipulated certain conditions (§§ 39, 40, 41, 104(11)) under which such changes may be made, as follows:

1. Every new county must contain at least 600 square miles of territory, and no existing county may be reduced to less than 600 square miles (§ 39);

2. No new county may be formed unless it contains a sufficient number of inhabitants to entitle it to at least one representative under the ratio of representation existing at the time of its formation and leaves the county, or counties, from which the new county is formed sufficient inhabitants to entitle the existing county, or counties to separate representation (§ 39);⁴⁷

3. No county boundary may be altered or established so as to run within seven miles of an existing courthouse (§ 40);

4. No courthouse may be removed from an established

⁴⁷This provision is probably now meaningless in view of reapportionment developments since 1965 that have based representation in the Legislature on legislative districts. *See* Opinion of the Justices, No. 184, 278 Ala. 412, 178 So. 2d 641 (Ala. 1965).

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county seat, nor may any county seat be changed, unless the change is authorized by a majority of the electorate of the county affected (§ 41);

5. No county seat may be changed or located by local legislation (§ 104(11)); and

6. Alterations of county boundaries may be made only by a vote of two-thirds of each house of the Legislature (§ 39).

CHAPTER II

**THE ORGANIZATION OF ALABAMA
COUNTY GOVERNMENT**

A. THE GOVERNING BODY

The governing body of the county in Alabama, as in other states, is an elective county board. This board in Alabama developed most directly from an administrative court established by law in 1821, shortly after Alabama's admission into the Union (1819). The act of 1821 provided for the election in each county of four commissioners of roads and for them to serve for terms of one year. Any two of the commissioners, together with the commissioner of the county court, constituted a court competent to levy the county tax; to establish, maintain, and discontinue county roads; and to exercise other powers in relation to roads, bridges, and ferries theretofore vested in other inferior judicial courts. With certain variations this body has survived to the present time and remains the form of county governing authority contemplated in the general laws of the state.¹

1. DESIGNATION

In 1970, the county governing bodies were uniformly designated as the "county commission."² Prior to that time there

¹Taken partly from an unpublished paper by I.B. Rutledge, former chief of the Bureau of County Aid, Alabama State Highway Department, titled, "Alabama: Expansion and Refinement of County Governmental and Operating Characteristics as Obtained in Inventory of Local Road Administration," Sept. 14, 1950; *See also Ala. Code* § 11-3-1.

²Ala. Code § 11-1-5. The remainder of this chapter is based in large measure upon two early, but nonetheless still valuable, studies of county government in Alabama: (1) Institute of Government Research of the Brookings Institution, *County Government in Alabama*, Vol. 5, Part 4, of Report on a Survey of

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was much variation in the state regarding the designation of the county governing bodies. The name most commonly used was "court of county commissioners," as prescribed in the general law governing the form of county government. Other designations applied to county governing bodies included such names as "board of revenue," "county commission," "board of directors," "board of finance and control," and the like.

2. COMPOSITION

Despite the present uniformity of designation, a good deal of variation in the composition of the county governing bodies remains depending upon how the chairman of the county commission is selected. The four ways the chairman of the county commission is selected are as follows: 1) The probate judge as chairman; 2) A chairman who is selected county wide; 3) A chairman who is elected from the body by the county commission; or 4) A rotating chairmanship among the commissioners.

In thirteen counties, the county commission is composed of the county commissioners and the probate judge, the latter sitting as ex officio chairperson, as provided by general law.³ Normally, counties are divided into 4 districts and a commissioner is elected for each district. Commissioners are elected by districts in most counties. In a relatively small minority of the counties,

the Organization and Administration of the State and County Governments of Alabama (Montgomery, 1932), and (2) Tennessee Valley Authority, County Government and Administration in the Tennessee Valley States (Washington, D.C., 1940). In several instances, reference has also been made to a pamphlet issued in 1973 by the Association of County Commissions of Alabama, Let's Get Better Acquainted with County Government of Alabama.

³This number was changed from 16 with the 2012 election as Washington, Lauderdale and Dale counties changed their types of county governing bodies.

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commissioners are elected on a county-wide basis.⁴ There is a one year county residency requirement, however, for any person seeking to run for the office of county commissioner. In counties where commissioners are elected by district, residency must be within that district. The residency requirement shall be met at all times while the commissioner is in office. Ala. Code § 11-3-1(a).

⁴A number of suits have been filed against Alabama local governments contesting various aspects of the representational systems employed to elect members of the local governing bodies. Generally speaking, the courts have held that federal constitutional standards require electoral systems that provide substantial political equality to the various segments of the voting population. No such system may discriminate against a racial or other identifiable group, diluting its capacity for effective participation in the political process. The individual interested in this subject should consult such cases as *Rogers v. Lodge*, 458 U.S. 613 (1982); *Thornburg v. Gingles*, 478 U.S. 30 (1980); *City of Mobile v. Bolden*, 446 U.S. 55 (1980); *East Carroll Parish Sch. Bd. & East Carroll Parish Police Jury v. Marshall*, 424 U.S. 636 (1976); *Dallas County, Alabama v. Reese*, 421 U.S. 477 (1975); *White v. Regester*, 412 U.S. 755 (1973); *Whitcomb v. Chavis*, 403 U.S. 124 (1971); *Avery v. Midland County*, 390 U.S. 474 (1968); *Reynolds v. Sims*, 377 U.S. 533 (1964); *Dillard v. Crenshaw County*, 831 F.2d 246 (11th Cir. 1987); *Nevett v. Sides*, 571 F.2d 209 (5th Cir. 1978); *Zimmer v. McKeithen*, 485 F. 2d 1297 (5th Cir. 1973); *United States v. Dallas County Comm'n*, 548 F.Supp. 875 (S.D. Ala. 1982), modified, 739 F.2d 1529 (11th Cir. 1984); *Hendrix v. McKinney*, 460 F.Supp. 626 (M.D. Ala. 1978); and *Thomas v. T.L. Ferguson*, 267 Ala. 383, 102 So. 2d 20 (Ala. 1958). For the previous edition of this work, information about these cases was supplied by Hon. Cartledge W. Blackwell, Jr., and Mr. Stephen E. Condrey. See also *Vote Dilution Challenges After Washington v. Davis*, 30 ALA. L. REV. 396 (1979); Laughlin McDonald, *The Quiet Revolution in Minority Voting Rights*, 42 VAND. L. REV. 1249 (1989). Ala. Code § 11-3-1, is the general statutory provision that describes the composition of county commissions.

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The membership of the county governing bodies frequently varies from the five members (four commissioners and the probate judge) prescribed by general law. Although a five-member commission is the most common, commission membership ranges, over the state as a whole, from three to nine. Another variation is that Jefferson County employs a commission form of government under a procedure approved by court as a settlement in an action against the county commission. The local law concerning the form of governing body in that county provides for the departmentalization of functions that is the primary characteristic of commission government in municipalities. Each Jefferson County Commissioner thus serves as the head of a separate administrative department. A 2006 act provided that all county commissions operating under a federal court order shall continue to do so until a general or local act dictates otherwise. Ala. Code § 11-80-12.

3. TERMS OF OFFICE

Generally, commissioners serve for a term of four years as prescribed in Ala. Code § 11-3-1(c). However, that same section allows for local laws to change this and, thus, some counties have terms of six years. The term of office of county commissioners begins at 12 a.m. on the second Wednesday following the general election at which he or she was elected and ends at 11:59 p.m. on the first Tuesday following the day of the general election at which a successor is elected. Ala. Code § 11-3-1(d). Note that this does not affect the term of office for the probate judge, which is six years. Ala. Code § 12-13-30. An Alabama Supreme Court decision has held that no Alabama county may change the time mentioned above for county commissioners to take office.⁵

⁵State v. Baldwin County, 686 So. 2d 220 (Ala. 1996).

4. QUALIFICATIONS

One important qualification prescribed by statute for the office of county commissioner, aside from other qualifications prescribed in Ala. Code §§ 36-2-1 through 36-2-10 for public officers generally, is the requirement that the incumbent be a qualified elector of the county. Ala. Code § 36-2-1. Ala. Code § 11-3-1(a) requires a commissioner to be a resident of the county he or she represents. A District Commissioner must be a resident of his or her district. Ala. Code § 11-3-1(a). Candidates for the office of commissioner should make certain that they are familiar with both the general and local qualifications and other requirements prescribed for the position that they are seeking. Qualifications include:

- A. The filing of a bond of an authorized surety company pursuant to Ala. Code §§ 11-2-1(b) and 11-2-6;
- B. Taking and filing an official oath of office. Ala. Code §§ 36-2-10, 36-4-1, 36-4-4;
- C. Not holding another office while serving as commissioner. However, a county commissioner may serve on public boards, commissions, and authorities. Ala. Code § 11-3-2; and
- D. One year residency requirement as discussed above. Ala. Code § 11-3-1 (a).

5. ETHICS ACT⁶

In 1973, the Alabama Legislature passed the Alabama Ethics Act. The most recent amendments were passed in 2012. The present law refers to "Public Official," and the definition of

⁶Information on the Ethics Act was provided by Jim Sumner, Director of the Alabama Ethics Commission.

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these individuals includes "any person elected to public office, whether or not that person has taken office, by the vote of the people at the state, county or municipal level of government." Ala. Code § 36-25-1. The law also refers to "Public Employees," and that term is defined as any person employed at the state, county, or municipal level of government. Ala. Code § 36-25-1. Thus, county commissioners and all county employees are required to comply with the provisions of this law.

The purpose and objective of the Alabama Ethics Act, is to prevent conflicts of interest and thus instill public confidence in the elected and appointed officials covered by the law. Ala. Code § 36-25-2. The Ethics Act is supported by Ala. Const. § 101, which prohibits any county official from accepting any fee, money, office, appointment, employment, reward, or thing of value in exchange for influencing legislation.

Basically, the Ethics Act contains two broad categories of provisions. The first category relates to disclosure, and the second is a set of ethical principles of conduct with which a county commissioner must comply while holding public office. All county commissioners, and many county employees, must file an annual "Statement of Economic Interest" with the Alabama Ethics Commission by April 30 of each year. Ala. Code § 36-25-14. Any candidate for a commission post must file a financial disclosure statement simultaneously with the date he or she becomes a candidate. Ala. Code § 36-25-15. **Failure to do so can result in removal from the ballot.** Ala. Code § 36-25-15(c).

All county commissioners and all county employees who file statements of economic interest must also attend mandatory training on the Ethics law. *See Ala. Code § 36-25-4.2(a)(4)*. This training can be done by accessing the Ethics Commission training video on their website at: www.ethics.alabama.gov. County Commissioners can comply with this training requirement by taking the mandatory Alabama Local Government Training Institute (ALGTI) class on ethics.

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The Statement of Economic Interests package may be sent to the county soon after the first of the calendar year with a form to be copied and distributed to each filing public official and employee. The form can also be filled out on the Ethics Commission's Web Site (<http://ethics.alabama.gov/forms2.aspx>) and printed out for mailing before April 30.

The information contained in a Financial Disclosure Form becomes a public document once it is received in the Commission office and is therefore available to the general public and to the media via any electronic database through the commission's website.

(1) Under the set of ethical principles of conduct contained in the law, a commissioner may not use his/her official position to obtain personal gain for self, family, or business. Ala. Code § 36-25-5.

(2) A commissioner may accept, solicit, or receive contributions only for use in influencing the outcome of an election, and only if he or she follows the procedures of the Fair Campaign Practices Act.⁷ Ala. Code §§ 36-25-6 and 17-5-7(b)(1).

A commissioner may not accept, solicit, or receive contributions more than twelve months before an election in which he intends to be a candidate. Ala. Code § 17-5-7(b)(2).

A commissioner may solicit contributions for up to 120 days after an election to pay off campaign debts, although he or she must follow all the rules of Ala. Code § 17-5-7(b)(3).

A commissioner shall not accept, solicit, or receive contributions with the intent of corruptly influencing official actions. Ala. Code § 17-5-7(c)(2).

⁷See Ala. Code § 17-5-1 *et seq.*

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A commissioner may not use contributions for personal use. Ala. Code § 36-25-6.

(3) A commissioner is prohibited from soliciting or accepting any money (other than his regular pay) for advice or assistance on matters pertaining to the Legislature, lobbying a legislative body, an executive department, or any public regulatory agency or other body of which he or she is a member. Ala. Code § 36-25-7(d).

(4) A commissioner may not use confidential information obtained as a result of his or her elected position to obtain financial gain for the commissioner or any other person. Ala. Code § 36-25-8.

(5) A commissioner may not serve as a member of a regulatory agency that regulates any business with which he or she is associated unless specifically provided by law. Ala. Code § 36-25-9(a).

A commissioner may not vote or participate in any matter in which that commissioner or a family member has any financial gain or interest. Ala. Code § 36-25-9(c).

(6) If a commissioner, a family member, or a business with which either is associated, represents a client, for a fee, before any state, county, or municipal agency, board, or department, the Alabama Ethics Commission must be notified within ten days after the first day of such appearance. Ala. Code § 36-25-10.

(7) A commissioner, member of his/her household, or a business with which either is associated, may contract to do work for state, county, or municipal governments only if he or she participates in competitive bidding in which there are no outside negotiations, and only if a copy of the contract is filed with the Alabama Ethics Commission within ten days after the contract has been entered into. Ala. Code § 36-25-11.

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(8) A commissioner may not solicit or accept anything of value (other than in the ordinary course of business) from a person associated with a business which is regulated by the agency, board or commission on which the commissioner serves. Ala. Code § 36-25-12.

(9) No commissioner or family member of the commissioner shall solicit or receive a thing of value from a lobbyist, subordinate of a lobbyist, or principal for the purpose of corruptly influencing official actions. Ala. Code § 36-25-7. Notwithstanding the foregoing, a lobbyist, or principal may offer or provide and a commissioner may solicit or receive items of de minimis value. Ala. Code § 36-25-5.1. In 2012 the following definition was added for “de minimis” value: “a value twenty-five dollars (\$25) or less per occasion and an aggregate of fifty dollars (\$50) or less in a calendar year from any single provider, or such other amounts as may be prescribed by the Ethics Commission from time to time by rule pursuant to the Administrative Procedure Act or adjusted each four years from the date of the enactment of this amendatory act to reflect any increase in the cost of living as indicated by the United States Department of Labor Consumer Price Index or any succeeding equivalent index. The definition of “thing of value” was not significantly changed by the 2010 amendments, but the exceptions to the definition were substantially changed. Commissioners should review the amended list of exceptions. For the list of exceptions, *see* Alabama Code § 36-25-1(33)(b)(1-18).

(10) A commissioner or former commissioner may not serve for a fee as a lobbyist or otherwise represent a client before any agency, commission, or department of which he or she has been a member within the past two years. Ala. Code § 36-25-13.

The 2010 amendments also added a new section that requires each county commissioner and spouse of each commissioner who is employed by, or who has a contract with the state or federal government, to notify the Ethics Commission of such employment within 30 days of beginning employment or

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within 30 days of the beginning of the contract. *See Ala. Code* § 36-25-5.2(b). The filing has certain requirements which are listed in § 36-25-5.2(c)(1-6). Each commissioner or the spouse of the commissioner is responsible for promptly notifying the Ethics Commission of any changes to the terms of his or her employment. *See Ala. Code* § 36-25-5.2(d).

Like any other citizen, commissioners may request an advisory opinion from the Alabama Ethics Commission on any real or hypothetical situation that may pertain to the Ethics Law. Additionally, they may request that an inquiry be made into any allegations or complaints concerning actions they believe are in violation of the ethics law. Ala. Code § 36-25-4.

County commissioners have a duty to file a report with the Ethics Commission on any matters which come to their attention in their official capacity which constitute a violation of the Ethics Law. Ala. Code § 36-25-17.

The Association of County Commissions of Alabama has drafted a model "Code of Ethical Conduct" to set the ethical standards of conduct for county commissioners.⁸ The ACCA recommends that the respective county commissions voluntarily adopt the standards set out in this code.

6. COMPENSATION

Determining the proper compensation for county commissioners is somewhat complicated and requires an examination of several different general acts. Ala. Code § 11-3-4.1(b) sets the minimum compensation for commissioners at \$14,600, except that the minimum compensation for commissioners required by local law to serve full time is \$25,000. The minimum compensation for the county commission chair is set at \$18,600 under this Code section, with minimum compensation

⁸*See* Appendix A.

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for a chairperson required by local law to serve full time set at \$30,000.⁹

In 1999, the legislature passed what has come to be known as the “Omnibus Pay Act”. Ala. Code § 11-2A-1 *et seq.* Under the provisions of this law, counties were grouped into population-based categories and granted small percentage increases in compensation based upon population as set out below:

CATEGORY 1. Population in excess of 450,000: salary set by local law.

CATEGORY 2. Population from 350,001 to 449,999: salary set by local law.

CATEGORY 3. Population from 200,001 to 350,000: 20 percent.

CATEGORY 4. Population from 50,001 to 200,000: 20 percent.

CATEGORY 5. Population from 19,000 to 50,000: 17 percent.

CATEGORY 6. Population of less than 19,000: 15 percent.

See Ala. Code §§ 11-2A-1 and 11-2A-2. These increases took effect on October 1, 2000.

These increases were not available to any county commissioner who was already receiving compensation in excess of the minimum compensation prescribed by Ala. Code § 11-3-4.1 plus the amount provided in Ala. Code § 11-2A-2 on September 30, 2000. Additionally, some counties were required to “opt in”

⁹Ala. Code § 11-3-4.1(d) provided that these minimum amounts would not take place unless approved by resolution of the county commission. At the time of publication, only one county has not adopted these salary provisions.

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for the increases or other provisions of the law to apply to the officials in those counties.

In addition to the above increases, Ala. Code § 11-2A-3 provided an additional increase in the amount of \$5,000 for any full-time county commission chairperson elected countywide in Category 4, 5, or 6 and an increase in the amount of \$2,500 for any judge of probate in Category 4, 5, or 6 who serves as chair of the county commission.

The Omnibus Pay Act also provided for future increases for county commissioners and certain other local elected officials beginning October 1, 2001. Pursuant to Ala. Code § 11-2A-4, these local officials are entitled to the same uniform increases in compensation, including cost-of-living increases, longevity increases, merit raises, and bonuses that are granted to county employees by the county commission at the time of the approval of the county budget.

The current law still allows for local laws addressing compensation and expense allowances for county commissioners. However, Ala. Code § 11-2A-4(b) provides that if a local law increases the compensation of a local official, he or she shall not be entitled to any cost-of-living adjustments under the Omnibus Pay Act until such time as the total compensation he or she would have received under the law is equal to or exceeds the increase provided by the local law.

Pursuant to Ala. Code § 11-3-4, county commissioners are also entitled to reimbursement of all actual travel expenses incurred in performing the duties of the office. Reimbursement shall be paid on warrants drawn on the county treasury on the order of the county commission provided he or she presents proper documentation of such expenses under procedures adopted by the county commission. Additionally, a county commissioner is entitled to mileage at the mileage rate allowed by the Internal Revenue Code while traveling in his or her personal vehicle within or outside the county. The mileage reimbursement may be paid out of the county gasoline tax revenues when the mileage is incurred

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while the commissioner is inspecting, accepting, building, repairing, or supervising any of the county roads or bridges.

7. REMOVAL AND VACANCIES

Members of the county governing body may be removed only by impeachment proceedings held in the circuit court of the county. Ala. Const. Section 175. However, probate judges who are ex officio chairmen of the county commission may only be removed by the Judicial Inquiry Commission. *Ex parte Hann*, 592 So. 2d 577 (Ala. 1992). Unless a local law authorizes a special election, any vacancy on the county commission shall be filled by appointment by the Governor. Ala. Code § 11-3-1(b). The length of the term of service is determined by the following:

(1) If the appointment occurs at least 30 days before the closing of party qualifying as provided in Ala. Code § 17-3-5, the person appointed to the vacated office shall only serve until seven days after the next general election following the appointment as provided herein. The person so appointed to fill the vacancy shall meet the residency requirements in Ala. Code § 11-3-1(a) , and shall hold office from the date of appointment until the eighth day following the next general election; or

(2) If the original term in which the vacancy occurred would not have expired on the eighth day following the next general election after the appointment, the person elected at the election required by operation of this subsection shall serve for a period of time equal to the remainder of the term in which the vacancy was created. Thereafter, election for the county commission seat shall be as otherwise provided by law. Ala. Code § 11-3-1 (b).

Commissioners who vacate their position due to a call-up to active military duty will resume their tenure in office thirty days after notifying the appointing authority of their intent to return to office. However, this only applies where the term has not expired. Ala. Code § 36-8-3 *et seq.* as amended by Ala. Act 2001-1095.

8. ALABAMA'S OPEN MEETINGS LAW¹⁰

Meetings of the county commission are required to be open to the public, including representatives of the media. A discussion of the Open Meetings Law is covered below.

An overhaul of the Open Meetings Law was passed by the legislature and went into effect in October 2005. This new law was the result of litigation and an almost century-long debate between public officials and the media as to what constitutes a meeting which must be open to the public.

a. History of the Open Meetings Debate

This century old debate erupted in 2001 when the Birmingham News sued Auburn University. The Birmingham News sought an injunction prohibiting Auburn University Trustees from violating the old Sunshine Law. Specifically, the newspapers sought to prevent (1) meetings and pollings of trustees by telephone, e-mail, and mail, (2) trustees' gathering in groups of three or more to discuss Auburn University business, and (3) meetings of trustees in executive session.

In *Auburn University v. Advertiser Co.*, 867 So.2d 293 (Ala. 2003), the Alabama Supreme Court carved out exceptions to the old Sunshine Law. The high court held, *inter alia*, that: (1) The Sunshine Law did not apply to board of trustee committee meetings of fewer than a quorum of trustees; (2) an exception to the Sunshine Law applied to board meetings which discussed honorary degrees and names of buildings; and (3) the attorney-client-privilege exception to the Sunshine Law included meetings between trustees and the attorney(s) to discuss legal ramifications of controversies imminently likely to be litigated.

During the next legislative session in 2004, the Open

¹⁰ This section was written to include materials developed by the Association of County Commissions of Alabama, Open Meetings Manual for Alabama Counties (2006).

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Meetings law was amended to provide that discussions regarding “security plans, procedures, assessments, measures or systems, or the security or safety of persons...” would be exempt from open meeting requirements. A more comprehensive bill was introduced, but did not pass.

b. The New Open Meetings Law: Ala. Code §§ 36-25A-1 through 11

In 2005, the Alabama legislature passed a comprehensive bill addressing many of the entanglements raised by the public about the nature of executive sessions and notice of public meetings in a new and improved Open Meetings Law. This law dramatically affected the way that Boards and Commissions conduct their business. It will be important for Commissioners to be thoroughly familiar with the rules of the game, in order to guide commissioners on conducting public meetings in order to comply with the requirements of the law which became effective October 2005. Commissioners will need to know the who, what, when, where, and why of Open Meetings.¹¹

i. Who is covered?

The Act defines “governmental body” 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 multi-member governing bodies of departments, agencies, institutions, and instrumentalities of the executive and legislative departments of the state or its

¹¹ The Association of County Commissions of Alabama has included on their website an Open Meetings Manual that includes Rules of Procedure that can be customized to fit a local county commission at www.alabamacounties.org.

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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; and 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 body.” Ala. Code § 36-25A-2(4).

This means all meetings of the county commission are governed by the Open Meetings Act and are required to be open to the public and the media, unless expressly exempt for matters that may be discussed in executive session under the Act, or otherwise are exempt by Federal or state statute. This also means that other boards that “expend or appropriate public funds” that commissioners may also serve on are covered by the Open Meetings Act.

ii. What is covered? Deliberations and Meetings

While the previous law was written very broadly, the new Act includes very detailed definitions and rules governing every aspect of a meeting conducted by a governmental body. So often in the past, commissioners might call each other and discuss their deliberations about a matter to come before them in an upcoming commission meeting. The new Act is intended to cover all deliberations and decisions by the county commission. It is important for commissioners to understand what is meant under the Act as “deliberations”.

(1) “Deliberations” Defined

“Deliberation” is defined as “...an exchange of information or ideas among a quorum of members of a governmental body intended to arrive at or influence a decision as to how the members of the governmental body should vote on a specific matter that, at the time of the exchange, the participating members expect to

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come before the body immediately following the discussion or at a later time.” Ala. Code § 36-25A-2(1).

This means on a three member commission, if two members engage in a discussion about how they might vote on a matter that will come before the commission, the commissioners are “deliberating” under the Act, and must only do this in an open meeting or they are violating the Open Meetings law.

Deliberation does not include every conversation between commissioners regarding an issue which may or may not come before the body. Deliberations take place when a number of members which would constitute a quorum exchange ideas on how they might vote on a specific matter they expect will come before the body.

The Act also prohibits the utilization of “electronic communications” to “circumvent any of the provisions” of the new Act. Efforts by commissioners to use the telephone, email or even internet chat rooms to avoid compliance with the Act will constitute a violation of the Act.

(2) “Meeting” Defined

“Meeting” is carefully defined to include any gathering of a quorum of commissioners where the commissioners engage in deliberations regarding a matter expected to come before the commission.

Ala. Code § 36-25A-2(6)(a) provides that the term “meeting” shall *only* apply to the following:

1. The prearranged gathering of a quorum of a governmental body or a quorum of a committee or subcommittee of a governmental body at a time and place which is set by law or operation of law.
2. The prearranged gathering of a quorum of a governmental body or a quorum of a committee or subcommittee of a governmental body during which

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the body, committee, or subcommittee of the governmental body is authorized, either by law or otherwise, to exercise the powers which it possesses or approve the expenditure of public funds.

3. The gathering, whether or not it was prearranged, of a quorum of a governmental body or a quorum of a committee or a subcommittee of a governmental body during which the members of the governmental body deliberate specific matters that, at the time of the exchange, the participating members expect to come before the body, committee, or subcommittee at a later date.

The exclusions from this definition of “meeting” set forth at Ala. Code § 36-25A-2(6)(b) are likewise as specific:

1. Social gatherings, conventions, conferences, training programs, press conferences, media events, or other gatherings of a quorum of commissioners or a committee are excluded so long as the commissioners do not deliberate specific matters that, at the time of the exchange, the members in attendance at the social gathering expect to come before the Commission at a later date.

2. Occasions when a quorum of the commission or a committee thereof 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.

(3) “Quorum” Defined

The Act contains its own definition of a quorum. This may or may not be the local definition of a quorum used by the local county commission. The Act defines a “quorum” as follows:

“Unless otherwise provided by law, a quorum is a

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majority of the voting members of a governmental body.” Ala. Code § 36-25A-2(12).

A quorum of county commissioners is required in order for the county commission to conduct business. A majority of members serving on the county commission constitutes a quorum. Ala. Code § 11-3-7. Commissions which include the probate judge or county-wide elected chairman as presiding officer, should include such presiding officer in the number of commission members when determining the number of persons necessary to constitute a quorum. Ala. Code § 11-3-7.

The definition of “quorum” also establishes a procedure that includes persons who have been elected or appointed to a public position but have not yet taken office. County commissions are exempted from this requirement, but other public bodies associated with county government are not exempted. For example, a person elected to a county school board cannot deliberate with other members of the board without triggering the open meetings law.

(4) “Governmental Body” Defined

The Act provides that governmental bodies must comply with the Open Meetings requirement. County commissions and their committees and sub-committees are included within this definition. County commission members often serve on other local groups as a part of their responsibility to the commission. Members of other local groups should review the definition closely to determine whether or not the group is a “governmental body” and therefore subject to the Act. Ala. Code § 36-25A-2(4) defines “governmental body” as follows:

“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 multi-member governing bodies of departments, agencies, institutions, and instrumentalities of the executive and legislative departments of the state or its

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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; and 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 body. The term ‘governmental body’ does not include any of the following:

- a. Legislative party caucuses or coalitions.
- b. Alabama appellate or trial courts, except as required by the constitution of this state or any body governed by rules of the Alabama Supreme Court.
- c. 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.” Ala. Code § 36-25A-2(4).

**iii. What is excluded from coverage?
Executive session Ala. Code § 36-25A-7**

The law sets special rules for conducting an executive session and includes detailed circumstances when a “closed” meeting can be held. In order to convene an executive session (other than to conduct a quasi-judicial or contested case hearing), the following procedure must be followed: (1) A quorum must convene a meeting; (2) A majority of the members present must adopt a motion calling for an executive session and stating the purpose for the executive session. The vote on the motion must be a recorded vote. Note that if an oral or written declaration is required pursuant to Ala. Code § 36-25-7(a), then that declaration is made prior to the vote; (3) The vote is recorded in the minutes; and (4) Prior to calling the executive session to order, the presiding officer shall state whether or not the commission will reconvene

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after the executive session and, if so, the approximate time. Ala. Code § 36-25A-7(b). The Act makes clear that though a topic may come within the scope of one of the exemptions from an open meeting, executive sessions are not mandatory. Ala. Code § 36-25A-7(a) sets forth nine areas for which an executive session may be held, but is not required:

(1) General Reputation and Character

“To discuss the general reputation and character, physical condition, professional competence or mental health of individuals or, subject to the limitations set out herein, to discuss the job performance of certain public employees. However, except as provided elsewhere in this section, discussions of the job performance of specific public officials or specific public employees may not be discussed in executive session if the person is an elected or appointed public official, an appointed member of a state or local board or commission, or 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 pursuant to § 36-25-14, Code of Alabama 1975. Except as provided elsewhere in this section, the salary, compensation, and job benefits of specific public officials or specific public employees may not be discussed in executive session.” Ala. Code § 36-25A-7 (a) (1).

(2) Dismissal or Discipline

“When expressly allowed by federal law or state law, to consider the discipline or dismissal of, or to hear formal written complaints or charges brought against a public employee, a student at a public school or college, or an individual, corporation, partnership, or other legal entity subject to the regulation of the governmental body.” Ala. Code § 36-25A-7(a)(2).

(3) Attorney Client Discussions of Litigation Actual, Potential, or Imminent Require an Attorney Opinion

“To discuss with their attorney the legal ramifications of

and legal options for pending litigation, controversies not yet being litigated but imminently likely to be litigated or imminently likely to be litigated if the governmental body pursues a proposed course of action or to meet or confer with a mediator or arbitrator with respect to any litigation or decision concerning matters within the jurisdiction of the governmental body involving another party, group, or body. **Prior to voting to convene an executive session under this exception the governmental body shall receive a written opinion or oral declaration reflected in the minutes from an attorney licensed to practice law in Alabama that this exception is applicable to the planned discussion.** Such declaration shall not otherwise constitute a waiver of the attorney-client privilege. Notwithstanding the foregoing, if any deliberation begins among the members of the governmental body regarding what action to take relating to pending or threatened litigation based upon the advice of counsel, the executive session shall be concluded and the deliberation shall be conducted in the open portion of the meeting or the deliberation shall cease.” (Emphasis supplied) Ala. Code § 36-25A-7(a)(3).

(4) Security Plans

“To discuss security plans, procedures, assessments, measures, or systems, or the security or safety of persons, structures, facilities, or other infrastructures, including, without limitation, information concerning critical infrastructure, as defined by federal law, and critical energy infrastructure information, as defined by federal law, the public disclosures of which could reasonably be expected to be detrimental to public safety or welfare. Provided, however, that when the discussion involves critical infrastructure or critical energy infrastructure information, the owners and operators of such infrastructure shall be given notice and an opportunity to attend the session.” Ala. Code § 36-25A-7(a)(4).

(5) Undercover Law Enforcement

“To discuss information that would disclose the identity of an undercover law enforcement agent or informer or to discuss the

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criminal investigation of a person who is not a public official in which allegations or charges of specific criminal misconduct have been made or to discuss whether or not to file a criminal complaint. Provided, however, that prior to such discussions a law enforcement officer with authority to make an arrest or a district or assistant district attorney or the attorney general or assistant attorney general shall advise the governmental body in writing or by oral declaration entered into the minutes that the discussions would imperil effective law enforcement if disclosed outside of an executive session.” Ala. Code § 36-25A-7(a)(5).

(6) Real Estate

“To discuss the consideration the governmental body is willing to offer or accept when considering the purchase, sale, exchange, lease, or market value of real property. Provided, however, that the material terms of any contract to purchase, exchange, or lease real property shall be disclosed in the public portion of a meeting prior to the execution of the contract. If an executive session is utilized pursuant to this exception in addition to the members of the governmental body, only persons representing the interests of the governmental body in the transaction may be present during the executive session. This real property discussion exception shall not apply if:

(a) Any member of the governmental body involved in the transaction has a personal interest in the transaction and attends or participates in the executive session concerning the real property.

(b) A condemnation action has been filed to acquire the real property involved in the discussion.” Ala. Code § 36-25A-7(a)(6).

(7) Trade, Commerce or Trade Secrets

“To discuss preliminary negotiations involving matters of trade or commerce in which the governmental body is in competition with private individuals or entities or other governmental bodies in Alabama or in other states or foreign

nations or to discuss matters or information of the character defined or described in the Alabama Trade Secrets Act. Provided, however, that prior to such discussions a person involved in the recruitment or retention effort or who has personal knowledge that the discussion will involve matter or information of the character defined or described in the Alabama Trade Secrets Act advises the governmental body in writing or by oral declaration entered into the minutes that the discussions would have a detrimental effect upon the competitive position of a party to the negotiations or upon the location, retention, expansion, or upgrading of a public employee or business entity in the area served by the governmental body if disclosed outside of an executive session, or would disclose information protected by the Alabama Trade Secrets Act.” Ala. Code § 36-25A-7(a)(7).

(8) Negotiations Between Governmental Bodies and a Group of Public Employees

“To discuss strategy in preparation for negotiations between the governmental body and a group of public employees. Provided, however, that prior to such discussions a person representing the interests of a governmental body involved in such negotiations advises the governmental body in writing or by oral declaration entered into the minutes that the discussions would have a detrimental effect upon the negotiating position of the governmental body if disclosed outside of an executive session.” Ala. Code § 36-25A-7(a)(8).

(9) Quasi Judicial Hearings

“To deliberate and discuss evidence or testimony presented during a public or contested case hearing and vote upon the outcome of the proceeding or hearing if the governmental body is acting in the capacity of a quasi-judicial body, and either votes upon its decision in an open meeting or issues a written decision which may be appealed to a hearing officer, an administrative board, court, or other body which has the authority to conduct a hearing or appeal of the matter which is open to the public.” Ala. Code § 36-25A-7(a)(9).

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It is also important to note that any board, commissions or meetings which were exempt from the old open meetings law (such as solid waste authorities and health care authorities, or proceedings on determining the death of a child) will also be exempt from the new Act.

iv. How to inform the public of meetings: Notice requirements.

(1) Notice requirements and establishment of meeting dates

Ala. Code § 11-3-8(a) requires county commissions to establish their regular meeting dates during the first meeting in November following the election of any of the members of the commission.

This meeting date, time and location must be posted in the courthouse and the members of the news media who have filed a written request must be advised of the regular meeting date when it is established. Ala. Code § 11-3-8(a). The Secretary of State has created a website which also allows governmental bodies covered by the open meetings law to post their meeting dates at www.openmeetings.alabama.gov. County Commission use of this website would be in addition to, and not a substitute for, the statutory requirement to post regular meeting notices in the court house.

It is not necessary to contact members of the media in advance of a regular commission meeting once the regular date has been established and the media has been initially notified.

(2) Holidays

When the regular meeting date falls on a holiday, the county commission may meet “on any day” of that week or on another date or time established by the commission. Ala. Code § 11-3-8(c) requires this substitute meeting date to be posted in the courthouse at least five days before the meeting. The commission must notify members of the media who have filed a written request

with the commission for such notification.

(3) Special Meetings

Special meetings of the commission can be called with five days notice upon written request of a majority of the members of the county commission. As required in Ala. Code § 11-3-8(b), the time, date and location of the special meeting along with the “purpose for and agenda of the meeting” must be posted in the courthouse at least five days before the meeting. The commission must notify the members of the media who have filed a written request with the commission for such notification.

Items that are not listed on the agenda may not be considered during the special meeting.

(4) Emergency Meetings

The commission chairman may call an emergency meeting. The five day notice requirement does not apply. However, the meeting time, date and locations should be posted in the courthouse as required in Ala. Code § 11-3-8. The commission must notify the members of the media who have filed a written request with the commission for such notification.

Items that are not part of the “emergency” resulting in the calling of the meeting may not be added to the agenda for action during the emergency meeting.

(5) Meetings of Commission Committees or Sub-Committees

The county commission may establish committees and subcommittees. The open meetings law specifically applies to meetings of such committees and subcommittees. Therefore, notice of the meetings must also be given in the same fashion as regular commission meetings. *See Ala. Code § 36-25A-3(d)*. Here are the important aspects of notice for county commissions.

- **Posting requirements:** Once the meeting time, location and date of a committee or subcommittee

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meeting is established, it must be posted at the courthouse. This posting should occur at least five days before the meeting, unless the meeting is an emergency. The commission must also notify the members of the media who have filed with the commission a written request for such notification.

- **Media Requests for Notification:** Ala. Code § 11-3-8 requires that the commission notify those local media outlets that have made a written request for notification of commission meeting dates, times and locations. Counties that receive oral requests for notification should advise the media that such requests should be made in writing. The written requests should be kept on file in the commission office.

(6) Notice Requirements in the Open Meetings Law Do Not Apply to County Commissions

Although the Open Meetings law includes a detailed notice requirement for other public bodies, it does not apply to county commissions if the commissions follow the requirements of Ala. Code § 11-3-8. The open meetings law provides the following exemption:

“County commissions which provide proper notice in conformance with § 11-3-8 shall **not** be required to comply with subsections (a), (b), and (c) of this section, nor shall committees or subcommittees of such commissions so long as the committees also comply with the notice procedures applicable to the full commission in Ala. Code § 11-3-8.” Ala. Code § 36-25A-3(d). (emphasis added)

v. What about Commission members serving on other governmental bodies? Do Commissioners need to know of other governmental notifications requirements?

(1) Non Commission notice requirements

Commissioners may also serve on other public boards. For example, the Chair of the Jefferson County Commission serves on the Birmingham Jefferson Civic Center Board, therefore, a familiarity with the Open Meetings law notice requirements may be helpful.

Governmental bodies are required to:

- Post Notice at least Seven (7) days in advance of a meeting of the governing body. Ala. Code § 36-25A-3(a).
- Include the time, date, and place of meeting in the notice posted. If a preliminary agenda is created, it shall be posted as soon as practicable in the same location or manner as the notice given pursuant to this section. Ala. Code § 36-25A-3(c).

(2) Local Government Notice Requirements

Some of the other notice requirements for local government include the following:

- **A municipal governmental body** is required to post notice of each meeting on a bulletin board at a place convenient to the public in the city hall, provided, however, that a corporation a majority of whose governing board is appointed or elected by a municipality and that has a principal office separate from the city hall may, in lieu of posting notice in the city hall, post notice of each meeting on a bulletin board at a place convenient to the public in the principal office of the corporation or other

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instrumentality. Ala. Code § 36-25A-3(a)(3).

- **A local school board** is required to post notice of each meeting on a bulletin board at a place convenient to the public in the central administrative office of the board. Ala. Code § 36-25A-3(a)(4).
- **Any other governmental body** is also required to post notice of each meeting in a reasonable location or shall use a reasonable method of notice that is convenient to the public. Any change of the location or method for posting notices of meetings shall not take effect until the change has been approved at an open meeting by the members of the governmental body and announced to the public at an open meeting. Ala. Code § 36-25A-3(a) (5).
- “If practicable, **a governmental body** ... shall provide direct notification of a meeting as defined in § 36-25A-2(6)(a), to any member of the public or news media covering that governmental body who has registered with the governmental body to receive notification of meetings. A governmental body may promulgate reasonable rules and regulations necessary for the uniform registration and payment for direct notice and for the distribution of the notices. The governmental body may choose to transmit a notice using electronic mail, telephone, facsimile, the United States Postal Service, or any other method reasonably likely to provide the requested notice. The actual cost of issuing notices, if there is one, may be required to be paid in advance by the person requesting notice by the governmental body. Direct notice to persons who have registered with the governmental body shall, at a minimum, contain the time, date, and place of the meeting.” Ala. Code § 36-25A-3(a)(6).

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- Under special emergency circumstances, unless otherwise specified by law directly applicable to the governmental body, notice of a meeting as defined in § 36-25A-2(6)(a)(2) and (3), as well as meetings called pursuant to § 11-43-50, shall be posted as soon as practicable after the meeting is called and in no event less than 24 hours before the meeting is scheduled to begin, unless such notice (i) is prevented by emergency circumstances requiring immediate action to avoid physical injury to persons or damage to property; or (ii) relates to a meeting to be held solely to accept the resignation of a public official or employee. In such situations, notice shall be given as soon as practical, but in no case less than one hour before the meeting is to begin. At the same time general notice is given, special notice shall be directed to any person who has registered to receive direct notices pursuant to the provisions of subsection (a)(6). Ala. Code § 36-25A-3(b).

(3) Additional matters not on agenda

“A governmental body may discuss at a meeting additional matters not included in the preliminary agenda. If a preliminary agenda is not available, the posted notice shall include a general description of the nature and purpose of the meeting.” Ala. Code § 36-25A-3(c).

(4) Notice not required for Quasi judicial hearings

“Governmental bodies may give, but shall not be required to give, notice of quasi-judicial or contested case hearings which could properly be conducted as an executive session under this chapter or existing state law.” Ala. Code § 36-25A-3(e).

(5) Notice for non meeting gatherings

“A governmental body is authorized, but not required, to provide notice in addition to that specified in this section and to

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provide notice for gatherings which are not meetings as defined in § 36-25A-2(6).” Ala. Code § 36-25A-3(f).

vi. Why should I be concerned about this?

There are Civil penalties for violation of this Act. Each member found in violation may be fined up to \$1,000 for each violation, or half of the defendant’s monthly salary for service in a public office, whichever is less. *See Ala. Code § 36-25A-9.*

vii. Record Keeping

Although the Open meetings law does not require county commissions to keep records of the posting of notice or its communication with representatives of the media, such records will be very important in the event the commission is sued over compliance with Alabama Open Meetings Act.

viii. Regular Meetings May Be Posted

Once the county commission establishes its regular commission meeting, the commission is encouraged to confirm that the notice is posted in the courthouse once each week.

Likewise should the commission alter its meeting dates, call a special meeting or otherwise make changes to the posted notice, such actions should be recorded and kept by the Commission in its offices.

ix. Rules of Procedure

The Open Meetings Act requires governmental bodies to have parliamentary rules of procedure and to follow those rules. Ala. Code § 36-25A-5(a). The Association of County Commissions of Alabama has a set of model rules on its website, www.alabamacounties.org.

9. POWERS

The general authority of the county commission is scattered throughout the Code of Alabama, although not so much now as before the recodification of 1975. Subtitle 1, Title 11, of the Code deals specifically with counties, and Subtitle 3, Title 11, contains statutory provisions applicable to both counties and municipalities. Hence, many of the powers and duties of the county governing bodies may be found in these parts of the Code. For example, Ala. Code §§ 11-3-1 and 11-3-10 establish the county commission and vest in that body jurisdiction over the establishment, change, or discontinuance of roads, bridges, causeways, and ferries within the county, except as may be otherwise provided by law. Ala. Code § 11-3-11 lists much of the general authority conferred on county commissions. Under Ala. Code § 11-3-11, the commission has the following authority:

- (1) To direct, control and maintain the property of the county as it may deem expedient according to law, and in this direction and control it has the sole power to locate the courts in the rooms of the courthouse and to designate the rooms to be occupied by the officers entitled to rooms therein, including the circuit judge if resident in the county, and to change the location of the courts and the designation of the rooms for officers as it may deem best and most expedient, and this shall be done by order of the county commission entered upon the minutes of the county commission at a regular meeting of the county commission. In the event the courthouse is inadequate to supply office rooms for such officers, the county commission may lease such office rooms in a convenient location in the county site and pay the rental from the county fund.
- (2) To levy a general tax, for general county purposes and a special tax, for special purposes, according to this Code.
- (3) To examine, settle and allow all accounts and claims chargeable against the county.

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(4) To examine and audit the accounts of all officers having the care, management, collection or disbursement of money belonging to the county or appropriated for its use and benefit.

(5) To make such rules and regulations for the support of the poor in the county as are not inconsistent with any law of the state.

(6) To punish for contempt by fine not exceeding \$10.00 and imprisonment not exceeding six hours.

(7) To subpoena, examine and compel the attendance of witnesses and the production of books and papers before the county commission in the same manner as the probate court.

(8) To contract for and have made map or plat books showing all subdivisions of land that have been heretofore or that may hereafter be made in the county.

(9) To compromise on such terms as it may deem just all doubtful claims in favor of the county when such claims arise on account of moneys heretofore paid in good faith by order of such county commission or in any case where they deem it to be the best interest of the county.

(10) To make an appropriation, in no case to exceed \$750.00 per year, to install and maintain an exhibit of the agricultural and mineral resources of the county.

(11) To pay at the regular legal rate for the advertising of notice and substance of local bills which may be introduced in the Legislature for the benefit of the county, or in reference to subjects or matters exclusively relating to county business or affairs.

(12) To procure and provide telephones for the offices of the circuit commissioner, the clerk and registrar of the circuit court, the sheriff and jailer, the tax assessor and tax collector and the commissioner of probate in the county, and to pay for the same out of the general funds of the county, and said county commission may, in like manner and for the same officers, establish telephones

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in both courthouses where the said officers maintain two offices in the county and must install such telephone upon the request of the officer entitled thereto.

(13) To make appropriations out of the county treasury to pay premiums on livestock that may be exhibited in livestock shows held in the county.

(14) To appropriate, where the state or federal authorities have taken up the works of farm demonstration or the organization of farm life clubs for the promotion of agriculture, such sum or sums as it may deem adequate and necessary for aiding in such work.

(15) To expend money for the purpose of improving the sanitary conditions of the county by laying trunk lines of sewers and constructing sewage disposal plants located in localities contiguous to thickly populated communities and to prescribe the terms on which the owners of houses or householders may connect with such lines of sewers, but no such lines of sewers shall be laid without the written approval of the executive officer of the State Board of Health, such approval to be based on the belief that the laying of any proposed line will materially improve health conditions. The county commission shall have the power to require owners of property in the county to connect to its sewer system any facilities used in the collection or disposal of sewage. If the owner of any property in the county fails to connect any such facility located on such property to such sewer within 10 days after deliver to the occupant of such property of written notice to make such connection, the county commission may cause such connection to be made and shall have the right to enter upon private property to the extent required to make such connection. The cost of the county of connecting to such system any facility used in the collection or disposal of sewage shall be reimbursed to the county by the owner of the property on which such facility is located, and the obligation of the owner of such property to pay such cost to the county shall be secured by a lien on such property to be collected as other debts are collected or liens enforced. The notice required by this subdivision shall be personal service or by

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posting a notice on the premises. Any other provisions of this subdivision to the contrary notwithstanding, no county commission shall have the power to require any owner of property to connect to a county sewer system if (i) the property of such owner is served by any other sewer system as of the date (the “prospective connection date”) that the construction of such county sewer system has advanced to the point that operational sewer lines belonging to such system are adjacent to the property of such owner, (ii) the property of such owner is served by a septic tank installed as of the prospective connection date, or (iii) any building to be served by such county sewer system is located on the property of such owner at a distance greater than 200 feet from the collector line of such county sewer system.

(16) To appropriate money to promote or enforce the health and quarantine laws of the state for the benefit of the county and its inhabitants when requested so to do by the State Board of Health.

(17) To pay out of any funds in the county treasury all the expenses, including a reasonable attorney's fee, incurred by the county treasurer in resisting the payment of any warrant where said resistance on the part of the county treasurer is successful.

(18) To set aside such part of the revenue of the county as may be deemed expedient for the purpose of creating a sinking fund for the payment of bonds or other indebtedness and to invest such sinking fund in such interest-bearing securities or deposit the same in interest-bearing account within the state as it may deem wise.

(19) To set aside, appropriate and use county funds or revenues for the purpose of developing, advertising and promoting the agricultural, mineral, timber, water, labor and all other resources of every kind of the county and for the purpose of locating and promoting agricultural, industrial and manufacturing plants, factories and other industries in the county. The county commission is authorized to enter into contracts with any person,

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firm, corporation or association to carry out the purposes set forth in this subdivision.

(20) To insure in solvent companies, the courthouse, jail, machine shops and other buildings of the county against loss by fire and storm and the trucks, tractors, machines, shovels, graders, equipment, vehicles and other personal property of the county against loss by fire and theft and against liability for damages to persons and property. Payment of premiums on such insurance coverage shall be made from the general fund of the county, except that payments of premiums on insurance coverage on vehicles, items of equipment or other personal property used and employed exclusively in connection with the establishment, construction, repair and maintenance of the public roads and bridges of the county may be made from the gasoline funds of the county and payments of premiums on insurance coverage on the courthouse, jail, machine shops and other buildings of the county may be made from the proceeds of special taxes levied for erection, repairing, furnishing or maintenance of public buildings, bridges or roads. Payments heretofore made for these purposes are validated.

(21) To use convict labor and any county equipment or machinery or expend any necessary sum of money for the improvement, beautification, or decoration of the grounds, campus or premises of any county school or schools under the control of the board of education in such county.

(22) To exercise such other powers as are or may be given by law.

(b) It shall be the duty of the county commission to provide a janitor for the courthouse and to see that the janitor keeps clean and in a sanitary condition all courtrooms, corridors, halls and offices in the courthouse of the county.

As previously noted, many powers and duties in addition to those enumerated above have been conferred upon the county governing bodies. Included among these additional powers and duties are the following requirements and authorizations:

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- to adopt a budget for the county no later than October 1st. Ala. Code § 11-8-3;
- to select a county depository in counties in which the office of county treasurer has been abolished. Ala. Code §§ 11-4-40 through 11-4-50. Legislation now requires that the banks acting as depository banks of public funds must meet the security requirements of the Security for Alabama Funds Enhancement Act (SAFE) Ala. Code § 41-14A-1 *et seq.* Financial institutions are required to place security funds into an account held in trust by the State Treasurer to serve as collateral for the amount of the public funds that exceeds \$100,000 and, therefore, are not FDIC insured;
- to alter the amount of the bonds of certain county officers and employees required to be bonded. Ala. Code §§ 11-2-5 and 11-2-20;
- to employ a county engineer, Ala. Code § 11-6-1, and an engineer trainee. Ala. Code § 11-6-20;
- to contract with the State Personnel Department to administer county personnel according to merit system principles. Ala. Code § 36-26-8;
- to provide group life, health, accident, and hospitalization insurance and insured retirement plans for certain officers and employees of the county. Ala. Code §§ 11-91-1 through 11-91-8;
- to make matching contributions on behalf of employees participating in “457 defined contribution plans”. Ala. Code §§ 16-25C-1 *et seq.* and 36-27C-1 *et seq.*;
- to appropriate out of the general county treasury any funds deemed expedient for the construction, repair, operation, maintenance, and support of new or

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existing public schools within the county. Ala. Code § 16-13-36;

- to make appropriations to vocational trade schools serving the county. Ala. Code § 16-60-196;
- to make appropriations or donations to help defray the cost of educational buildings or facilities at state institutions of higher learning and to issue interest-bearing warrants for such purposes. Ala. Code §§ 16-19-1 through 16-19-8;
- to provide for county hospitals pursuant to Ala. Code §§ 22-21-50 through 22-21-57 or §§ 22-21-70 through 22-21-83;
- to levy license taxes (including sales and use taxes) for school purposes. Ala. Code §§ 40-12-4 through 40-12-7;
- to provide for the preparation of county assessment maps or plats. Ala. Code § 11-1-12;
- to designate which offices in the courthouse may be furnished with telephones by the county. Ala. Code § 11-3-12;
- to determine whether and to what extent the commission will send and accept electronic records and signatures and to what extent it will rely on such records. Ala. Code § 8-1A-18;
- to establish or alter election districts and polling places within the county. Ala. Code §§ 11-1-13, 11-1-14, 17-6-1 through 17-6-9;
- to determine the day of the week on which the county offices may be closed either all day or for part of a day. Ala. Code § 11-1-8;

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- to petition the State Retirement System for coverage of its employees in that retirement system, except for employees already participating in a retirement or pension system. Ala. Code § 36-27-6;
- to exercise the option to fund a cost-of-living increase for registrars, or to increase registrars' per diem, once without the need for local legislation. Ala. Code § 17-3-13;
- to exercise the option to increase compensation for certain county election officials. Ala. Code § 17-8-12;
- to expend state gasoline tax proceeds for the construction and maintenance of streets located within municipalities and for public highways and traffic control areas located on state or public school property situated within the county. Ala. Code §§ 40-17-359(k) and (l);
- to expend motor fuel and gasoline tax proceeds on the resurfacing, restoration, and rehabilitation of paved county roads and bridges or bridge replacement on the county system. Ala. § 40-17-362 (b)(2).
- to acquire waterworks systems. Ala. Code §§ 11-9-20 through 11-9-28;
- to acquire lands for public park or recreational purposes, Ala. Code §§ 11-18-20 through 11-18-24, or for other public purposes. Ala. Code §§ 11-18-1 through 11-18-3;
- to acquire projects through the issuance of revenue bonds and to lease projects for purposes of industrial development. Ala. Code §§ 11-20-1 through 11-20-50 and 8-6-110 through 8-6-122;

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- to use public funds to purchase or lease real property, buildings, machinery, and equipment of any kind, and to improve and develop the properties for industry of any kind or as industrial park projects. Ala. Const. Amend. 77;
- to approve any class 7 or 8 municipality or rural scenic right-of-way plan and the inclusion of any right of way of a county road to that plan pursuant to Ala. Code § 11-69-1;
- to lease, sell, or otherwise convey real property buildings or equipment to any individual or corporation, public or private, including any industrial development board, for the purpose of developing and operating industrial, commercial, research, or service facilities of any kind (Ala. Const. Amend. 772);
- to lend its credit to or grant public funds to any individual or corporation, public or private, for the purpose of promoting the economic growth and industrial development of the county (Ala. Const. Amend. 772);
- to issue bonds and become indebted to secure funds for the uses outlined in Amendment 772 (Ala. Const. Amend. 772);
- to abate certain taxes for private-use industrial property located within the county and, with consent from an affected municipality, within that municipality. Ala. Code § 40-9B-5;
- to determine whether to elect to participate in an intergovernmental cooperation with the Alabama Land Bank Authority to acquire tax delinquent properties and authorize the release of tax liens to facilitate rehabilitation and development of certain tax delinquent properties pursuant to the Alabama

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Land Bank Authority Act. Ala. Code §§ 24-9-1 through 24-9-9;

- to abate local taxes for Brownfield Development Properties cleaned up voluntarily under Ala. Code § 22-30E-1 *et seq.*, known as the Alabama Land Recycling and Economic Redevelopment Act. Ala. Code § 40-9C-1 *et seq.*;
- to acquire or construct a waterworks system, a sanitary sewer system, a gas system, and an electric system, provided no such system is then being operated as a public utility; to improve, enlarge, extend, and repair such systems as it owns and operates; or to consolidate any two or more of its systems. Ala. Code § 11-81-161;
- to authorize the organization of public corporations under the State Products Mart and Coliseum Authority Act. Ala. Code §§ 41-10-80 through 41-10-109;
- to form a public corporation to acquire real and personal property to lease to the United States of America, its departments, agencies, and instrumentalities. Ala. Code § 11-101A-1;
- to adopt a comprehensive land management and use program for flood-prone areas situated in unincorporated territory within the county. Ala. Code §§ 11-19-1 through 11-19-24;
- to undertake a program of collection and disposal of solid wastes described by the Solid Wastes and Recyclable Materials Management Act, Ala. Code §§ 22-27-1 through 22-27-18; and to finance the acquisition of facilities for the collection and disposal of solid wastes by the issuance of interest-bearing warrants of the county. Ala. Code §§ 22-27-20 through 22-27-27;

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- to exercise the option to participate in enforcing state regulations regarding cleanup and disposal of scrap tires. Ala. Code § 22-40A-1 *et seq.*;
- to defray the expenses of defending lawsuits brought against county officials in their official capacity. Ala. Code § 11-1-9;
- to enter into contracts with federal, state, or other county governments for the purpose of acquiring funds, services, supplies, materials, buildings, etc., deemed beneficial for the promotion of industrial, agricultural, recreational, or other development. Ala. Code § 11-1-10];
- to pay membership fees and other expenses involved in membership in state organizations for the sheriff, tax assessor, tax collector, circuit clerk, and license commissioner or other like official. Ala. Code § 11-1-11;
- to make appropriations to the Lurleen B. Wallace Memorial Cancer Hospital Fund. Ala. Code § 11-8-12];
- to contract with public and private agencies and organizations and to exercise other necessary powers to participate in the highway and traffic safety programs of the state, the provisions of the "National Highway Safety Act of 1966", and similar federal programs of highway and traffic safety. Ala. Code § 32-4-7;
- to provide ambulance service within the county. Ala. Code §§ 11-87-1 through 11-87-5;
- to establish industrial parks. Ala. Code §§ 11-23-1 through 11-23-8; Ala. Code §§ 11-92-1 through 11-92-11;

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- to approve or deny an application for the establishment a County Industrial Development Authority pursuant to Ala. Code §§ 11-92A-1 through 11-92A-23;
- to pay membership fees or other expenses incurred by the county commissioner, and personnel in his or her office, in attending state or national conferences, schools, or similar functions. Ala. Code § 12-13-19;
- to form a corporation to provide for the temporary care and custody of youths who have been placed under the jurisdiction of a juvenile court, and to appropriate monies for the support of such corporation's facilities and programs. Ala. Code §§ 44-3-1 through 44-3-12;
- to plan, establish, and furnish recreational, social, and cultural facilities, services, and programs especially for senior citizens. Ala. Code § 11-80-5;
- to acquire and pledge letters of credit as security for bonds, notes, or warrants, and to enter into such agreements, contracts, and indentures with respect to such letters as are deemed necessary. Ala. Code § 11-80-7;
- to direct and control the finances of the county by levying taxes, making appropriations, and incurring indebtedness, but only, it should be emphasized, in the manner, for the purposes, and within the limits prescribed by the Constitution and laws of Alabama. Ala. Code §§ 11-14-1 through 11-14-24;
- to make temporary loans in anticipation of taxes. Ala. Code §§ 11-10-1 through 11-10-6;
- to issue interest-bearing tax-anticipation warrants. Ala. Code §§ 11-11A-1 through 11-11A-5;

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- to issue securities in anticipation of grants. Ala. Code §§ 11-11B-1 through 11-11B-8;
- to have custody of county property, to make conveyances of said property, and to direct the sheriff to prevent trespasses to the county courthouse. Ala. Code §§ 11-14-2 and 11-14-9;
- to make special appropriations for the jail and to examine the jail. Ala. Code §§ 11-14-19, 11-14-20 and 11-14-22;
- to contract with class 6 municipalities (population 12,000 to 24,999) to provide law enforcement services outside their corporate limits but within their police jurisdictions, except the contract may not include enforcement of traffic regulations. Ala. Code § 11-40-10.1;
- to regulate the minimum size of lots and the planning and construction of public streets, roads, and public utilities to be located in proposed subdivisions. Ala. Code §§ 11-24-1 through 11-24-7;
- to establish and maintain county law libraries. Ala. Code §§ 11-25-1 through 11-25-13;
- to establish a workers' compensation self-insurance fund. Ala. Code §§ 11-26-1, 11-26-3 and 11-26-6;
- to establish a health and accident self-insurance group for county officers, employees, and their dependent family members. Ala. Code §§ 11-26-2 through 11-26-6;
- to require public works and sewer authorities to receive a permit before entering the county right of way. Ala. Code § 11-88-14;

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- to authorize the provision of assistance, by means of gift or loan, to the governing body of any other county or municipality in the state which has been declared a disaster area by the Governor of Alabama or the President of the United States. Ala. Code § 11-80-9;
- to regulate junkyards. Ala. Code § 11-80-10;
- to authorize the county license inspector, or solid waste officer to issue citations (but not arrest) for littering pursuant to criminal littering statute. Ala. Code § 13A-7-29;
- to display Alabama's state flag at certain public buildings. Ala. Code §§ 16-43-1 and 16-43-4;
- to establish building codes, zoning ordinances and conduct building inspections for flood-prone areas under certain conditions. Ala. Code §§ 11-19-3 through 11-19-7;
- to establish noise levels for sport shooting ranges, under certain conditions, and limits on lead occurring in the atmosphere of sports shooting ranges. Ala. Code § 6-5-341;
- to abate buildings that are nuisances. Ala. Code § 34-14A-12;
- to close county offices, set safety curfews, and take other necessary actions in a state of emergency. Ala. Code § 31-9-10; and
- to exercise the option to pay the difference between the higher public salary and the lower military salary of county employees called to active military

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duty after September 11, 2001. Ala. Code § 31-12-7.¹²

The Legislature has authorized county commissions to grant non-exclusive franchises for community antenna television facilities. Such franchises are restricted to unincorporated areas of a county and are subject to any reasonable rules and regulations established by the county commission. The term "community antenna television facilities" expressly includes cable television facilities. Ala. Code §§ 11-27-1 and 11-27-2. Also note that under Ala. Code § 11-27-3, the county is authorized to collect a license tax on community antenna TV facilities.

Pursuant to Ala. Code § 34-14A-1 *et. seq.*, county commissions are now authorized, to adopt building laws and codes by ordinance. Counties doing so also may employ building inspectors to enforce these laws and codes and may exact fees to be paid by the owners of the property so inspected.

The Alabama Limited Self-Governance Act (Ala. Code §§ 11-3A-1 through 11-3A-7) is another expansion of the powers of the county commission. Passed in 2005, the act grants to county commissions the power to provide for the public welfare of citizens by bestowing authority to abate weeds as a public nuisance, to control animals, to control litter or rubbish, to control junkyard areas which create a public nuisance, and to abate noise, unsanitary sewage, and pollution. Ala. Code § 11-3A-2. The act provides that the powers it grants only take effect in those counties where a majority of the qualified electors of the county residing in the county's unincorporated areas vote to approve the act in a

¹²The powers and duties of the county governing body set out above represent only a brief indication of its extensive authority. Some of the more important powers of the county commission are dealt with topically in other chapters of this study, and the reader is referred to the appropriate chapters for additional indications of its authority and for more extensive discussions of its role in the administration of specific functions.

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referendum. Ala. Code § 11-3A-5. *See also Ala. Code §§ 13A-7-29 and 32-5-76.*

Although the list of powers and duties set out above makes it clear that the county commission possesses authority of considerable significance, the laws of Alabama vest in the commission little power or authority over the other organizational units comprising the county government. Because of its limited powers, the county commission does not occupy a position in the county government comparable to that of the council in municipal government. Nevertheless, its legislative and administrative powers are extensive, and it performs a central role in the administration of county government. In a sense, then, the commission serves as the governing body of the county, having important relationships with the other elements of the county government, and it is so referred to in the laws of Alabama. It is in an effort to clarify the commission's role that the discussion now shifts to the other officers and agencies forming a part of the county's governmental organization or otherwise functioning within the county as an administrative area.

B. OTHER OFFICERS AND AGENCIES

1. COUNTY COMMISSION CHAIRPERSON

As the presiding officer of the county commission, the chairperson has no vote in the proceedings of the commission except in the event of a tie among the commissioners. This rule does not apply if the chairman of the county commission serves on the commission as a district commissioner. If so, then he or she may vote on all matters coming before the commission. *See Ala. Code § 11-3-20 (a).* In addition to serving as the presiding officer, the chairperson is charged with responsibility for recording the proceedings, making all necessary orders, and issuing all process necessary to sustain its jurisdiction or to maintain its authority. Ala. Code § 11-3-20.

Other important duties of the chairperson concern county financial administration. The general law places upon the chairperson responsibility for issuing warrants against the county

treasury. Ala. Code § 11-8-9. The chairperson, or such other officer as may be designated by the county commission is authorized to draw warrants against the county treasurer and to review personally all claims against the county to determine their factual and legal sufficiency. Ala. Code §§ 11-8-9, 11-12-10 through 11-12-12.

2. PROBATE JUDGE AS COUNTY COMMISSION CHAIRPERSON

Although most Alabama counties have chosen to use a chairperson other than the probate judge, some still maintain the probate judge as the chairperson.¹³ Ala. Code § 11-3-1 provides that unless otherwise provided by local law or court order, the probate judge shall serve as the chairperson of the county commission. When acting in this capacity, the probate judge has basically the same powers as enumerated above for the chairperson, but does not vote except in the event of a tie. § 11-3-20.

Numerous duties in addition to those connected with the county commission are attached to the office of the probate judge. The probate judge performs the duties usually associated with probate court, including, for example, the probate of wills and administration of estates. Also in this connection, the judge has jurisdiction over insanity proceedings and adoptions. Unless otherwise provided by local law, the probate judge is the licensing officer of the county and, as such, issues marriage, driver's, and automobile licenses, as well as business, professional, and occupational licenses required by law. Additionally, legislation also allows probate judges to perform marriage ceremonies anywhere in Alabama, Ala. Code § 30-1-7, and to record living

¹³Probate judges are chairpersons in the following counties: Blount, Cherokee, Choctaw, Cleburne, Dallas, Franklin, Geneva, Hale, Henry, Lamar, Lee, Monroe, and Tuscaloosa.

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wills for \$5 plus any other required local fees. Ala. Code § 22-8A-14.

Probate judges also perform special duties in connection with elections. They receive the lists of registered voters from the county board of registrars and prepare and certify the list of qualified electors in the county. The compensation of the clerical assistance necessary to prepare the list is paid by the county. Ala. Code § 17-3-60. Although the governing body fixes the boundaries of election districts and designates polling places, the probate judge is required to publish notice of changes, prepare the ballots to be used in elections, and deliver the lists of qualified electors and the election supplies to the sheriff, who distributes the lists and supplies among the various polling places. The probate judge, the sheriff, and the circuit clerk comprise the board responsible for the appointment of election officials and for the canvassing of election returns.

Unless the county is on the fee system (in which case the compensation of probate judges is in the form of fees derived from the performance of their numerous duties) probate judges are paid a regular salary. For more details, *see* the Handbook for Alabama Probate Judges, 9th Ed., and Ala. Code § 11-2A-1 *et seq.*, which establishes the specific permissible minimum salaries for probate judges. Additionally, Ala. Code § 11-2A-3 authorizes a probate judge serving as chairperson of a county commission in a Category 4,5, or 6 county to receive an additional \$2,500 in addition to his or her regular salary.

3. COUNTY ADMINISTRATOR

The county commission may employ a chief administrative officer to carry out the administrative duties of the county. Ala. Code § 11-3-18. The county administrator performs the following duties:

(1) keeps and records the minutes of all county commission meetings;

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- (2) oversees preparation and presentation to the county commission for proper execution of all appropriate documents;
- (3) maintains detailed financial records for the county;
- (4) performs duties the county commission deems necessary with regard to accounting, auditing claims, issuing warrants, and supplying information to the county commission;
- (5) serves as signatory for county; and
- (6) performs other necessary duties as established by the county commission. Ala. Code § 11-3-18.

The role of the county administrator has evolved into one of the most demanding in county government. Counties are faced with federal laws and regulations and local and state statutes that are constantly changing. Since a county commission depends in great part upon the county administrator to implement changes that may occur as a result of state and federal legislation, a county administrator should maintain a close working relationship with the county attorney and stay informed of interpretations by the courts and the attorney general of legislation affecting county operations.

The Alabama County Finance Manual, 3rd Ed. 2008, has helped transform differing county bookkeeping systems into a uniform record keeping system. A county administrator must be knowledgeable in accounting practices so that the county can keep abreast of changes in the area of governmental accounting. The administrator should be able to interpret and supply commissioners with complex financial reports that relate directly to county operations and affairs. The administrator should prepare cash flow analyses and invest funds lying dormant to obtain maximum revenues. By contacting all financial institutions in the county for interest quotes before investing, the administrator can ensure the highest rate of return for county funds.

Intra-office coordination and internal control are key elements in the smooth and efficient operation of a county

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commission office. The administrator must assign duties and hire personnel who are able to follow instructions without continuous supervision. The administrator must be able to analyze problem areas in office procedure and make adjustments when necessary.

The administrator should inform commissioners on items of importance as they occur. This service is important because much of the daily business is conducted without commissioners being present.

The deduction of federal withholding tax, state withholding tax, and Social Security are now only minor aspects of preparing a payroll. Various insurance plans, credit unions, and dues checkoffs also must be dealt with in payroll preparation. The administrator has to keep commissioners informed of all payroll changes, including, but not limited to, hiring, dismissals, retirements, temporary employees, and layoffs. Payroll and budget awareness go hand in hand; the administrator must make sure commissioners are aware of any and all changes.

The most recent edition of the Alabama County Finance Manual illustrates how the budget process for Alabama counties works. The administrator, who is the key to the adoption of a workable budget for any county, must be aware of local, state, and federal revenue sources and be able to analyze departmental and appropriation requests for review by the commissioners.

When preparing financial reports, the administrator should flag and note problem areas so the commission can take appropriate action. A complete and accurate inventory of physical assets must be compiled and maintained according to accounting principles.

Dependence on federal and state funds in the form of grants has placed additional responsibilities on the administrator. Compliance with legislated regulations requires thorough research and record-keeping for audit purposes. Counties are eligible for federal and state grants in numerous categories. The administrator should be aware of those grants that will benefit the county and inform the county commission about their availability.

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A county administrator must be well informed on every issue that confronts the county commission. This is imperative because the county administrator often represents and speaks for the commission and serves as the source of information for the commissioners. Although the efficient operation of a county commission office depends on many things, it depends in great measure upon a strong working relationship between the county commission and the administrator.

There is a training program for county administrators under the Alabama County Government Education Institute, which is governed by the Alabama Local Government Training Institute. Information on professional development for county administrators is available at www.alabamacounties.org.

4. COURTS AND JUDGES

Under the judicial article of the Alabama Constitution as amended in 1973, the courts and judges formerly included in the county court system have become a part of the unified state court system.

Structurally, the most important effects of the amended article occurred at the county and municipal level. Circuit courts and probate courts continued to exist, but the inferior courts were replaced by a system of district courts that function on a uniform basis throughout the state. Municipalities have the option of retaining their own municipal courts or being served by a district court. The territorial jurisdiction of each district court will be defined by the Legislature, and the district court must hold court in each county seat and in each municipality of 1,000 or more population having no municipal court. Ala. Code § 12-12-1(b).

Under the legislation implementing the article, each county is denominated a district, with one district judge, except that Baldwin, Chambers, Cullman, Dale, Elmore, Etowah, Houston, Lee, Limestone, Marshall, Russell, Shelby, St. Clair, Talladega, Tuscaloosa, and Walker counties have two district judges. Three are allowed in Calhoun, Montgomery and Morgan counties. Madison County has four. Mobile County has five; Jefferson

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County has twelve. Ala. Code § 12-17-61. Because the judicial article created a state court system, county personnel serving the district and circuit courts, other than sheriff's deputies and employees and building maintenance and security personnel, are now state employees. Ala. Code § 12-17-1. County commissions are responsible for providing building space, fixtures, and most utilities for the district and circuit courts. The state, through the Administrative Office of Courts, is responsible for providing equipment, furniture, and supplies, for paying long distance phone charges, and for the day-to-day operations of district and circuit courts. Ala. Code §§ 12-19-1 through 12-19-10.¹⁴ Consequently, most court costs and fees of these courts are now paid into the state treasury. The Legislature also eliminated judges' annual salary increases for bench experience. Ala. Code § 12-10A-1(e). Uniform compensation of state judicial affairs is now addressed in Ala. Code § 12-10A-1.

Except for municipal judges, judges continue to be elected. They serve for terms of six years, and all judges except probate judges must be lawyers. Ala. Code § 12-13-31. However, judges are now subject to discipline and removal by a Court of the Judiciary, on charges brought by a Judicial Inquiry Commission, rather than removal proceedings under the impeachment process.¹⁵

5. CLERK OF THE CIRCUIT COURT

A circuit clerk is elected by the voters of each county, for a term of six years, to maintain the records of the cases tried in circuit court. The circuit clerk may be appointed to the office of

¹⁴Act No. 821, S. 35, 1978 Regular Session, transferred to the state the costs and expenses of juror, jury commission, and bailiffs. *See Ala. Code* §§ 12-16-10, 12-16-34, 12-16-37, 12-17-311, 12-19-10, 12-19-210, and 12-19-211. *See also Ala. Code* § 12-19-3(b) and §12-19-7.

¹⁵It should be noted that the office of justice of the peace was abolished by a constitutional amendment adopted in 1972. The judicial article was adopted at a referendum held on December 18, 1973. It became Amendment 323.

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register, but in practice different people frequently held the two offices.¹⁶

The register of the circuit court was appointed by the circuit judge, or the presiding judge of courts having more than one judge, to administer the records of "equity" cases heard in circuit court. Registers held office for the term of the judge who appointed them.¹⁷

Circuit clerks and registers are a part of the state court system, so their compensation (and that of their employees) is paid by the state. Ala. Code § 12-17-80. The responsibilities of the register are now vested in the circuit clerk. Ala. Code § 12-17-110. Today the duties of the register are carried out by the clerk of the court because the office of register no longer exists in Alabama. Except where a separate clerk is authorized for the district court within a county, the circuit clerk also serves as ex officio clerk of the district court. Ala. Code § 12-17-160.

6. DISTRICT ATTORNEY

The Constitution requires the election of a district attorney, or prosecuting attorney, for every judicial circuit of the state. District attorneys serve for a term of six years and receive an annual salary equal to \$1,000 less than the salary of circuit judges. Ala. Code § 12-17-182. District attorneys are paid exclusively out of the general fund of the state treasury, except in certain circuits, where district attorneys receive an additional amount from the county. Ala. Code § 12-17-182. However, effective June 1999, those district attorneys receiving local supplements and expense

¹⁶Originally, Section 165 of the Constitution of 1901 provided that the circuit clerk might also fill the office of register. The new judicial article contains a similar provision. For statutory provisions applicable to registers, *see* § 12-17-110 *et seq.*

¹⁷The original provisions of the Constitution of 1901 applicable to the register, now repealed by Amendment 328, included Sections 163 and 166. The judicial article makes provision for the election of a circuit clerk in each county.

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allowances to their salary will have their local supplement reduced by any increase in their state compensation until the supplement is eliminated. District attorneys appointed after October 1, 2001, may not receive a county supplement or expense allowance. After June 10, 1999, no county may increase salary allowances in addition to state salaries. Ala. Code § 12-10A-6. The purpose of the act was to provide for uniform compensation of state judicial officers. Ala. Code § 12-10A-1.

The duties and authority of district attorneys include the important functions of attending on the grand juries, advising them as to matters of law, and examining witnesses before them; drawing up all indictments and prosecuting all indictable offenses; and prosecuting or defending civil actions in the circuit court in the prosecution or defense of which the state is interested. The district attorney provides legal counsel to all county officers as to matters concerning their respective offices and, when requested to do so by the proper authorities, renders assistance and makes investigations and recommendations in connection with pardons and paroles in cases arising in the circuit. A district attorney's fund is established in each county treasury for the use of the district attorney in the performance of official duties and for law enforcement purposes. District attorneys appoint assistant district attorneys to perform prosecutorial duties in the district and circuit courts within their respective circuits. Ala. Code §§ 12-17-180 through 12-17-199.

7. COUNTY ATTORNEY

The statutory provision authorizing district attorneys to give legal advice to county officials contains the further provision that county commissions may also retain or employ attorneys when it is deemed advisable or necessary. Ala. Code § 12-17-184(8). Acting under this authority, county commissions regularly employ attorneys to conduct various proceedings in which the county is interested and to advise the commissioners about legal questions concerning their powers and duties.

8. SHERIFF

The Constitution provides that a sheriff must be elected in each county. Sheriffs hold office for a term of four years, and (since 1938) are eligible to succeed themselves in office. Ala. Const. §§ 112 and 138 as amended by Amendment 35. Although the sheriff is the chief police officer of the county and serves as the executive officer of the courts held in the county, the sheriff's deputies are considered to be state officials and not subject to the liability imposed on county officials.¹⁸ Additionally, the courts have held that actions to compel public officers to perform their legal duties are governed by the ten-year statute of limitations in Ala. Code § 6-2-33.¹⁹ The sheriff is also responsible for the day-to-day operations of the county jail.

a. Compensation

The annual minimum compensation for the sheriff is set at \$50,000 pursuant to Ala. Code § 11-2A-2. Additionally, pursuant to Ala. Code § 11-2A-4, sheriffs, like other local elected officials, are entitled to the same uniform increases in compensation, including cost-of-living increases, longevity increases, merit raises, and bonuses that are granted to county employees by the county commission at the time of the approval of the county budget.

The current law still allows for local laws addressing compensation and expense allowances for sheriffs. However, Ala. Code § 11-2A-4(b) provides that if a local law increases the compensation of a local official, he or she shall not be entitled to any cost-of-living adjustments under the Omnibus Pay Act until such time as the total compensation he or she would have received under the law is equal to or exceeds the increase provided by the local law.

¹⁸Whitten v. Lowe, 677 So. 2d 778 (Ala. 1996).

¹⁹McMillan v. Lee, 655 So. 2d 906 (Ala. 1994)(finding that an action against the Secretary of State, Comptroller, and Director of Finance to compel the payment of an allotted monthly expense allowance was governed by the 10-year statute of limitation).

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b. Election Duties

In addition to the duties of peace officer and executive officer of the courts, the sheriff performs certain duties in connection with the conduct of elections. The sheriff, along with the probate judge and the circuit clerk, is a member of the board that appoints election officials for the various polling places and canvasses election returns. Ala. Code §§ 17-1-2 and 17-8-1. After these officials are appointed, the judge of probate is charged with notifying and publishing a list of the appointees. Ala. Code § 17-8-2. Notice must be given of the date of each election and the officers to be voted for or the issues to be decided. Ala. Code § 17-9-5. The sheriff, moreover, is designated by law as the returning officer for the county. Ala. Code § 17-8-10. The sheriff distributes among the polling places the ballot boxes and other supplies necessary for the conduct of an election, and preserves order at all elections held in the county. Ala. Code §§ 17-1-2, 17-6-47 and 17-9-1. After the votes have been counted, the sheriff receives the boxes sealed with the ballots and a poll list and preserves them for a period of six months. After that period of time, the ballots are destroyed unless a contest has been instituted in the meantime. Ala. Code §§ 17-9-15 and 17-12-7. For more details, *see* the Alabama Election Handbook, 15th Ed.

c. Jails

State law vests in the sheriff legal charge and custody of the county jail and prisoners. The sheriff is not, however, an employee of the county for purposes of imposing civil liability on the county for acts of the jailer. *Turquitt v. Jefferson County*, 137 F.3d 1285 (11th Cir. 1998); *Parker v. Amerson*, 519 So. 2d 442 (Ala. 1987). The sheriff may, and normally does, appoint a jailer to perform the actual work involved in operating the jail. Ala. Code § 14-6-1. Sheriffs are also charged with responsibility for feeding the prisoners in the jail, but they perform this duty under the supervision of the county commission. The state participates in paying the expense of feeding prisoners and also pays an

allowance for preparing and serving the food.²⁰ Ala. Code §§ 14-6-40 through 14-6-43. In addition, municipalities are obligated to reimburse the county for housing, maintenance, and medical costs incurred while detaining juveniles held for violating any municipal ordinance not based on a state criminal statute. Ala. Code § 12-15-108. It is the prerogative of the chairperson of the county commission and the probate judge to make a weekly, unannounced visit to the jail, to make a written report on the jail's condition, and to make a report of the conditions to the grand jury. Ala. Code § 11-14-22.

9. CONSTABLE

General law provides for the election of one constable for each election precinct in each county to hold office for a term of four years. Constables are conservators of the peace within their respective counties, and they perform executive duties in connection with the local courts. Constables receive compensation in the form of fees for the performance of their various duties and services. Ala. Code §§ 36-23-1 through 36-23-9. § 36-23-1(b) In 1984, Ala. Code § 36-23-1(b) was passed which allows the Legislature to abolish the office of constable by local act and therefore this office has been abolished in several counties.

²⁰The food allowance paid by the state may not exceed \$1.75 per prisoner per day, but an additional \$1.25 per capita is conditionally appropriated. Ala. Code § 14-6-42. The allowance for preparing and serving the food ranges from one dollar per prisoner per day, for one prisoner, downward to five cents per prisoner per day when as many as eighty-five prisoners are housed in the jail. Ala. Code § 14-6-43. In addition to the state payments, people convicted of an offense under the Consumer Protection Identity Act must pay \$25 per day plus their medical expenses for any time spent in a county or municipal jail. Ala. Code § 13A-8-195. *See generally*, Ala. Code § 13A-8-190 *et seq.*

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10. CORONER

According to the general provisions of Alabama law, a coroner is elected for each county in the state. Not all counties, however, may have such an officer. Where no coroner exists, the Department of Forensic Sciences performs those duties. Ala. Act 2012-398 provides that in any county in which the duties of the county coroner are performed by the Department of Forensic Sciences, the county commission shall pay the Department of Forensic Sciences for those services. In certain cases (for example, when the office is vacant or when both the coroner and the sheriff are interested in a case), the judge of probate may appoint a special coroner. Ala. Code § 11-5-11. Where a coroner is elected, the term is four years. Ala. Code § 11-5-1. Vacancies caused by death or disqualification of the incumbent are filled by gubernatorial appointment. Coroners usually receive compensation in the form of fees, but in some counties they are paid a salary pursuant to local law.

The coroner's principal duty is to investigate cases of violent or unusual death to determine the cause of death. Other duties include keeping the jail when the sheriff is imprisoned and performing the duties of the sheriff in certain emergency situations, such as when the office of sheriff is vacant or when the sheriff is otherwise unable to act. Ala. Code §§ 11-5-1 through 11-5-13. In 2006, the Legislature empowered coroners to appoint deputy coroners with the county commission's approval. Ala. Code § 11-5-34. The same legislation also established a series of minimum training requirements for coroners, to be overseen by the Alabama Coroner's Training Commission. Ala. Code § 11-5-30 *et seq.*

11. TAX ASSESSOR

The assessment of property for tax purposes is performed by the county tax assessor. Generally, the tax assessor is elected for a term of six years, commencing on the first day of October following election. Ala. Code § 36-3-5. Some counties, however, have amendments or local laws providing for something different.

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Originally, tax assessors were paid under the fee system based on tax collections and fees for such acts as demands for assessment, subpoenas for state witnesses, notices issued by order of the State Department of Revenue or the board of equalization, and returns on escaped property. Ala. Code §§ 40-4-2 through 40-4-8, § 40-7-25, and § 40-7-32. For more details, *see Handbook for Alabama Tax Administrators: Tax Assessors, Tax Collectors, License Commissioners, and Revenue Commissioners, 7th Ed.* As counties have switched over from a fee system to a salary system, the fees or commissions payable to the tax assessor under the fee system accrued to the county treasury. Ala. Code § 40-4-3.

Under the salary system, the annual minimum compensation for the tax assessor is set pursuant to Ala. Code § 40-6A-2 based upon county population. The minimum amounts are set out below:

In Counties Having a Population of:	Annual Salary
25,000 or less	\$32,500.00
25,001 to 75,000	\$37,500.00
75,001 to 119,000	\$40,000.00
More than 119,000	\$42,500.00

In 2000, the Omnibus Salary Bill was enacted by the Alabama Legislature and was codified as Ala. Code § 11-2A-1 *et seq.* In addition to the above base salary, Ala. Code § 11-2A-2(3) allowed county commissioners to grant tax assessors an expense allowance not to exceed \$10,000 on or after June 1, 2000. This expense allowance could be phased in over a two-year period. The county commission was not required to grant this expense allowance, but the law does not include a time limit for granting the expense allowance. However, it is a one-time increase. In addition to the possible expense allowance for tax officials, Ala. Code § 11-2A-3(3) provided that, effective October 1, 2000 any local official charged by law with the administration of a “one-

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stop” tag program shall receive annual compensation for such administration in an amount not less than three thousand dollars (\$3,000).

As with the county commissioners, sheriffs, and probate judges, pursuant to Ala. Code § 11-2A-4, all local tax officials are entitled to the same uniform increases in compensation, including cost-of-living increases, longevity increases, merit raises, and bonuses that are granted to county employees by the county commission at the time of the approval of the county budget.

The current law still allows for local laws addressing compensation and expense allowances for local tax officials. However, Ala. Code § 11-2A-4(b) provides that if a local law increases the compensation of a local official, he or she shall not be entitled to any cost of living adjustments under the Omnibus Pay Act until such time as the total compensation he or she would have received under the law is equal to or exceeds the increase provided by the local law.

Assistant tax assessors and tax collectors who are elected receive 90% of the salary established for the tax assessor or tax collector. Ala. Code § 40-6A-2, § 40-6A-3.

The money for these salaries is taken from the ad valorem taxes collected during the tax year and deposited into the county general fund and their salaries are paid from that fund in equal installments. Each fund, agency, or municipality that receives ad valorem taxes pays a pro rata share of the salaries. Ala. Code § 40-6A-2.

The county general fund is used to provide the tax assessor with supplies and for the preparation of the assessment book used by the tax collector, and land and lot books. Ala. Code §§ 40-4-7, 40-4-8, 40-7-36 through 40-7-41. Another duty of the tax assessor is to notify new property owners in writing of the procedures to pursue current use valuation. Ala. Code § 40-7-25.2. *See Handbook for Alabama Tax Administrators: Tax Assessors, Tax Collectors, License Commissioners, and Revenue Commissioners, 7th Ed., for more information.*

Amendment 411 of the Constitution of Alabama provides that the Legislature may provide for the combination of the offices of tax assessor, tax collector, and/or license commissioner; the local act must be approved by the majority of voters in the county affected. About forty-seven counties have combined the offices of tax assessor and tax collector into the unified office of revenue commissioner.

12. BOARD OF EQUALIZATION

The duty of equalizing tax assessments is vested in the county board of equalization, which is composed of three members appointed by the Commissioner of Revenue and the Governor for a term of four years. Appointees are selected from a panel of at least nine nominees submitted by the county commission, the county board of education, and the municipalities of the county.²¹ Ala. Code § 40-3-1, § 40-3-2. The tax assessor serves as secretary of the board of equalization but has no voice or vote in its proceedings. Ala. Code § 40-3-6. The annual term of service and compensation of members of county boards of equalization are determined by a classification system based on the total assessed value of taxable property in the counties. As a general rule, the compensation of members of county boards of equalization is paid 22 ½ percent by the state, 38 ¾ percent by the county, and 38 ¾ percent by the largest municipality in the county. In other counties, members are paid one-third by the county, one-third by the state and one-third by any municipality in the county in which the total assessed value of taxable property in that municipality

²¹The Alabama Revenue System: Report of the Revenue Survey Committee, An Interim Committee of the 1945 Legislature (Montgomery, 1945), p. 89. The latter work is cited hereafter as The Alabama Revenue System. In counties having a merit system and a population of 400,000 or more, members of the board of equalization are appointed under the merit principle. Ala. Code § 40-3-2.

For a discussion of the mandatory reappraisal program required for the equalization of assessments, *see* "State Administrative Supervision" in Chapter IV.

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amounts to 50 percent or more of the total assessed value of all taxable property located within the county. If there is no such city in a county, the compensation of the members of the board of equalization is paid one-half by the state and one-half by the county.²² Ala. Code §§ 40-3-2, 40-3-6 through 40-3-8.

13. TAX COLLECTOR

The collection of the levies on property by the state and its subdivisions is the duty of the county tax collector, except in some cases in which municipalities provide for the collection of their own levies. The tax collector is generally elected for a six-year term, commencing October 1. Ala. Code § 36-3-6. However, some counties may have amendments or local laws providing something different.

Tax collectors were originally paid under the fee system for such actions as making demands on delinquent taxpayers and making levies and sales of property, together with commissions on amounts of taxes collected. *See Ala. Code* §§ 40-5-1 through 40-5-

²²The compensation of members of county boards of equalization ranges from a minimum of \$35 a day for not more than 80 working days a year (the exact working period to be fixed by the State Department of Revenue) up to a maximum of \$21,090 and \$19,425, which is the annual compensation of the chairperson and members, respectively, in counties having a total assessed valuation of more than \$600 million. Special provisions apply to the office of chairperson in any county having a population of 600,000 or more and a total assessed valuation of more than \$600,000,000. Ala. Code § 40-3-7. The classifications are based on tax valuations as of the year 1955. Ala. Code § 40-3-7. In the smaller counties, limited travel allowances, as approved by the State Department of Revenue, are also provided for. Ala. Code § 40-3-8. *See Ala. Code* § 40-3-8 for the duty of the county commission to provide support and facilities for the board of equalization in counties having a population of 140,000 or more. *See also Ala. Code* § 40-4-8.

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47. For more details, *see* Handbook for Alabama Tax Administrators: Tax Assessors, Tax Collectors, License Commissioners, and Revenue Commissioners, 7th Ed. As counties have switched over from a fee system to a salary system, the fees or commissions payable to the tax collector under the fee system accrued to the county treasurer. Ala. Code § 40-5-5.

Under the salary system, the annual minimum compensation for the tax collector is set pursuant to Ala. Code § 40-6A-2 based upon county population. The minimum amounts are set out below:

In Counties Having a Population of:	Annual Salary
25,000 or less	\$32,500.00
25,001 to 75,000	\$37,500.00
75,001 to 119,000	\$40,000.00
More than 119,000	\$42,500.00

In 2000, the Omnibus Salary Bill was enacted by the Alabama Legislature and was codified as Ala. Code § 11-2A-1 *et seq.* In addition to the above base salary, Ala. Code § 11-2A-2(3) allowed county commissioners to grant tax collectors an expense allowance not to exceed \$10,000 on or after June 1, 2000. This expense allowance could be phased in over a two-year period. The county commission was not required to grant this expense allowance, but the law does not include a time limit for granting the expense allowance. However, it is a one-time increase. In addition to the possible expense allowance for tax officials, Ala. Code § 11-2A-3(3) provided that, effective October 1, 2000, any local official charged by law with the administration of a “one-stop” tag program shall receive annual compensation for such administration in an amount not less than three thousand dollars (\$3,000).

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As with the county commissioners, sheriffs, and probate judges, pursuant to Ala. Code § 11-2A-4, all local tax officials are entitled to the same uniform increases in compensation, including cost-of-living increases, longevity increases, merit raises, and bonuses that are granted to county employees by the county commission at the time of the approval of the county budget.

The current law still allows for local laws addressing compensation and expense allowances for local tax officials. However, Ala. Code § 11-2A-4(b) provides that if a local law increases the compensation of a local official, he or she shall not be entitled to any cost of living adjustments under the Omnibus Pay Act until such time as the total compensation he or she would have received under the law is equal to or exceeds the increase provided by the local law.

Assistant tax assessors and tax collectors who are elected receive 90% of the salary established for the tax assessor or tax collector. Ala. Code §§ 40-6A-2 and 40-6A-3.

The money for these salaries is taken from the ad valorem taxes collected during the tax year and deposited into the county general fund and their salaries are paid from that fund in equal installments. Each fund, agency, or municipality that receives ad valorem taxes pays a pro rata share of the salaries. Ala. Code § 40-6A-2.

14. REVENUE COMMISSIONER

In the majority of counties, the offices of tax assessor and tax collector have been combined, by local legislation and constitutional amendment, to form the office of revenue commissioner. The amendments create offices that vary in length and specificity; therefore, the local act proposing an individual office should be consulted for information about the revenue commissioner in a given county. The revenue commissioner performs the combined duties of the tax assessor and tax collector. Typically, the revenue commissioner is elected for a six-year term and is compensated as are the tax assessors and tax collectors of other counties. For additional details, *see Handbook for Alabama*

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Tax Administrators: Tax Assessors, Tax Collectors, License Commissioners, and Revenue Commissioners, 7th Ed.

The annual minimum compensation for revenue commissioner is set pursuant to Ala. Code § 40-6A-2 based upon county population. The minimum amounts are set out below:

In Counties Having a Population of:	Annual Salary
25,000 or less	\$32,500.00
25,001 to 75,000	\$37,500.00
75,001 to 119,000	\$40,000.00
More than 119,000	\$42,500.00

Ala. Code § 40-6A-2 provides that in all countries where the tax assessor and tax collector have been combined, the minimum annual salary is \$10,000 greater than the minimum set in the population tables.

In 2000, the Omnibus Salary Bill was enacted by the Alabama Legislature and was codified as Ala. Code § 11-2A-1 *et seq.* In addition to the above base salary, Ala. Code § 11-2A-2(3) allowed county commissioners to grant revenue commissioners an expense allowance not to exceed \$10,000 on or after June 1, 2000. This expense allowance could be phased in over a two-year period. The county commission was not required to grant this expense allowance, but the law does not include a time limit for granting the expense allowance. However, it is a one-time increase. In addition to the possible expense allowance for tax officials, Ala. Code § 11-2A-3(3) provided that, effective October 1, 2000 any local official charged by law with the administration of a “one-stop’ tag program shall receive annual compensation for such administration in an amount not less than three thousand dollars (\$3,000).

As with the county commissioners, sheriffs, and probate judges, pursuant to Ala. Code § 11-2A-4, all local tax officials are

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entitled to the same uniform increases in compensation, including cost-of-living increases, longevity increases, merit raises, and bonuses that are granted to county employees by the county commission at the time of the approval of the county budget.

The current law still allows for local laws addressing compensation and expense allowances for local tax officials. However, Ala. Code § 11-2A-4(b) provides that if a local law increases the compensation of a local official, he or she shall not be entitled to any cost of living adjustments under the Omnibus Pay Act until such time as the total compensation he or she would have received under the law is equal to or exceeds the increase provided by the local law.

The county must provide the revenue commissioner with personnel, office space, stationery, equipment, and operating supplies. If the county has a merit system, employees automatically become a part of the system. Ala. Code § 40-6A-5. Among the commissioner's duties is the obligation to inform new property owners in writing of the procedures to pursue current use valuation. Ala. Code § 40-7-25.2.

The money for the salary of the revenue commissioner is taken from the ad valorem taxes collected during the tax year and deposited into the county general fund, and the revenue commissioner's salary is paid from that fund in equal installments. Each fund, agency, or municipality that receives ad valorem taxes pays a pro rata share of the salary. Ala. Code § 40-6A-2.

15. LICENSE COMMISSIONER

The office of license commissioner has been legislatively created by some Alabama counties and two counties have created a similar position, although not by statute. This officer is selected through election or appointment. As a general rule, license commissioners are compensated on a salary basis.

The annual minimum compensation for the license commissioner is set pursuant to Ala. Code § 40-6A-2 based upon county population. The minimum amounts are set out below:

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In Counties Having a Population of:	Annual Salary
25,000 or less	\$32,500.00
25,001 to 75,000	\$37,500.00
75,001 to 119,000	\$40,000.00
More than 119,000	\$42,500.00

In 2000, the Omnibus Salary Bill was enacted by the Alabama Legislature and was codified as Ala. Code § 11-2A-1 *et seq.* In addition to the above base salary, Ala. Code § 11-2A-2(3) allowed county commissioners to grant license commissioners an expense allowance not to exceed \$10,000 on or after June 1, 2000. This expense allowance could be phased in over a two-year period. The county commission was not required to grant this expense allowance, but the law does not include a time limit for granting the expense allowance. However, it is a one-time increase. In addition to the possible expense allowance for tax officials, Ala. Code § 11-2A-3(3) provided that, effective October 1, 2000 any local official charged by law with the administration of a “one-stop” tag program shall receive annual compensation for such administration in an amount not less than three thousand dollars (\$3,000).

As with the county commissioners, sheriffs, and probate judges, pursuant to Ala. Code § 11-2A-4, all local tax officials are entitled to the same uniform increases in compensation, including cost-of-living increases, longevity increases, merit raises, and bonuses that are granted to county employees by the county commission at the time of the approval of the county budget.

The current law still allows for local laws addressing compensation and expense allowances for local tax officials. However, Ala. Code § 11-2A-4(b) provides that if a local law increases the compensation of a local official, he or she shall not be entitled to any cost of living adjustments under the Omnibus Pay Act until such time as the total compensation he or she would

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have received under the law is equal to or exceeds the increase provided by the local law.

The money for the salary of a license commissioner is taken from the ad valorem taxes collected during the tax year and deposited into the county general fund, and the license commissioner's salary is paid from that fund in equal installments. Each fund, agency, or municipality that receives ad valorem taxes pays a pro rata share of the salary. Ala. Code § 40-6A-2.

Ordinarily, the judge of probate is the licensing officer in the county and is charged with the responsibility of issuing licenses for exercising any right or privilege for which a license is required by the State of Alabama or by the county. Ala. Code § 40-12-21. Where the office of license commissioner has been established, the licensing function is transferred to that office, and the license commissioner performs the duties associated with the issuance of licenses that had been required by law of the probate judge.

Generally, licenses issued include hunting and fishing licenses, those dealing with the operation of motor vehicles, and the many licenses imposed on a wide variety of business, professional, and occupational activities. *See Ala. Code § 40-12-1 et seq.*

As a second major duty, the license commissioner performs the duties regarding the assessment and collection of ad valorem taxes on motor vehicles that are ordinarily performed by the tax assessor and tax collector. In this way, the assessment and collection of motor vehicles taxes and licenses are incorporated into one county office. Ala. Code § 40-12-253.

For more details, *see* the Handbook for Alabama Tax Administrators: Tax Assessors, Tax Collectors, License Commissioners, and Revenue Commissioners, 7th Ed.

16. SUPERNUMERARY TAX COLLECTORS, TAX ASSESSORS, LICENSE COMMISSIONERS, AND REVENUE COMMISSIONERS

A person who has served twelve years as a county official at least 10 years or more continuously as tax collector, tax assessor, license commissioner, revenue commissioner, or sheriff and who is at least 60 years of age may elect to become a supernumerary tax collector, tax assessor, license commissioner, or revenue commissioner. Others also may qualify under specific situations. Ala. Code § 40-6-1. Supernumeraries shall serve for life with pay ranging from 60% to 75% of their average pay during the last four years in office, depending on length of time in service. No supernumerary may receive more than \$49,600 annually. Ala. Code § 40-6-3. In 1994, Ala. Code § 40-6-5, which allowed a person to become a supernumerary, even though eligible for retirement was repealed. An official who is eligible to participate in the supernumerary program and who is also eligible to participate in another state or county retirement program must choose between the two programs. Ala. Code § 40-6-4.1.

If a vacancy occurs in the office in the county in which the supernumerary holds his or her commission, the supernumerary must immediately assume and exercise all the duties of that office until a successor is appointed. Ala. Code § 40-6-2. A majority of counties have abolished the office of supernumerary through constitutional amendment. The county commission may increase or remove the compensation limitation for anyone who became a supernumerary official after September 30, 1993. Ala. Code § 40-6-3(a). Supernumerary officials also may receive the same cost-of-living increases as those given to county retirees if the commission approves an enabling resolution. Ala. Code § 40-6-3(b).

In counties where a local constitutional amendment abolishes supernumeraries, officials in office at the time of the amendment have the right to buy service credit in the retirement system by paying an amount equal to the total contributions they would have made in the relevant time period, plus 8% interest

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compounded annually from the service date. Ala. Code § 36-27-6.1 as amended by Ala. Act 2004-362.

17. TREASURER OR DEPOSITORY

Responsibility for the custody of county funds, and for their disbursement upon proper authorization, is vested in either a county treasurer or a depository in lieu of treasurer and in a separate custodian of county school funds.²³ Most counties use a depository in lieu of a treasurer; however the office of treasurer is filled by election in the few remaining counties of more than 56,000 (according to the 1930 census) population not having a county depository or other custodian of county funds in lieu of a county treasurer. The elected county treasurer holds office for a term of four years. Vacancies are filled by appointment of the county commission, and the person so appointed holds office only for the unexpired term. Ala. Code §§ 11-4-20 and 11-4-21.

The more important duties of the county treasurer are to receive, keep, and disburse the moneys of the county; to demand and receive all moneys due to the county; to institute proceedings against defaulters; to submit to the county commission, at its first meeting in October of each year, the register of claims, accounts for the previous year balanced as to charges for receipts and credits for payments, vouchers for the payments, an estimate of the indebtedness of the county for the coming year, and the means of providing for such indebtedness; to make reports and give information to the county commission, when required, on all matters concerning the finances of the county; and to furnish the chairperson of the county commission, in October of each year, a verified statement of all moneys and valuables received for the county during the preceding year. Ala. Code § 11-4-23.

²³Brookings Report, pp. 176-178; Ala. Code§ § 11-4-1 through 11-4-50, the general laws relating to the county treasurer and depository in lieu of treasurer. Since school funds are separately administered, only the custody of county funds is discussed here.

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The office of county treasurer was abolished in counties having a population of not more than 55,000, and a county depository was established in lieu of a county treasurer in these counties.²⁴ Legislation requires the governing body of such a county to select annually some incorporated state or national bank(s) in the county as the county depository. Ala. Code §§ 11-4-40 and 11-4-41. All funds formerly paid to the county treasurer are required to be paid into the bank selected as the depository; all settlements formerly made with the treasurer are required to be made by the county commission. Ala. Code § 11-4-45. When a depository bank acts in lieu of the treasurer, accounts are opened and kept in the bank in such manner and in such funds as the county commission may direct. Ala. Code § 11-4-46. Disbursements are made on the order of the county commission, on warrants signed by the presiding officer of the commission. Ala. Code § 11-4-48; *see also* § 11-8-9. The bank, semi-annually, must furnish the county commission a full and detailed statement of receipts and disbursements; the semi-annual statements must be furnished on the second Mondays of January and July of each year. Ala. Code § 11-4-46.

County depositories are charged with the same duties and are subject to the same liabilities, insofar as the receipt, safekeeping, and disbursement of county funds are concerned, as are imposed by law upon county treasurers. Banks acting as depositories receive no compensation for their services as county depositories. All duties required by law to be performed with respect to county funds other than the receipt and disbursement of county funds by depositories must be performed by the presiding officer of the county commission. Ala. Code §§ 11-4-43, 11-4-44, and 11-4-50. Banks that are to hold county funds must comply with the Security for Alabama Funds Enhancement Act, or SAFE. Ala. Code § 41-14A-1 *et seq.* The SAFE program is administered by the State Treasurer's office and requires that banks maintain deposits held subject to the order of the State Treasurer whose

²⁴In 1932, the population figure was changed to 56,000. The code reads "according to the 1930 federal census."

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market value meets or exceeds the amount of the county funds that exceeds \$100,000. The accounts are held for the benefit of the Loss Payment Fund as a security interest for the public funds. The State Treasurer may impose higher security requirements for institutions deemed to pose a greater risk of default. If the county commission is unable to designate a bank as county depository, because of its inability to secure from any bank within the county satisfactory terms for the handling of county funds, the commission is authorized to appoint a person who may act as county treasurer under such terms and conditions as the commission may prescribe. Ala. Code § 11-4-49.

Under other provisions of law, the county commission, upon the request of the tax collector, county treasurer, probate judge, or circuit clerk, must appoint a bank, savings and loan association, or trust company as a depository in which these officers may deposit the money coming into their hands. Ala. Code § 11-1-7.

18. LICENSE INSPECTOR

Enforcement of the license tax laws is the specific function of an officer known as the license inspector. Each county commission is authorized to appoint a license inspector. Ala. Code § 40-12-10. It is the duty of the license inspector to examine the records maintained in the office of the probate judge and to examine the records of the municipalities in the county as well. The inspector also must cite delinquents to appear at the courthouse, to show cause why license fees have not been paid. If a delinquent refuses to take out a license, the license inspector initiates criminal proceedings against the delinquent. The license inspector receives compensation in the form of citation fees and percentages of the fines or penalties recovered from delinquent taxpayers. Ala. Code § 40-12-10(o). The governing body of the county, at the expense of the county, provides the license inspector with citation blanks and other necessary forms, and the authority to issue citations. Ala. Code § 40-12-10(k). License inspectors shall have the same power to arrest persons violating the revenue laws

of the state as is now vested in the sheriffs of the state and shall receive the same fees for such service. Upon approval of the county commission, the county license inspector shall have authority to issue criminal littering citations. Ala. Code § 13A-7-40. The statute however, does not allow the license inspector to make arrests for criminal littering. Ala. Code § 13A-7-29. Ala. Code § 40-12-10(k). The salary of the license inspector, his deputies, and office expenses are fixed and paid by the county commission. Ala. Code § 40-12-10-(o). The county may also designate a license inspector to enforce subdivision regulations. (Ala. Code § 11-24-1 *et seq.*) and to enforce notice requirements for planned timber operations utilizing county roads and access points. Ala. Act 2012-257.

19. BOARD OF REGISTRARS

Voter registration is administered by county boards of registrars. The board of registrars in each county consists of three "reputable and suitable" electors (voters) of the county, appointed by a state board composed of the Governor, the State Auditor, and the Commissioner of Agriculture and Industries. Registrars serve for four years from the date of appointment and until a successor is appointed, but the Secretary of State may remove them for cause by submitting written reasons to the registrar and the state appointing board. Ala. Code § 17-3-3. In addition to the duties listed below, registrars have a number of responsibilities related to provisional ballots pursuant to state legislation passed in response to the Help America Vote Act of 2002; registrars should pay close attention to these statutory procedures. Ala. Code § 17-10-2.

a. Meetings

State law requires that in counties with a population of less than 600,000, the county board of registrars may not register any person as a qualified elector within ten days prior to any election. Ala. Code § 17-3-50. This provision does not apply to counties with a population of more than 600,000. Generally, county boards of registrars have offices in the county courthouse. In those

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counties with public or private universities with enrollments in excess of 500 students, the county board of registrars is required by law to meet at least one full working day during the school year on those campuses to register voters. Public notice of dates, times, and location of such special registration is required at least twelve days in advance of the scheduled special sessions. Ala. Code § 17-3-11.

The number of sessions in which the board will meet to register voters and the number of special session days (up to twenty-five held away from the courthouse) are determined by a quorum of the board, based on the needs of the county. Ala. Code § 17-3-8(e) and (f). The Code of Alabama restricts the maximum meeting days for a particular county to between 120 and 220. Ala. Code § 17-3-8(a)(b),(c) and (d). Advance public notice of the sessions' times and dates is required by law. Ala. Code § 17-3-8(f).

b. Voters' List

When registration closes before an election, the registrars submit to the probate judge any additions, deletions, or other changes that should be made to the list of registered voters. The probate judge then prepares an alphabetical list of registered voters, which is to be published in a newspaper of general circulation in the county on or before the twentieth day before each regularly scheduled primary election. Legislation passed in 2006 allows county commissions to opt to publish the voters' list in the form of a pre-printed insert submitted to the newspaper. Ala. Code § 17-4-1. The probate judge also prepares a supplementary list of voters who were inadvertently omitted from the original list, which is to be published on or before the seventh day preceding the date of the primary. Ala. Code §§ 17-4-1 and 17-4-2. Alabama law also requires registrars to record an electronic archive in the state voter registration list's database at the same time as the list of qualified voters is printed and to certify that the printed list was produced from the state voter registration list. In addition, counties may use electronic access to the voter registration list in lieu of a

printed list, according to rules drafted by the Secretary of State. Ala. Code § 17-4-2. Provisions exist in the law whereby registrars may purge the list of registered voters to be sure that they continue to reflect accurately the county electorate. Ala. Code § 17-4-3. The state will reimburse county commissions for all postage costs associated with voter list maintenance activities and one-fourth of the cost of publication of the names of people to be removed from the list of registered voters. Ala. Code § 17-4-31. Provision also exists whereby people whose names have been erroneously removed may be reinstated on the registration list. Ala. Code § 17-4-13. The Secretary of State shall provide and maintain a single uniform nondiscriminatory, official centralized, interactive computerized statewide voter registration list pursuant to the requirements of Ala. Code § 17-4-33.

20. DEPARTMENT OF HUMAN RESOURCES

Local machinery for the administration of the welfare function includes county boards of human resources as well as county departments of human resources. Ala. Code § 38-2-7 requires county boards to be composed of seven members selected from among the residents of the county by the county commission on the basis of their recognized interest in public welfare. At least two of the members must be women. In counties that contain cities having a population of 60,000 or more inhabitants, the governing body of the city has equal authority with the county commission in appointing the members of the county board of human resources. Members of county boards of human resources serve for terms of six years. The county board selects from among its own membership a chairperson and a secretary to serve at its pleasure. The board holds its meetings under rules established by it in conformity with the regulations of the state board. Members of the county board receive no compensation for their services, but are reimbursed for expenses incurred in attendance at the meetings of the board or during the course of departmental business. The functions of the county board include duties of a general advisory and policy-making nature and appointing, under the provisions of

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the state merit system, the director of the county department of human resources.

The county director serves as the executive officer of the county department. Ala. Code § 38-2-8. He or she is appointed by the county board on a nonpartisan basis and serves at its pleasure. Ala. Code § 38-2-7. A reorganization act of 1951 placed all county departmental employees, including the director, under the state merit system.²⁵ Consequently, the county board, whenever it desires to appoint a county director, must request the State Personnel Department to establish a register of eligible people. The law requires the appointment to be made, if possible, from among residents of the county in which the vacancy occurred. If no appointment can be made from among the residents of the county, the board appoints a director from the statewide register. Ala. Code § 38-2-7.

County departments of human resources consist of the director and such other employees as may be authorized by the county board and the state department. The director appoints the necessary staff, subject to the approval of the county board and the provisions of the state merit system. As in the case of the director, departmental employees are appointed, insofar as possible, from among the residents of the county in which a vacancy exists. Appointments are made from the statewide register only if no appointments can be made from a local register. Ala. Code § 38-2-8.

A county commission may appropriate funds to be expended by the county department of human resources for the relief of children under 18 years of age. Ala. Code § 38-2-9. Additionally, the Office of State Parent Locator is available to assist county agencies in locating absent parents who owe financial obligations for the support of minor children. Ala. Code § 38-2-6.1. The commission may make other and further provision for the

²⁵ Ala. Code §§ 38-2-7 and 38-2-8 (1975). *See also* § 36-26-17.

care of the poor in the county, but the disbursement of such funds as the commission makes available for expenditure by the county department of human resources must be approved by the state Department of Human Resources. Ala. Code § 38-2-9.

21. LIBRARY BOARD

Under authority granted by general legislation, the governing body of any county may establish and maintain, or aid in establishing and maintaining, free public libraries, either separately or in connection with the public schools. To that end, the county may accept gifts, donations, and bequests of land, buildings, or money, and may appropriate public funds in support of the library function. Ala. Code §§ 11-90-1 through 11-90-4. Powers of government and supervision of a county library are vested in a library board, which is composed of five members appointed by the county commission for overlapping terms of four years.²⁶ All vacancies on the board are filled by the county commission. Members of the library board serve without compensation. Counties and municipalities are authorized to enter into agreements for the provision of joint library service and to establish joint library boards.²⁷ County library boards have full authority to control the expenditure of all funds received or appropriated for library service. They also possess authority to erect or rent buildings, to appoint a librarian and other necessary employees, and to manage and control the library in such a manner

²⁶Ala. Code § 11-90-2.1 provides that in a Class 2 municipality the numbers of public library board members who are appointed by the governing body shall be the same number as the number of members of the Class 2 municipality governing body.

²⁷In counties in which a city having a population of not less than 65,000 already maintains a free public library, a separate county library board need not be appointed. In such counties, the county library and the appropriations made for library service are administered by the existing library board on such terms as may be agreed upon between the county commission and the library board. Ala. Code § 11-90-3.

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as to provide the most effective library service possible. Ala. Code § 11-90-3.

22. EXTENSION AGENT²⁸

Alabama has extension agents in each of its sixty-seven counties. One of them serves as coordinator of the county extension staff. Extension agents are appointed by the director of the state extension service and serve for an indefinite term but may be removed at the discretion of the director. Extension agents specializing in agricultural subjects direct farm demonstration work in the county and assist in disseminating the information compiled by the extension specialists at Auburn University and Alabama A&M University. These extension agents supervise 4-H club work and give advice and assistance to farmers in regard to such matters as animal husbandry, raising poultry, horticulture, landscape gardening, entomology, forestry, soils, crops, and marketing farm products. Other county extension agents specialize in home economics. The duties of these agents consist primarily of giving practical instruction in such subjects as home furnishings, equipment and care of the house, food preservation, nutrition and diet, the planning of meals, child development, family budgeting, and recreation. They conduct home economics club work as a means of promoting interest in the extension program. County agents also are involved in the administration of the community resource development program.

23. BOARD OF EDUCATION

Responsibility for general administration and supervision of the public elementary and secondary schools in Alabama is

²⁸Partially based on The Historical Records Survey, Division of Professional and Service Projects, Work Projects Administration, Inventory of the County Archives of Alabama, No. 61; Talladega County (Birmingham, 1940), pp. 320-321, 337. *See also* Chapter V.

divided between county school systems and independent city school systems. The county school system is composed of all public schools located within the county, except those in cities having city boards of education. The county system is controlled by an elective board of education. The law provides that control of the independent city schools within a county may be vested in the county board of education. Ala. Code §§ 16-8-8, 16-8-9, 16-8-11, 16-8-12 and 16-8-17.²⁹ Pursuant to Ala. Code § 16-8-12.1, county boards of education may enter into cooperative agreements, projects and programs with the county commission for the proper management of the public schools as long as those agreements are consistent and not in conflict with any law or policy of the State Board of Education or in conflict with the purposes for which the school system was established.

County boards of education are composed of five members elected for overlapping terms of six years. Under the general laws, board members must be elected by the qualified voters of the entire county, but local laws frequently require the election of board members from districts within counties. *See Ala. Code* §§ 16-8-1 and 16-8-2. Vacancies on the county board of education are normally filled by a majority vote of the remaining members of the board, but if any vacancy is not filled in this manner within thirty days, the State Superintendent of Education fills the vacancy by appointment. A person appointed to fill a vacancy may hold office only for the duration of the unexpired term. Ala. Code § 16-8-6.

24. SUPERINTENDENT OF EDUCATION

The general school laws of Alabama require the board of education of every county to appoint a county superintendent of education, an officer who functions as secretary and chief executive of the board. Ala. Code §§ 16-8-7, 16-9-2, 16-9-13.

²⁹Section 270 of the Constitution allows Mobile County to maintain a different type of school system from that generally prevailing in the state.

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Essentially, the duties of the county superintendent of education involve (1) assisting the board in planning county educational policy and (2) carrying out the policies established by the board. It should be noted that local laws providing for elected county superintendents have decreased the number of counties in which the county board of education appoints the superintendent, so that now the office is elective in more counties than it is appointive.

In counties where the superintendent of education is elected by popular vote, the successful candidate takes office on the first day of January next following the election and serves for a term of four years. Ala. Code § 16-9-8. Where the county superintendent of education is appointed by the county board of education, the superintendent serves for a term of not less than two nor more than four years. The term commences on the first day of July next following the appointment. Ala. Code § 16-9-1.

The commission is required to provide the superintendent with an office. Ala. Code § 16-9-24.

25. BOARD OF HEALTH

The county is Alabama's unit for local health administration.³⁰ Ala. Code § 22-1-3. This function is the responsibility of the county board of health and the county health officer, who is the executive officer of the county health department. The county board of health functions under the general supervision and control of the State Board of Health. Ala. Code § 22-1-3.

The county board of health consists of the board of censors of the county medical association and the chairperson of the county

³⁰Municipalities may engage in certain health activities, such as the provision of additional services and maintenance of additional sanitation requirements, but these activities must be under the supervision of the county board of health. *See Ala. Code § 22-3-11* for appropriations by municipalities for public health work.

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commission, as member ex officio.³¹ Ala. Code § 22-3-1. The general health laws authorize each county governing body to levy a special tax of .5 % in an amount sufficient to maintain a full-time health officer and health department and to administer public health work within the county. The tax collected in those counties having such a local act, is earmarked for the county health fund. Ala. Code § 22-3-10. The local board of health appoints a health officer for the county, subject to the approval of the State Committee of Public Health, an executive committee of the State Board of Health. The county board of health fixes the term of office of the county health officer at not less than three years. Ala. Code § 22-3-2. The health officer's salary is fixed by the appropriate merit system. Ala. Code § 22-3-6.

The county health officer, operating under the direction of the State Health Officer and the county board of health, has authority over the direction of all sanitation and public health work within the county. Ala. Code §§ 22-3-2, 22-3-4, 22-3-5. Although each of the state's sixty-seven counties now maintains a permanent, full-time health department, each county may not have a full-time health officer of its own. In some instances, health officers serve counties on a joint or district basis. Where physicians are not available to serve as county health officers, health services administrators are used to coordinate activities at the local level. In a number of counties, local health matters are handled by the state department.³² Similarly, the size and composition of county health departments vary from county to county, depending on the needs of each county and the funds available for the support of the local health organization.³³

³¹The board of censors is the governing authority of the county medical association. The members of this board are elected by the members of the county association.

³²Alabama Department of Public Health, *A New Century; A New Plan* (1975 Annual Report), p. 49; Alabama Department of Public Health, *Keys to Better Health* (1976 Annual Report), p. 21.

³³State of Alabama Department of Health, *The Health of Your State* (Montgomery: n.d.), p. 7.

26. COUNTY LAW LIBRARIES

Each county commission may establish and maintain a law library for the use and benefit of county and state officials. While the commission is empowered to furnish space and utilities for the law library and to supplement its book and materials budget, municipal bodies also are authorized to appropriate funds or property for the county law library as consideration for allowing municipal citizens to use the facility. Ala. Code §§ 11-25-1 through 11-25-4.

The presiding circuit judge or county law librarian is charged with administering the library. Ala. Code § 11-25-13. The funds for operating the library are appropriated by the state, county, or municipal governments or from such activities as book sales or donations. Those the funds are maintained in a separate county law library fund. Ala. Code §§ 11-25-5 through 11-25-8. In addition, a library fee of \$2 is collected from each cause and case in the district and circuit courts of the county. This fee likewise is deposited in the county law library fund. Ala. Code § 11-25-9. The funds in the county law library fund may be authorized by the presiding circuit judge to be expended pursuant to Ala. Code § 11-25-13.

County law libraries, part of the network of state and non-state-supported libraries, receive from the Secretary of State copies of both the Acts of Alabama and the Code of Alabama, along with the supplements thereto. Ala. Code §§ 11-25-10 and 11-25-11.

27. COUNTY EMERGENCY MANAGEMENT AGENCY

The basis of the emergency management program in Alabama is the Alabama Emergency Management Act of 1955, codified at Ala. Code §§ 31-9-1 through 31-9-24 and 31-9-40. This Act authorizes and directs each county, city, and town to establish (by appropriate ordinance, resolution, or both) a local organization for emergency management in accordance with the

state emergency management plan. Each county's emergency management agency is responsible for coordinating all the components of the emergency management system in the jurisdiction. Each county must make certain that all response organizations know the threats to the community and the plan for emergencies, that all can operate effectively in an emergency and that all can conduct recovery operations after a disaster. Threats to a community may include tornadoes, floods, hazardous materials spills, hurricanes, and others based on a hazards analysis maintained by the emergency planning committee established under the Emergency Planning and Community Right-to-Know Act. *See* 42 U.S.C. §§ 11002, *et. seq.*

28. EMERGENCY TELEPHONE SERVICE

The Emergency Communications District, is a telephone communications service whereby a public safety answering point may receive telephone calls dialed to 911. A county commission may by ordinance or resolution create emergency communication districts within their respective jurisdictions. Those districts are political and legal subdivisions of the state, with the power to sue and be sued in their corporate names and to incur debts and issue bonds. Upon creation of a district, the county commission may appoint a board of commissioners composed of seven members to govern its affairs and shall establish a domicile within their counties. In lieu of appointing a board, the county commission may also serve as the board of the district. The governing commissions of the communication districts shall have various powers established by law to carry out their emergency services functions. Ala. Code §§ 11-98-1 through 11-98-11. Legislation passed in 2012 altered the funding mechanism for local emergency communication districts effective October 1, 2013. This law also changes the make-up and duties of the State Board which oversees funding. *See* Ala. Act 2012-293, amending Ala. Code §§ 11-98-1,11-98-2,11-98-4,11-98-5,11-98-6,11-98-7 and 11-98-9 and adding Ala. Code §§ 11-98-4.1,11-98-5.2,11-98-5.3,11-98-13,11-98-13.1,11-98-14 and 11-98-15. The state's Good Samaritan Law immunizes licensed architects, contractors,

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engineers, land surveyors, and subcontractors from liability for acts or omissions committed while working for free in that capacity under an emergency management agency's direction or supervision. Ala. Code § 6-5-332.

29. DEPARTMENT OF HOMELAND SECURITY

The Alabama Legislature established the Department of Homeland Security in 2003. When the Governor declares a state of emergency related to homeland security, the department's director obtains broad powers to allocate resources and direct traffic in consultation with state and local authorities. Ala. Code § 31-9A-1 *et seq.* A representative of county government is appointed by the Governor to Homeland Security Task Force, which shall meet at least twice a year to advise the Homeland Security director regarding the comprehensive plan and program for homeland security. Ala. Code § 31-9A-12. The Legislature has placed the state Health Department in charge of working with state and local agencies to draft lists of residents with special medical needs and to plan for sheltering them in a time of emergency. Ala. Code § 31-9B-1 *et seq.*

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CHAPTER III

HIGHWAY ADMINISTRATION

Responsibility for local highway administration in Alabama became centered in the county governing bodies early in the state's development. At the present time, the general laws of the state vest authority in each county commission over the establishment, change, or discontinuance of roads, causeways, bridges, and ferries within the county, except as otherwise provided by law. Ala. Code § 11-3-10. Similarly, the county commissions have jurisdiction over the maintenance and improvement of the established road system.¹ Ala. Code § 23-1-80. County commissions are authorized to establish and post speed limits and to establish and enforce weight restrictions on bridges, streets and highways under their jurisdiction and control. Ala. Code §§ 32-5A-173 and 32-1-3. They also possess the right of eminent domain for purposes of establishing and changing public roads and bridges in their respective counties. Ala. Code § 23-1-82; *See also* §§ 11-80-1 and 18-1B-2. Effective August 1, 2004, any newly incorporated municipality must take responsibility for all county roads within its boundaries no later than twenty-four months after the incorporation is finalized. This legislative enactment is prospective and does not require municipalities existing before August 1, 2004 to assume control of such roads. Ala. Code § 11-41-1.

A. ADMINISTRATION OF THE HIGHWAY FUNCTION

1. DISTRICT SYSTEM

The counties may construct or repair roads and bridges either with their own forces or through contracts with independent

¹Counties have authority to place and maintain traffic-control devices on highways under their jurisdiction. Ala. Code § 32-5-31.

contractors.² Ala. Code § 23-1-80. Most counties maintain road departments and usually employ a sizeable number of people in this activity, but the more substantial projects are often beyond their capabilities and are performed under contract. As a matter of practice, there is considerable variation among the counties in the manner in which the local highway function is administered. Where the "district" method is used, members of the county commission usually receive pro rata shares of available road funds, maintain their own road crews and equipment, and plan, supervise, and control the road activities carried on in their districts.

2. UNIT SYSTEM

Most counties employ a centralized system of highway administration commonly known as the "unit" system. Where the unit system is utilized, the functions of planning, purchasing, construction, and maintenance, with respect to the county road system, are in varying degrees administered on the basis of the county as a whole, or unit. Under this system, the commission determines the road policy, sets priorities, and exercises its authority through the county engineer. The counties that have adopted the unit system usually have done so by local legislation.

Some counties have adopted a hybrid of the unit system known as a "modified unit system," under which a portion of the road and bridge work within the county is performed on a unit basis (usually the maintenance of paved roads and bridges) while other portions (usually unpaved roads) are maintained under the district system.³ These modified systems are typically established by commission resolution and amended over time as conditions warrant.

²See "Disbursement of County Funds" in Chapter IV for a discussion of the statutory provisions regulating the letting of contracts for road projects.

³O.H. "Buddy" Sharpless, "Districts v. Units: Either System Can Work Well," The County Commissioner, Jan.-Feb. 1990.

B. COUNTY ENGINEERS

In 1939, the Legislature authorized the county governing bodies to employ a full-time professional engineer to supervise the administration of the highway function. Legislation enacted in 1971 continues this authority and provides that each county commission may employ a full-time engineer and fix the engineer's compensation. *See Ala. Code* §§ 11-6-1 through 11-6-6. No person is eligible for appointment to the office of county engineer, or chief engineer of the division of public roads, unless that person is a registered professional engineer and has had at least three years experience in the maintenance and construction of highways and bridges. No consulting engineer or consulting firm may act in the capacity of county engineer. The county may enter into a contract of employment with the engineer for a period of time not to exceed five years.

Subject to the approval and supervision of the county commission, the county engineer may (1) employ, supervise, and direct the employees necessary to maintain and construct the county public roads and bridges; (2) perform such engineering and surveying as may be required to prepare and maintain necessary maps, plans, and records; (3) maintain the accounting records necessary to reflect the cost of the county highway system; and (4) perform such other duties as may be required in connection with the operation of the county highway system. *Ala. Code* § 11-6-3.

When any county has established the office of county engineer, or chief engineer of the division of public roads, the State Director of Transportation may make a grant to the county of an amount equal to 70 % of the annual salary of the engineer, to be applied toward the payment of the engineer's salary. The grant is limited, however, in that it may not exceed 70 percent of the salary schedule for the state's Professional Civil Engineer II classification in any one year. Unless otherwise stipulated by contract entered upon the records of the county commission, the State Director of Transportation may discontinue payment of the grant after thirty

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days' notice in writing to the county commission and to the engineer. Ala. Code § 11-6-4.

Since 1975 county commissions have been authorized to employ engineer interns to assist the county engineer in the performance of the local highway function. As in the case of the county engineer, the Department of Transportation participates in the salary of the engineer interns, subject to certain conditions: (1) the amount contributed by the state to the trainee's salary may not include retirement contributions, Social Security, unemployment compensation, or other such benefits, and (2) the state contribution may not exceed 50 % of the annual salary schedule of the Department of Transportation established for the graduate civil engineer classification or, in the case of an assistant to the county engineer who has served at least one year as an engineer intern and has qualified as a registered engineer in the state, 50 % of the annual salary schedule of the Department of Transportation under the graduate registered engineer classification. Ala. Code §§ 11-6-20 through 11-6-25. A county engineer certification program is administered in connection with the Association of County Engineers of Alabama and the Association of County Commissions of Alabama under the supervision of the Alabama Local Government Training Institute. The certification program is for training in the public works function and not professional engineer (P.E.) certification.

C. HIGHWAY FUNDS

1. BACKGROUND

At the turn of the century, Alabama counties were solely responsible for the construction, repair, and maintenance of public roads and bridges. The Constitution of 1901 continued the local system of highway administration. It was not until the adoption of Amendment 1 to the Constitution in 1908 that the state was permitted to engage in road construction and maintenance work. In 1939, the Legislature created the Alabama Department of Transportation and established the office of Highway Director.

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The Highway Director, appointed by the Governor, was the chief executive and head of the State Highway Department. In 1993, the Legislature changed the name of the State Highway Department to the Department of Transportation and changed the name of its head to the Director of Transportation. Ala. Code §§ 23-1-20 and 23-1-21.

2. EARMARKING OF PARTICULAR REVENUES

The funds with which Alabama counties finance the highway function are obtained from a number of sources. The Constitution of Alabama authorizes a maximum county property tax of 2 ½ mills for roads, bridges and public buildings. Ala. Const. § 215. Subject to approval at a referendum and to its constitutional debt limit, a county may issue bonds to provide for the construction and improvement of highways and bridges. In addition, the Legislature has enacted a number of local laws authorizing specific counties to levy gasoline taxes. Aside from these revenue sources, however, few methods are available to the counties to raise funds locally for highway purposes. Consequently, the counties have come to depend to an increasing extent upon the state for funds with which to finance the highway function.

3. MOTOR VEHICLE REGISTRATION RECEIPTS

The counties have long been granted a portion of the receipts derived from state motor vehicle registration and license fees. Local shares of such receipts are distributed among the counties and cities of the state on the basis of motor vehicle registrations. Distribution of receipts from motor vehicle licenses and registration is set forth in Ala. Code §§ 40-12-269 and 40-12-270. After distributions are made pursuant (a)(1) and (2), the residue (called net proceeds) is distributed pursuant to Ala. Code § 40-12-270. Seventy-two percent of the net proceeds from this source is distributed to the state, and 21 % to the municipality in which the owner of the vehicle resides or to the county if the owner resides outside an incorporated city or town. Seven percent

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of the available proceeds is distributed among the counties in proportion to the number of motor vehicles registered in each county. However, 10 % of this latter allocation is apportioned on a population basis among the municipalities in the county. All funds received by local governments from state motor vehicle registration and license fees may be used only for the construction, improvement, and maintenance of public highways or streets, including the administrative expenses involved and the retirement of securities issued to finance the cost of such work. Ala. Code §§ 40-12-269 and 40-12-270 (e)(2).

A secondary road committee was charged with developing and publishing criteria for the designation of high density roads and bridges and eligible recreational access roads. In addition, the committee was required to develop and publish minimum design standards for the construction, reconstruction, surfacing, resurfacing, restoration, and rehabilitation of the high density roads and bridges and the recreational access roads. The law mandates that printed copies of the criteria and standards be distributed to the chairperson of each county commission. Ala. Code § 40-12-270(e)(2).

Using these criteria and standards, the State Director of Transportation must approve of a county commission's plans for the use of license and registration proceeds that are submitted to the state treasurer (an amount equaling 5% of all of the moneys so collected). Funds distributed to the counties under this act are to be maintained separate from the county's other funds. *See Ala. Code* §§ 40-12-269 and 40-12-270.

**4. DRIVER'S LICENSES AND VEHICLE
REGISTRATION REINSTATEMENT**

Counties also receive the \$1.50 fee retained by the probate judge (minus \$0.60 paid to the probate judge if he or she is paid on a fee basis) receiving the application and fee for a driver's license and for the issuance of a temporary instruction permit. Funds received by the county are deposited in the public highway and

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traffic fund of the county. Ala. Code § 32-6-5. A resident's initial driver's license or identification card must come from an office of the Department of Public Safety. Renewals still will occur at the county licensing office or probate office, and issuing fees still will be paid to those offices. Ala. Code § 32-6-1 *et seq.*

A 2010 amendment to the Alabama Mandatory Liability Insurance Act Ala. Code § 32-7A-1 *et seq.* provided that violators' vehicle reinstatement fees may be paid either to the Department of Revenue or the county licensing office. Counties shall keep 10% of any fee paid to a county licensing official and retain 50% of this amount in a special fund to pay for technology connected to vehicle registration or titling, and 50% of this amount goes into the county general fund. Licensing officials also must deposit 15% of the net proceeds received by the department into the Alabama Peace Officers' Annuity and Benefit Fund. Ala. Code § 32-7A-12.

5. GASOLINE TAX

Alabama statutory law has a number of provisions for funding state road and bridge projects through taxation and imposition of fees. The counties receive a portion of some of these revenues. For a good discussion of the different "gas taxes" and proper uses of the revenue, *see AG's Opinion # 2001-078*.

Effective Oct. 1, 2012, the collection point for the statewide gasoline and diesel fuel tax will shift from the retail point to the terminal rack. Ala. Code § 40-17-326. This change, supported by the Association of County Commissions of Alabama, will result in taxes being collected before the fuel tankers can deliver fuel to stations in Alabama. The new act also repeals the existing statutes that govern the distribution and expenditure of the tax proceeds, but simply enacts the same code sections elsewhere in Alabama law. The explanation below on the expenditure of the tax proceeds will continue to apply after Oct. 1, 2012.

a. Gasoline Excise Taxes

Ala. Code § 40-17-325(a) imposes an excise tax on motor fuel as follows: \$.16 per gallon on gasoline, which is comprised of a \$.07 excise tax, a supplemental \$.05 excise tax, and an additional \$.04 excise tax; \$.19 per gallon on diesel fuel, comprised of a \$.13 excise tax and an additional \$.06 excise tax; \$.0925 on aviation gasoline and \$.035 on aviation jet fuel when the aviation fuel is sold to a licensed aviation fuel purchaser. When not sold to a licensed aviation fuel purchaser, aviation gasoline is taxed as gasoline and aviation jet fuel is taxed as diesel fuel. Distribution and use of the proceeds is determined by the new Ala. Code §§ 40-17-359 through 40-17-361. *See generally*, Ala. Code §§ 40-17-321, et. seq.

55% of the \$.07 excise tax is allocated to the counties and municipalities pursuant to Ala. Code § 40-17-359(d). Distribution to a county of its allocation of the \$.05 supplemental excise tax is determined by Ala. Code § 40-17-359(f) and constitutes 55% of two-fifths of the supplemental net tax proceeds. The county receives 55% of the \$.04 additional excise tax pursuant to Ala. Code § 40-17-359(o). Distribution of the tax proceeds on aviation fuels is addressed in Ala. Code § 40-17-360. Distribution of diesel fuel proceeds is addressed in Ala. Code § 40-17-361.

b. Lubricating Oil Excise Tax

Ala. Code § 40-17-220 imposes a \$.04 excise tax on lubricating oil. The county and municipality allocation of this tax is 55% of the net tax proceeds as set forth pursuant to Ala. Code § 40-17-223. *See generally*, Ala. Code § 40-17-220 through 40-17-225.

c. Petroleum Inspection Fees

Ala. Code § 8-17-87 imposes an inspection fee on petroleum products sold, offered for sale, stored, or used in the state, to be paid to the Commissioner of Agriculture and Industries.

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The inspection fee for gasoline is 2¢ per gallon. All fees are set out in Ala. Code § 8-17-87. The distribution of these proceeds is addressed in Ala. Code § 8-17-91. An amount equal to 5% or no less than \$175,000 of the proceeds received each month, whichever is greater, is paid to the agricultural fund. Of the balance of those proceeds, 13.87% is distributed equally among each of the 67 counties. \$407,981 monthly is allocated to the State Department of Transportation. 2.76% of the balance of proceeds are allocated to incorporated municipalities, using population ratios as set out in the Ala. Code § 8-17-91.

d. Motor Vehicle License Taxes and Registration Fees

Ala. Code § 40-12-240 *et seq.* provides for license taxes and registration fees for motor vehicles. Ala. Code § 40-12-270 sets out the distribution of the net proceeds, a portion of which are apportioned and allocated to counties. As in the case of the above-referenced tax revenues, the Code specifies how these tax proceeds can be used by counties. *See Ala. Code § 40-12-270.* However, the uses vary somewhat depending on the particular source of the tax revenues. Note that Ala. Code § 40-12-250 provides that state and local governments, which used to pay the actual costs of producing a tag for government vehicles, now pay no more than the fee charged for standard passenger vehicles, which results in a small decrease in what was previously paid for government tags.

e. Miscellaneous State Revenue Sources

i. Driver's License Fees

Ala. Code § 32-6-5 provides that the probate judge shall retain \$1.50 of all fees collected for driver's licenses. If the probate judge is compensated by fees, he or she shall keep two-fifths of the \$1.50 and the balance shall be paid over to the county. Otherwise, the county retains the entire \$1.50. All fees paid to the county from driver's licenses shall be paid into the

"public highway and traffic fund of the county". The statute does not mandate specific uses for these funds.

ii. National Forest Receipts

Ala. Code § 9-13-2 provides that any moneys the state receives from the federal government from receipts from national forests within the state shall be distributed among the several counties proportional to the area of national forests located therein. These programs have faced Congressional opposition in the last several years and have been decreased substantially. Any such funds received by a county shall be distributed as follows: the county shall pay 50% of the proceeds to the county board of education and shall expend the other 50% "for the benefit of the public roads of the county". The county commission and county school board cannot enter an agreement for all proceeds to go to the county commission. *See AG's Opinion # 2001-061.*

D. FEDERAL SOURCES

Congress passed the Intermodal Surface and Transportation Efficiency Act (ISTEA).[102 P.L. 240 (1991)]. This act provided for federal funds to be distributed to states for use in improving roads and bridges. The Alabama Department of Transportation distributes a portion of these funds to counties. Prior to that time, each county was allocated approximately \$85,000 for use on road projects and \$100,000 for use on bridges. The counties had to encumber the road funds through contracts within one year from the time they became available and the counties had to get specific permission from the state before constructing any *new* bridges. The amount for road projects was increased to \$160,000 and the amount for bridges was increased to \$178,000. Later, an additional \$5 million became available for distribution to counties at the discretion of the State Director of Transportation. The State Director of Transportation divided the \$5 million equally among the counties and abolished the distinction between road and bridge funds. In that year, each county received \$412,626.86 for road and bridge projects, the only requirement being that 15% of the

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funds be used for “off-system” bridge projects. In 1995 and 1996, the allocations remained the same. Counties currently receive a total of \$500,000 per year in federal funds for use on road and bridge projects. In recent years the allocation has been increased slightly to compensate counties for the administrative charges associated with processing the construction plans. The funds must be matched with \$125,000 in local monies and be expended according to federal guidelines.

The Alabama Federal Aid Highway Finance Authority Act authorizes the incorporation of the Finance Director, the Director of Transportation, the Attorney General, the State Treasurer, and the Executive Secretary to the Governor for the purpose of anticipating and providing for the federal share of the cost of constructing federal aid projects on the state highway system. Ala. Code §§ 23-1-300 *et seq.* The authority may issue bonds not exceeding \$212 million. These bonds are tax-exempt. All such federal-aid funds received by the state each year are required to be paid into a sinking fund in an amount sufficient to pay the principal and interest on obligations issued by the authority. The authority may authorize the State Department of Transportation to expend directly any portion of obligations issued under the act for constructing, reconstructing or relocating federal-aid projects on the state highway system, if such action is necessary to comply with federal legislation.

In 1998, Public Law 105-178, known as the Transportation Equity Act for the 21st Century (TEA 21), went into effect. TEA 21 regulated programs concerning highways, highway safety, transit, and other surface transportation programs until FY 2003. TEA 21 was later amended by the TEA 21 Restoration Act, and the resulting regulation is commonly referred to as TEA-21.⁴

There are several important features of TEA-21. The TEA-21 assures a guaranteed level of federal funding of surface

⁴More information may be obtained from the Department of Transportation’s website: <http://www.fta.dot.gov>.

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transportation programs, including highway construction and maintenance, through FY 2004 to be allocated from the Highway Account of the Highway Trust Fund (HTF).⁵ TEA-21 also extends the Disadvantaged Business Enterprise (DBE) program with a flexible 10% goal for the participation of disadvantaged businesses, including those owned by women and minorities in highway and transit contracting. New safety programs aimed at increasing the use of seat belts and promoting the enactment and enforcement of a 0.08 % blood alcohol for drunk driving are included in TEA-21. Continuation of flexible use of funds under the ISTEA is included in TEA-21, along with additional programs such as Border Infrastructure, Transportation Infrastructure Finance and Innovation, and Access to Jobs that target areas of special interest and concern. TEA-21 also provides funds for research and innovation to improve the performance and efficiency of transportation programs.

With the passage of Amendment 1 in 2000, the state was authorized to issue a \$350 million bond issue to be used for the replacement and repair of county bridges and roads. The bonds are being repaid with federal funds, which will require the counties to follow federal regulations and procedures. The state must match 20% to secure these federal funds and without the passage of the amendment, each county would have been required to provide the 20% to secure these funds. However, the state provided the matching funds with the proceeds of the bond issue by dividing the proceeds among the counties using a formula devised by the Association of County Commissions of Alabama and adopted by the Legislature's Joint Transportation Committee.

The bond issue focused on bridges that are closed to school bus traffic and on road needs in individual counties. This bond issue did not replace existing allocation of funding under TEA-21.

⁵The amount guaranteed under TEA-21 for surface transportation is estimated to be \$198 billion. The full authorization for the highway (including highway safety) and transit programs in TEA-21 totals almost \$218 billion.

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The distribution of the federal funds to each county was in an amount that is the largest of the following:

An amount equal to the estimated cost of replacing 40% of the county's bridges that are structurally deficient, or

An amount equal to the county's share of \$125 million divided according to the existing gasoline tax formula, or

An amount of \$2.6 million, plus the required 20% match.

Each county was required to utilize its funding first on replacement of structurally deficient bridges. Each county was given a total of five years from the date of receipt of notification of funding to submit completed plan assemblies to the Department of Transportation to receive its funding.

In 2012, Governor Robert Bentley announced a new initiative, ATRIP-the Alabama Transportation Rehabilitation and Improvement Program, focusing on the replacement of county and city bridges and the resurfacing of county and city roads. The first round of projects announced, constitute 105 road and bridge improvement projects representing \$138.5 million in funding. Sixty-one of Alabama's 67 counties had at least one project approved on the first phase of funding. Funded with federal highway dollars, the program offers counties the ability to submit projects to be evaluated by a committee of seven persons. The first projects in the program were let to contract in September 2012.

As announced by Governor Bentley, the program is expected to total more than \$800 million to \$1 billion over the next three years. Application deadlines, evaluation criteria and project administration have been established by the Alabama Department of Transportation. Counties are required to provide a 20% match for the funding. However, at the time of this writing, work is underway to provide some Alabama counties with assistance in providing the matching funds.

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CHAPTER IV

FINANCIAL ADMINISTRATION

A. REVENUE SOURCES

County revenues in Alabama accrue from several sources, including both local and intergovernmental sources of income. Taxes furnish the bulk of the revenues raised locally, with such other income as fines, fees, penalties, costs, and assessments contributing the remainder. Although declining in relative importance among all sources of county revenue, the general property tax remains the most productive of county taxes.¹ Because of its primary importance as a producer of county tax revenue, the property tax will be discussed at some length in this chapter.

1. THE GENERAL PROPERTY TAX

a. Assessed Valuations and Rates of Taxation

All taxable property in the state is divided into four classes for ad valorem tax purposes and for state tax purposes is assessed at the following ratios of assessed value to either fair and reasonable market value or the current use value. Ala. Code § 40-8-1.

Class I: All property belonging to a utility that is used in the business of that utility is Class I. Property in Class I is assessed for taxation by the State Department of Revenue and is defined in Ala. Code § 40-21-1 *et seq.* This classification excludes certain railroad property defined 104 P.L. 88.

¹The Alabama Revenue System: Report of the Revenue Survey Committee, An Interim Committee of the 1945 Legislature (Montgomery, 1945), p. 34; Thomas I. Dickson, Jr., A Summary of County Finance Trends in Alabama, 1950-1975, Office of Public Service and Research, Auburn University, 1977, pp. 38-39.

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The assessment ratio for property in Class I is 30% of fair market value.

Class II: All property not otherwise classified is Class II. Generally this includes business, industrial, personal, and undeveloped real property.

The assessment ratio for property in Class II is 20% of fair market value.

Class III: All agricultural, forest and residential property, and historic buildings and sites is Class III. The assessment ratio in this class is 10%.

Class IV: All private passenger automobiles and motor trucks of the type commonly known as "pick-ups" or "pick-up trucks" owned and operated by an individual for personal or private use and not for hire, rent, or compensation are Class IV. Consequently, lease purchase vehicles, hired vehicles (e.g., cabs), motorcycles, trailers or semi-trailers, and self-propelled campers or house cars are excluded. As long as the vehicle is individually owned and operated, even though used in the owner's business, but not for hire, compensation or rent, it is Class IV.

The assessment ratio for property in Class IV is 15% of fair market value.

Under certain conditions, a county may increase or decrease the assessment ratio applicable to any class of taxable property. Whether such a variance will be allowed is dependent upon the total assessed value of all property classified in any one class of taxable property located in the county, municipality or other taxing authority. *See Ala. Code* § 40-8-4.

Alabama uses a millage rate expressed as a percentage to calculate ad valorem taxes. Simply put, a mill is one-tenth of a cent. The rate of taxation for state purposes is sixty-five one-hundredths of 1% per annum on the assessed value of taxable

property. Ala. Code § 40-8-2. This means that for every \$100 in assessed value, the state receives a tax of 65 cents annually. Converted to mills, this is a 6.5 mill tax. Expressed in decimals, the state tax rate is equal to the figure .0065.

Multiplying the assessed value of taxable property by the tax rate expressed as a percentage (or in decimals) produces the amount of state ad valorem taxes due. However, this computation does not yield the total of all ad valorem taxes due, because the counties and cities also levy ad valorem taxes. The state ad valorem tax is relatively small compared to the local taxes, which vary from county to county.²

b. General Exemptions

The Legislature has attempted some definition of the property tax base by enumerating particular objects of taxation. Ala. Code § 40-11-1. The property tax is a general tax, however, in that it applies to all property not specifically exempted. Various types of property have been exempted from the tax by legislative action.

Amendment 373 of Section 217 of the 1901 Alabama Constitution provides:

The following property shall be exempt from all ad valorem taxation: the real and personal property of the state, counties and municipalities and property devoted exclusively to religious, educational or charitable purposes, household and kitchen furniture, all farm tractors, all farming implements when used exclusively in connection with agricultural property and all stocks of goods, wares and merchandise.

²*See also* Handbook for Alabama Tax Administrators: Tax Assessors, Tax Collectors, License Commissioners, and Revenue Commissioners, 7th Ed., Alabama Law Institute, 2010.

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Legislative exemptions from ad valorem taxes are found generally in Ala. Code § 40-9-1. Further exemptions extend to instruments or instrumentalities of the United States as laid down in the early case of *McCulloch v. Maryland*, 17 U.S. (4 Wheat) 316 (1819).

Generally, Ala. Code § 40-9-1(1) includes the following kinds of property among the numerous exemptions from ad valorem taxation in Alabama:

(1) All bonds of the United States and this state and all county and municipal bonds issued by counties and municipalities in this state, all property, real and personal, of the United States and this state and of county and municipal corporations in this state; all cemeteries, all property, real and personal, used exclusively for religious worship, for schools or for purposes purely charitable; provided, that property, real or personal, owned by any educational, religious or charitable institution, society or corporation let for rent or hire or for use for business purposes shall not be exempt from taxation, notwithstanding that the income from such property shall be used exclusively for education, religious or charitable purposes; all mortgages, together with the notes, debts and credits secured thereby on real and personal property situated in this state, which mortgages have been filed for record and the privilege tax paid thereon; all security agreements and security interests under the Uniform Commercial Code, together with the notes, debts and credits secured thereby; all money on deposit in any bank or banking institution and all other solvent credits; all warrants issued by county boards of education and city boards of education for the purpose of erecting, repairing, furnishing school buildings or for other school purposes.

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Hospitals receive an exemption for real and personal property to the extent of \$75,000 if 15% of the business of the hospital is for charitable purposes. The same exemption is available for a corporation which owns or operates a hospital to the extent of \$75,000 worth of its capital stock. Ala. Code § 40-9-1(2) and (3).

Other miscellaneous exemptions found in Ala. Code § 40-9-1 include:

- property owned by the American Legion, V.F.W., D.A.V. Elks, F.O.P., Eagles and Moose;
- property owned by literary or scientific institutions; libraries of ministers;
- property of deaf mutes, and mentally ill people to the extent of \$3,000 and property of blind people to the extent of \$12,000;
- family portraits;
- cotton, livestock, or agricultural products grown in the state and kept by the producer thereof;
- cotton stored in licensed warehouses for less than twelve months, regardless of where grown;
- farming supplies and machinery, livestock;
- county fairs, university football stadiums;
- coke, pig iron;
- National Guard property;
- poultry;

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- property of incompetent veterans up to \$3,000;
- various items of personalty;
- air and water pollution reduction or elimination equipment;
- tobacco stored in hogsheads;
- farm tractors and implements;
- stocks of goods, wares, and merchandise, described in Ala. Code § 40-11-1(b)(4);
- aircraft, parts, and equipment of air carriers with hubs within the state;
- HUD property; and
- shrimping vessels.

c. Homestead Exemption

The most familiar exemption is the homestead exemption, which is described in Ala. Code § 40-9-19. Its historical basis is Section 205 of the Alabama Constitution of 1901. Section 205 provided an exemption of \$2,000 for a homestead not exceeding eighty acres in size.

Historically, both the value and the area of land allowed for the homestead exemption have been changed by the state Legislature. The most recent step in the history of the homestead exemption is Ala. Act 2012-313, which rewrote Ala. Code § 40-9-19, which describes homestead for purposes of the allowed exemption from ad valorem taxes:

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Ala. Code § 40-9-19. Homesteads.

“(a) Homesteads, as defined by the Constitution and laws of Alabama, are hereby exempted from all state ad valorem taxes. In no case shall the exemption herein made apply to more than one person, head of the family, nor shall the said exemption exceed \$4,000 in assessed value, nor 160 acres in area for any resident of this state who is not over 65 years of age. The homesteads of residents of this state who are over 65 years of age, retired due to permanent and total disability, regardless of age, or blind as defined in § 1-1-3, regardless of age or whether such person is retired, shall be exempt from all state ad valorem taxes.

The Department of Revenue shall by regulation establish the criteria and proof required for an exemption based upon a person being "permanently and totally disabled" and shall issue certificates of disability to any person who meets such criteria and provides the required proof. Any person who is drawing any pension or annuity from the armed services or a company or governmental agency as being permanently and totally disabled shall automatically be granted a certificate of permanent and total disability by the department.

(b) For tax years beginning on and after October 1, 1981, for residents of this state not over 65 years of age, homesteads, as defined by the Constitution and laws of Alabama, are hereby exempted from all ad valorem property taxes levied, except countywide and school district ad valorem taxes levied for school purposes, by any county of this state. In no case shall such exemption herein made apply to more than one person, head of the family, nor shall the said exemption exceed \$2,000

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in assessed value, nor 160 acres in area for any resident of this state who is not over 65 years of age except as provided in subsection (c).

(c) For tax years beginning on and after October 1, 1981, the governing body of any county, municipality or other local taxing authority may at any time grant by resolution or ordinance an exemption from any levy of ad valorem property taxes levied by such county, municipality or other local taxing authority on homesteads, as defined by the Constitution and laws of Alabama, of residents of this state not over 65 years of age. In no case shall such exemption herein allowed apply to more than one person, head of the family, nor shall said exemption, when added to any other homestead exemption applicable to the same ad valorem tax levy, exceed \$4,000 in assessed value, nor 160 acres in area. Any homestead exemption granted pursuant to this subsection (c) may be adjusted, rescinded, or reinstated at any time by resolution or ordinance of the governing body of the county, municipality or other local taxing authority granting such exemption. Any action authorized by this subsection to be taken by a taxing authority, or the governing body thereof, shall, other than in the case of a municipality, be taken by resolution of the governing body of the county in which such taxing authority is located acting on behalf of such taxing authority; provided however, any action authorized by this subsection to be taken by a taxing authority, or the governing body thereof, which action shall affect countywide or district ad valorem taxes levied solely for the support of county or city school districts, shall be taken by resolutions of the governing bodies and boards of the school systems that are recipients of the proceeds of the ad valorem tax so affected by such action. The provisions of

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this subsection (c) shall in no way annul or reduce exemptions provided under subsections (a), (b), and (d) of this section.

(d) For tax years beginning on and after October 1, 1981, homesteads, as defined in the Constitution of Alabama of 1901 and laws of Alabama, are hereby exempted from ad valorem property taxes levied by any county of this state, including such taxes levied for school districts, for residents of this state who are blind as defined in § 1-1-3, regardless of age or whether such person is retired. In no case shall such exemption exceed \$5,000 in assessed value, nor 160 acres in area. With respect to homesteads situated in more than one county, the exemption granted herein shall be prorated between the counties in which the homestead is situated in the proportion that the area of the homestead in each county bears to the total area of the homestead claimed for exemption.

(e) The grant of any homestead exemption provided under the provisions of this section shall not be allowed if such grant shall prevent the payment of any bonded indebtedness secured by any tax to which the homestead exemption would apply.

(f) Any homestead exemption under this section or § 40-9-21 shall not be affected during any period the homestead is being repaired after being damaged by a natural disaster such as a tornado or hurricane.”

In addition, Ala. Code § 40-9-21 states as follows:

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Ala. Code § 40-9-21.

“(a) In addition to the persons and property exempt from ad valorem taxation as prescribed in § 40-9-1, the principal residence and 160 acres adjacent thereto shall be exempt from ad valorem taxation for any resident of this state who is retired because he or she is permanently and totally disabled or who is 65 years of age or older, provided the net annual taxable income for the person claiming the exemption and that of his or her spouse is twelve thousand (\$12,000) or less, as shown on such person’s and spouse’s latest United States income tax return or some other appropriate evidence acceptable to the department. In the event that such person and spouse are not required to file a United States income tax return, then an affidavit indicating that the net taxable income of such person and spouse for the preceding taxable year was twelve thousand dollars (\$12,000) or less shall be sufficient proof. Proof of age shall be required for an exemption claimed by residents over the age of 65. Proof of total disability may be, but shall not be limited to, the written certification of such total disability by any two physicians licensed to practice in this state. Any person who is drawing any pension or annuity from the armed services or a company or governmental agency because he or she is permanently and totally disabled shall automatically be granted a certificate of permanent and total disability by the department. In order to qualify for an exemption under this section, such principal residence must be a single-family residence owned and occupied by a person qualifying under this section.

(b) the department shall by regulation establish the criteria and proof required for an

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exemption based upon a person being “permanently and totally disabled” and shall issue certificates of disability to any person that meets such criteria and provides the required proof. Any person who is drawing any pension or annuity from the armed services, a private company, or any governmental agency because he or she is permanently and totally disabled shall automatically be granted a certificate of permanent and total disability by the department.”

Pursuant to Ala. Code § 40-9-21.1, any person permanently and totally disabled who qualifies for homestead exemptions in Ala. Code §§ 40-9-19 and 40-9-21 is not required to annually claim such exemption, but may verify such condition via an affidavit to the tax assessor. Ala. Code § 40-9-21.1. The same is true for any person qualifying for a homestead exemption under the income limitations of Ala. Code § 40-9-21. Ala. Code § 40-9-21.1.

d. Allocation of Revenues

Alabama's Constitution allows a maximum county tax rate of 24.1 mills, allocated as follows:

- five mills for general purposes Ala. Const. § 215;
- two and one-half mills for roads, bridges, and public highways. Ala. Const. § 215. Under Amendment 208, certain excess amounts of the funds derived from this tax may be used for general county purposes to be determined by the county governing body;
- one mill for public schools, Ala. Const. 269, as amended by Amendment No. 111;
- three mills for public schools. Ala. Const. Amend.

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3. In addition, school districts have the authority to levy additional tax provided the tax is approved by a vote of the district. Ala. Const. Amend. 382;

- ten mills of property tax;
- ten mills of property tax to be levied in each school district with these proceeds going entirely to general school purposes [2006 Amendment];
- three mills for public schools, to be levied by the school districts. Ala. Const. Amend. 3;
- one-tenth of one mill for hospital purposes, to be levied by all counties except Mobile and Montgomery. Ala. Const. Amend. 59;
- four mills for hospital and public health purposes, to be levied by all counties except Jefferson, Mobile, and Montgomery. Ala. Const. Amend. 72;
- five mills for educational purposes. Ala. Const. Amend. 202; and
- one-half of one mill for library purposes. Ala. Const. Amend. 269.

Constitutional amendments applicable to specific local subdivisions allow numerous counties to levy property taxes at rates in excess of the generally prescribed 24.1 mills. County commissions are required to levy county property taxes for both general and special purposes at their regular meetings in February of each year. Ala. Code § 40-7-42. The commission may not vary the rate of taxation when making the annual levy, but must simply renew the tax each year in order for the local tax official to be empowered to collect the tax payments. Although county property tax rates vary considerably, the counties commonly levy a county tax rate including at least 14 ½ mills: the five-mill tax for general

purposes; the two-and-one-half-mill tax for county roads, bridges, and public buildings; the one-mill and the three-mill county-wide school taxes; and the three-mill school district tax. A great number of counties levy in excess of this 14 ½ mill rate, usually adding the hospital, library, or a special school tax. Except for special taxes, the commissioners normally levy the maximum rates allowed under the Constitution. *See Ala. Code* § 40-7-42.

e. The Lid Bill

Under the constitutional provision authorizing a classification system for taxing property, there is a maximum increase of between 1% and 2% of the fair and reasonable market value of the taxable property in any one ad valorem tax year. Ala. Const. Amend. 325.

Although ad valorem taxes are a very small part of total state revenues, they are a major source of revenue for counties, cities and their local instrumentalities. Legislation such as the Lid Bill is vitally important to local governments. The legislation currently affecting assessment rates is found in Ala. Code § 40-8-1 *et seq.*

Ala. Code § 40-8-1, as previously explained, outlines the classes of property and the assessment rates of each. Ala. Code § 40-8-2 sets the state taxation rate at 6.5 mills. Ala. Code § 40-8-3 gives the allocation scheme for the state property taxes collected.

Ala. Code § 40-8-4 contains the essence of the "Lid Bill" legislation. Its title suggests its importance for county and municipal officials: "Assessment ratios for purposes of local taxation." Ala. Code § 40-8-4 allows county, municipal, or local taxing authorities to increase or decrease the ratio of assessed value to the fair and reasonable market value of any class of taxable property, provided certain criteria are met. To put such an increase or decrease into effect, the local governing body must take three initial steps:

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- 1) the proposal must be presented at a public hearing on the issue;
- 2) it must be approved by an act of the legislature; and
- 3) a special election must be held by the taxing authority in which a majority of the voters approve the proposal.

The statute contains the qualifying criteria that must be met by the taxing authority that proposes to change the assessment ratio. To decrease the assessment ratio with respect to any class of taxable property, the total assessed value of all property in that class must be more than 50% of the total assessed valuation of all taxable property in the county, municipality, or local taxing authority. The assessment ratio for purposes of local taxation on that class of property may be decreased up to a maximum of 5% from the class rate set by the state. Ala. Code § 40-8-4(b)(1).

To increase the local assessment rates for a particular class of property, the total assessed value of that property in the taxing authority must constitute less than 20% of the assessed valuation of all its taxable property. The assessment ratio of that class may then be increased up to 5% greater than the rate set by the state. Ala. Code § 40-8-4(b)(2).

Finally, if the total assessed value of all properties in any one class of the taxing authority equals more than 75% of the assessed valuation of all taxable property in the authority, the assessment ratio applying to that class may be decreased up to 5% from the state's ratio. Then the assessment ratios of the remaining classes of taxable property in the authority may be increased to a 5% maximum. Ala. Code § 40-8-4(b)(3).

The date for applying any of the above criteria for purposes of determining the percentage of a particular class of property in the authority is October 1. Ala. Code § 40-8-4(b).

f. Current Use Law

The case of *Cooper v. Board of Equalization*³ defined the 1978 current use law very narrowly:

There is a recognizable kinship of law between the benefits afforded to farm owners as to a current use valuation and the advantages granted to taxpayers by tax exemption statutes The appraisal of property for assessment purposes at its fair and reasonable market value is the rule, ... and the current use valuation is the exception. The current use valuation statutes are, therefore, construed against the taxpayer and in favor of the taxing authority.

Ala. Code § 40-7-25.1, the 1982 current use bill, is more detailed and expansive than the previous law.

The 1982 act amended Ala. Code §§ 40-7-25.1, 40-7-15 and 40-7-25. The act provided for the appraisal, for purposes of ad valorem taxation, of certain taxable property at its current use value and not at its fair and reasonable market value. Such appraisal will be made at the request of the property owner. In *Eagerton v. Williams*, 433 So. 2d 436 (Ala. 1983), the Supreme Court held that county tax assessors may not take into account the prospective value which property might have if it were put to some other possible use.

The definition of Class III property, to which the current use statute applies, has been expanded and includes the following classifications of real property: agricultural, forest, residential, and historic buildings and sites. Ala. Code § 40-8-1.

If the property is agricultural or forest property, the tax assessor pursuant to Ala. Code § 40-7-25.1 will determine within

³392 So. 2d 244, 246 (Ala. Civ. App. 1980).

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which of ten generally defined soil, groups the property falls. Depending upon the soil group, the property will receive an agricultural or forest productivity rating ranging from Good to Nonproductive. This rating will be incorporated into a complex formula, increasing or decreasing the result by a certain percentage based on the productivity rating. Whether the property is classified as agricultural, forest, residential property, or historic building and site will determine how the formula will be calculated. An example of the procedure in calculating the agricultural property formula is set forth below.

The current use standard is determined by taking the top three crops in terms of acreage harvested for the most recent calendar year for which statistics are available and multiplying total crop production by the seasonal average price received for these crops in each of the ten most recent calendar years since 1973 for which statistics are available. The result is divided by the acreage harvested for each crop for each year giving the gross return per year per crop. From the gross return figures thus obtained, costs of production for each crop are subtracted, giving the net return to land per year per crop. This total is weighted to give effect to the average number of acres of each crop being harvested in the state in the ten most recent calendar years since 1973, such total yielding income flow per acre. The income flow per acre is capitalized by dividing it by the average of the annual effective interest rates on new federal land bank loans. Such rate is reduced by 4.5% for determinations made for the first tax year to which the provisions of the act apply. As noted below, the resulting figure is then multiplied by a percentage assigned to the productivity rating. For example, the formula is increased by 20% with respect to property having a productivity rating of Good. The final result is the current use standard value per acre of property in agricultural use. The tax assessor then records the standard value or values per acre, multiplied by the number of acres of agricultural property of each productivity, and assesses the property at that value for ad valorem tax purposes utilizing the assessment ratio or ratios then applicable to Class III property.

Owners who are not satisfied with the resulting assessment may, within thirty days after they receive notice, submit to the assessor a statement outlining any errors. The assessor will attach an opinion and turn the statements and recommendations over to the board of equalization which will file and hear the objections.⁴ The tax assessor or revenue commissioner is required to notify new property owners in writing of the procedures to pursue current use valuation. Ala. Code § 40-7-25.2.

Litigation in this area has established that the determination that property is eligible for current use evaluation for ad valorem taxation during one tax year does not preclude its reclassification to fair market value evaluation in subsequent tax years.⁵ Subsequent appeals concerning the *Delaney* case have further established that the taxing authorities are entitled to a jury trial on the issue⁶ and that the issue of whether the property had changed from one of the exempted uses for current use valuation to commercial use for fair market valuation was an issue of fact to be determined by a jury.⁷

g. The Assessment Process

In Alabama, county officials administer the general property tax. Property is assessed for tax purposes by the county tax assessor. Property is assessed annually as of October 1, which is the beginning of the assessment period. Ala. Code § 40-7-2. From October 1 to January 1, the county tax assessor accepts returns of property as made by the taxpayers. The 1983 Taxpayer Convenience Act (Acts 1983, 3d Special Session, No. 83-814), Ala. Code § 40-7-2.1, allows the tax assessor to assess property and accept applications for homestead exemption from January 1 through September 30 of each taxable year. The assessment

⁴For a case interpreting the current case law, see *State v. Delaney's, Inc.*, 834 So. 2d 105 (Ala. 2000).

⁵*Delaney's*, 834 So. 2d 105.

⁶*Roberts v. State*, 682 So. 2d 44 (Ala. 1996).

⁷*Delaney's*, 834 So. 2d 105.

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becomes effective on the following October 1. The act amends Ala. Code § 40-7-2.1 and, in effect, allows for year-round assessment of property.

From January 1 to the succeeding third Monday in January, the tax assessor serves notice of assessment upon all taxpayers who fail to return a list of their taxable property by January 1. Ala. Code § 40-7-19. After the third Monday in January, the tax assessor assesses property not theretofore listed. Ala. Code § 40-7-22. By the last Monday in February, the tax assessor must have completed the work of listing and valuing property. The assessor then must notify the State Department of Revenue that the assessment and equalization work has been completed and tax returns are ready for review and inspection by that department. Ala. Code § 40-7-27. The tax assessor must deliver assessment lists to the board of equalization no later than the second Monday in March. Ala. Code § 40-7-27. Abstracts of assessments must be made out in triplicate and submitted to the State Department of Finance, the State Department of Revenue, and the county tax collector by the second Monday in August. Ala. Code § 40-7-35. A final book showing the amount of taxes assessed against and due from each taxpayer should be delivered to the tax collector by September 15 Ala. Code § 40-7-36. *See Handbook for Alabama Tax Administrators: Tax Assessors, Tax Collectors, License Commissioners and Revenue Commissioners, 7th Ed., for more information.*

h. The Collection Process

As noted, the county tax collector is responsible for the collection of property taxes. Although the tax assessor, tax collector, and board of equalization have direct responsibility for the local administration of the property tax, the county commission and its chairperson also have important duties relative to property tax administration. Aside from actually levying the taxes, the county commission performs such functions as, for example, crediting the tax collector with amounts of taxes deemed uncollectible, considering claims for a refund of purchase money

when lands are erroneously sold for taxes, and considering claims for refund of taxes paid by mistake or error. *See Ala. Code* §§ 40-5-23 through 40-5-30, 40-10-100 through 40-10-105, and 40-10-160 through 40-10-166.

2. OTHER LOCAL TAX SOURCES

a. Sales and Use Taxes

In order to tax its residents, counties must be delegated powers of taxation. They may levy only such taxes as are expressly authorized by the state Constitution or the Legislature. The general property tax has been the traditional mainstay of the county revenue system, but as that tax has failed to provide sufficient revenues to meet an increasing demand for services, the county has been authorized to turn to other, non-property taxes as sources of revenue. Such non-property taxes as those on gasoline, beer, and tobacco, and county sales and use taxes are steadily increasing in importance as producers of county income. Usually, such taxes are either authorized or imposed by local legislation, applicable to particular counties. In 1969, however, the Legislature enacted general legislation authorizing the counties to levy additional license taxes for public school purposes. Sales and use taxes may be levied under this authorization, but such taxes must parallel, except for the tax rate, the corresponding taxes levied by the state. By resolution of the county commission, the State Department of Revenue can be requested to collect county sales and use taxes levied under the 1969 enactment. *Ala. Code* §§ 40-12-4 through 40-12-7. In 1996, a law was passed to allow counties to administer and collect, or contract for the collection of, any local sales and use tax. *Ala. Code* § 11-3-11.2.

In 2004, the Legislature forbade any future local tobacco taxes in an act that raised the state tobacco tax by twenty-one cents per pack of cigarettes. The act did not nullify any pre-existing local tobacco taxes but it required all counties taxing cigarettes to use stamps in the process. The act provided for the state to repay counties' costs in administrative costs, cost of stamps, and the

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discount provided to the distributors and it did not impose any stamp requirements for any other kind of local tobacco tax. Ala. Code §§ 40-25-2 and 40-25-23. State lawmakers also recently established an annual back-to-school state sales tax holiday during the first weekend of August. County governments are not required to participate in the holiday, but they may opt into it by approving a resolution and informing the Revenue Department of the changed rate no later than thirty days before the holiday. State law specifically bars counties from establishing a local sales tax holiday at any other time of year. Ala. Code §§ 40-23-210 through 213.

Congress thus far has not approved the collection of sales taxes on Internet transactions, but the Alabama Legislature provided in 2001 that if Congress ever does, counties would distribute the revenues from any such local sales tax pursuant to local tax authority. Ala. Code § 40-23-150.

During the 2012 session, the Alabama Legislature set in motion a centralized sales tax payment process, allowing businesses the opportunity to file and remit sales taxes to the state of Alabama and all cities and counties through a single internet-based filing system. The system will be known as the Optional Network Election for Single Point Online Transactions or “ONE SPOT” and shall be available for use by taxpayers for tax periods after September 30, 2013. A committee of city, county and business representatives was established to work with the Alabama Department of Revenue in the operation of this new system. Ala. Act 2012-279.

Counties retain the ability to collect and enforce their sales taxes on the local level. This system is designed to offer, at tax payers’ option, the ability to file and pay sales taxes through one internet portal. Counties will continue to enforce sales taxes on the local level and will give the Alabama Department of Revenue specific guidelines on the transfer of the business payments to the county’s approval account. Ala. Act 2012-279.

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To provide funds for county public schools, the county commission is authorized to levy and collect franchise, excise, and privilege taxes and may in its discretion submit to a vote by the county's qualified voters. Ala. Code § 40-12-4. All of the proceeds collected pursuant to this section must be used exclusively for public school purposes, including specifically and without limitation capital improvements and the payment of debt service on obligations. Ala. Code § 40-12-4. All athletic events held at public and private schools, as well as all athletic events sponsored by the Alabama High School Athletic Association, are exempt from the state sales tax. Because state law requires that the local tax be collected under the same rules as the state tax, counties will miss out on local sales tax revenues from these events. However, the revenue will not be lost entirely; state law requires schools to continue to collect the tax amount and retain it for school purposes. Ala. Code § 40-23-2 (2).

Some counties by local act have levied such local taxes as an occupational tax, lodging tax, and excise tax. Ala. Code § 40-12-31, added in 2001, reinforces the idea that the Legislature is empowered to impose occupational taxes on architects, attorneys, engineers, etc., which are to be paid to the county, by local act.

b. License Taxes

A number of county privilege license taxes are levied on business activity in Alabama. People engaging in particular lines of business must obtain not only a state privilege license, but a county license as well. The licensing function is administered almost universally by the probate judge, who, as licensing officer under the general law, issues both state and county licenses and remits the proceeds to the proper treasury. County license fees are levied at one-half the amount prescribed for the state license, except when a different county license fee is prescribed by law, or when no county license is required for the conduct of a particular activity. Ala. Code §§ 40-12-2, 40-12-40 through 40-12-179. The manner of distributing the proceeds of state and county licenses provides that whenever both state and county licenses were levied,

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the officer collecting these licenses would continue to collect both licenses, and, of the total amount collected for both licenses, distribute one-half to the state and one-half to the county. Ala. Code § 40-12-3. The law altered the arrangement formerly existing, under which the county received only the proceeds of the county license fee. Under the later arrangement, therefore, the county receives one-half of the total amount of the state and county license fees, when both are levied, rather than one-third of the total amount, as was formerly the case. Ala. Code § 40-12-3. Legislation in 2006 entitles counties to charge applicants for approval of a new landfill up to 20% of the application fee required by the Alabama Department of Environmental Management and to charge up to 50% of the fee to entities that reapply within eighteen months after an initial rejection. Ala. Code § 22-27-48.

c. Local Acts

The legislature by local act may authorize local taxes such as lodging taxes and court fees. These are limited by Alabama Constitution of 1901, Article IV, §§104 and 105.

3. INTERGOVERNMENTAL SOURCES

County income from intergovernmental sources refers to the various forms of financial assistance rendered by the state and federal governments. Intergovernmental fiscal aid takes two basic forms: shared revenues and grants-in-aid of specific activities. From the beginning, Alabama county governments have been responsible for the local administration of state functions. Because of the state's concern with the effective performance of these functions, the Legislature has enacted a number of measures providing fiscal assistance for counties. Such state assistance has long been a revenue source of major importance to Alabama county government. Now, federal aid also has assumed an impressive role as a county revenue source.

a. State Sources

i. Gas Tax

The state levies taxes on gasoline and other motor fuels at rates of sixteen cents a gallon but shares these proceeds with the local governments. Beginning Oct. 1, 2012 this excise tax on gasoline will be collected at the terminal point and distributed to counties in the same manner as the taxes collected prior to Oct. 1, 2012. Ala Code § 40-17-326. A two cent per gallon inspection fee is shared by counties, municipalities and the state. Ala. Code §§ 8-17-87 and 8-17-91. As noted in Chapter III, a percentage of the proceeds of the state gasoline tax is apportioned among the counties and the municipalities of the state for highway purposes. *See Ala. Code* §§ 40-17-321 through 40-17-325; 40-17-359 through 40-17-363; 40-17-221 and 40-17-223 through 40-17-225.

ii. Motor Vehicle License Tax

Counties also share in the proceeds of state license taxes levied on the operation of motor vehicles. As noted in Chapter III, local shares of motor vehicle license tax receipts are distributed among the cities and counties of the state on the basis of motor vehicle registration Ala. Code §§ 40-12-269 and 40-12-270. In counties where the probate judge is compensated by fees, three-fifths of the \$1.50 retained by the probate judge for receiving the application and fee for a driver's license, and for the issuance of a temporary instruction permit, must be paid into the public highway and traffic fund of the county. If the probate judge is compensated with a regular salary, he remits the entire \$1.50 to the county. Local laws can provide for alternative allocations of the fee. Ala. Code § 32-6-5.

County-owned trucks must carry tags but are not taxed. Ala. Code § 40-12-250 *et seq.* State tags are designated with an "S," county tags with the word "county," and municipal tags with the word "municipal."

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Note, that Ala. Code § 40-12-250 provides that state and local governments, which used to pay the actual costs of producing a tag for government vehicles, now pay no more than the fee charged for standard passenger vehicles, which results in a small decrease in what was previously paid for government tags.

iii. Corporate Privilege Tax

An annual privilege tax is levied on every corporation, limited liability entity, and disregarded entity doing business in Alabama, or organized, incorporated, qualified, or registered under the laws of Alabama. Ala. Code § 40-14A-22. The privilege tax is assessed upon the net worth of the entity operating or organized under Alabama law. Ala. Code § 40-14A-2. *See also*, Ala. Code § 40-14A-23. The privilege tax is assessed at the following rate.

If the taxable income is

<u>at least</u>	<u>but less than</u>	<u>the tax rate shall be</u>
	\$1	\$0.25 per \$1,000
\$1	\$200,000	\$1.00 per \$1,000
\$200,000	\$500,000	\$1.25 per \$1,000
\$500,000	\$2,500,000	\$1.50 per \$1,000
\$2,500,000		\$1.75 per \$1,000

The privilege tax on certain entities shall not be less than \$100. The privilege tax levied shall not exceed \$15,250 for the taxable year beginning January 1, 2000. For each taxable year thereafter, the maximum tax shall not exceed \$15,000, except for financial institutions, which shall not exceed \$3 million annually, real estate investment trusts, which shall not exceed \$500,000 annually, or for any electing family limited liability entity, which shall not exceed \$500. Ala. Code § 40-14A-22.

For the fiscal year beginning October 1, 1999, and each fiscal year thereafter, each county shall receive an amount equal to the amount it received from the shares tax assessed under previous

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measures (after deductions are made to cover appropriations made for administration costs, one-fourth of the remaining proceeds is returned to the county where collected). Beginning with the fiscal year ending September 30, 2000, and for each fiscal year thereafter, the county's distribution shall be increased by three-quarters of 1% of the amount received by each entity in the preceding year. Ala. Code § 40-14A-26(b).

For the fiscal year beginning October 1, 1999, and each fiscal year thereafter, each county shall receive an amount that would have been distributed to each county prior to the repayments required by settlement of litigation regarding audits conducted by the Alabama Department of Revenue from the franchise tax distributed under the former Ala. Code § 40-14-43 during the fiscal year ending September 30, 1999. Beginning with the fiscal year ending September 30, 2000, and for each fiscal year thereafter, the county's distribution shall be increased by three-quarters of 1% of the amount received by each entity in the preceding year. Ala. Code § 40-14A-26(a).

iv. Privilege Tax

The state levies privilege license taxes on deeds, bills of sale, mortgages, deeds of trust, conditional sales contracts, and other instruments which convey an interest in property or which secure the payment of any debt. The law requires such taxes to be paid to the probate judge before any deed or mortgage may be admitted to record. The probate judge remits two-thirds of such taxes collected to the state treasury. The remaining one-third is paid into the county treasury. Provision is made for an apportionment of the county share if the property is located in more than one county. Ala. Code § 40-22-1. A state excise tax of 6.5% is levied on the net income of financial institutions as of January 1, 2001, after the ratification of Amendment 662. Ala. Code § 40-14A-21 of the Alabama Privilege Tax Act of 1999⁸.

⁸This section is authorized by Amendment 662, which empowers the Legislature to levy and provide for the collection of

v. Sales Tax

The state sales tax is now levied at a rate of 4% on the gross sales, or gross receipts, of retail business activities. Ala. Code § 40-23-26. The counties receive a portion of sales tax receipts based upon a statutory formula, which, under present conditions, results in the distribution of a small grant of \$378,000 annually among the counties. One-half of the grant is distributed equally among the counties, and the remaining one-half is distributed on the basis of population. These funds must be used, at the discretion of the county commissioners, exclusively for the support of full-time health service in cooperation with the State Board of Health or the federal government and for extension work in cooperation with the Alabama Agriculture Extension Service or the federal government within the several counties.⁹ Ala. Code § 40-23-35.

The state sales tax was originally enacted in 1936 to provide funds for the replacement of state property tax revenues lost through homestead exemptions. In 2002, the Legislature mandated that counties would receive at least 25% of any future state or national required rate of sales and use tax imposed specifically on Internet transactions. Ala. Code § 40-23-170 *et seq.* The next year, state lawmakers ordered Alabama merchants that have websites to collect state and local sales taxes on all catalog and online sales delivered into the state. Ala. Code § 40-23-190. In 2006, the Legislature required cigarette sellers to tell purchasers about the obligation to pay sales tax on cigarettes

taxes for state purposes on taxable income of corporations, from whatever source derived, and additionally allows for a 6.5% rate on the taxable income of corporations.

⁹The bulk of the proceeds of the sales tax, along with the net proceeds of the use tax, is paid into the Alabama Education Trust Fund, and provides the largest part of the funds with which the state makes equalization grants in support of the public schools. Ala. Code § 4-23-2(4).

ordered via fax, Internet, or telephone and established criminal penalties for violations. The law requires in-state vendors to collect and remit the tax, while out-of-state vendors must inform buyers that the buyers are responsible for paying the tax. However, the act's language does not address how to proceed with the collection or payment of taxes in such transactions for purchase by state entities. Ala. Code § 13A-12-3.6 *et seq.* In 2006, a law was passed that requires out-of-state companies to voluntarily submit to having a nexus in the state so the state department or agency can collect the appropriate sales use or lease tax. Ala. Code § 41-4-116.

vi. Alcoholic Beverage Tax

At one time, all counties in Alabama participated in the proceeds derived from the operations of the Alabama Alcoholic Beverage Control Board. However, dry counties now also are eligible to share in the distribution of alcohol taxes if they have at least one community development district within their boundaries. Ala. Code § 35-8B-1(e). ABC Board funds are distributed among the eligible counties on the basis of a statutory formula. Most of the funds may be used for general county purposes. Ala. Code § 28-3-74 as amended. In addition, Ala. Code § 28-3-184 imposes a flat privilege or excise tax of \$0.05 for each twelve ounces of beer sold in the state. One-half cent of each \$0.05 collected by the state is distributed equally among the wet counties. The Legislature in 2001 removed Alabama wine manufacturer's exemption from excise tax on table wine. All table wine now is taxed at forty-five cents per liter, with seven cents of that amount distributed to the county or municipality in which the wine is bought. Ala. Code § 28-7-16.

Counties also are authorized to levy license fees on the sale of alcoholic beverages by hotels, clubs, and restaurants. Such licenses are administered by the Alcoholic Beverage Control Board, but all fees collected therefrom are paid, quarterly, to the

counties in which the licenses were levied.¹⁰ *See Ala. Code* §§ 28-3A-1 et seq, the Alabama Beverage Licensing Code. Finally, Ala. Code §§ 28-3-280 through 28-3-286 provide for a 2% tax on alcohol sold by ABC stores; 25% of the proceeds is distributed among the counties in which the tax is collected, to be used exclusively for law enforcement purposes unless a local act provides otherwise. The municipalities in which the tax is collected receive 75% of the proceeds. The counties and municipalities are responsible for the State Department of Revenue's costs in handling the tax.

vii. TVA Distribution

A portion of the payments made by the Tennessee Valley Authority in lieu of state ad valorem taxes is transferred to the counties in the state served by the TVA. The amount of funds transferred to local governments in the area served by the TVA has ranged in recent decades from 20% of the total “in-lieu” payments to a maximum of 78% beginning in fiscal year 2005-06. Five percent of the total in-lieu payments made by the TVA is apportioned among the counties that prohibit the sale of alcoholic beverages (the so-called “dry” counties) and are not served by the TVA. Distribution of the TVA in-lieu payment is made among the counties in which TVA property is located on the basis of a formula set out in the act. However, any county receiving a portion of the TVA in-lieu payments must share its allocation with any municipality within the county that is served in whole or in part by the TVA. A dry county in the TVA area must receive an allocation of TVA in-lieu funds that is at least equal to the amount of ABC Board funds that the county would have received, had it been eligible, during the previous fiscal year. Ala. Code §§ 40-28-

¹⁰A portion of the ABC Board profits was formerly divided among the counties for welfare purposes. Since 1951, however, these funds have been paid to the State Department of Human Resources. One percent of the first \$2 million in net profits, or \$20,000, is apportioned among the eligible counties for health work. Ala. Code § 28-3-74.

1 through 40-28-5. Ala. Code § 40-28-5 provides for a reallocation of certain liquor tax revenues which began in September 30, 2010. This change is intended to eliminate any TVA distributions to counties not served by the TVA. Because the payments are being transferred as the liquor tax revenues increase, their reallocation is expected to take several years.

viii. Severance Tax

The state has levied a privilege license tax on persons engaged in the business of producing or severing oil, gas or other hydrocarbons from or beneath the soil or the waters of the State of Alabama. For most oil and gas produced in the state, the amount of tax is measured at the rate of 8% of the gross value of oil or gas at the point of production. However, amendments to the statute set forth certain exceptions to this rate according to county population, well size, and the date the well came into production. *See Ala. Code § 40-20-1 et seq.*

Ala. Code § 40-20-8 designates the allocation and distribution of the net taxes collected. From offshore production, 90% of the taxes is allocated to the state general fund, and the remaining 10% goes to the counties in which the oil or gas was produced, to be used at the discretion of the county governing body. Twenty-five percent of the taxes levied and collected from all other production is allocated to the state general fund, and 75% is shared by the state and the counties. Of that 75%, 66 2/3% is distributed among the state General Fund, the counties in which the oil and gas were produced, and the municipalities within those counties. The following schedule sets the distribution of the 66 2/3%:

- 25% to the county, to be expended pursuant to Ala. Code § 40-20-8(c)(1);
- 10% of the amount collected on oil and gas within a municipality's corporate limits or police jurisdiction to the municipal government. Ala. Code § 40-20-

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8(c)(2);

- of the amount remaining, 50% of the first \$150,000 to the state, 42.5% to the county, and 7.5% to the municipalities in the county on a population basis. Ala. Code § 40-20-8(c)(3); and
- of all additional sums collected, 84% to the state, 14% to the county, and 2% to the municipalities in the county on a population basis. Ala. Code § 40-20-8(c)(4).

Effective October 1, 2004, Alabama instituted a severance tax of ten cents per ton on all natural minerals, with the revenues going to the counties from which the minerals were extracted. Ala. Code § 40-13-54. Except in Franklin County, at least 75% of the revenues must be used for road repair, construction, or maintenance, unless otherwise provided by local act. Ala. Code § 40-13-58.

ix. State Grants-in-Aid

In addition to the shares of state collections mentioned above, Alabama counties also receive income from state grants-in-aid. The principal areas in which grants are made to counties in Alabama concern education, libraries, and public health. Education was one of the earliest county functions to receive state aid, and grants-in-aid of education constitute at present the largest part of the amounts so expended by the state. Formerly, subsidies to county libraries were primarily in the form of books, but since 1973, the Legislature has appropriated a monetary subsidy for county libraries. These funds are apportioned among the counties on the basis of a formula consisting of population and area served and are conditioned upon the existence of a plan providing for county-wide public library development. The county is the local unit for the administration of the public health function in Alabama, and both federal and state funds are distributed among the counties in aid of county health work. A 1957 act, for

example, provides state grants to counties for indigent hospital services. Ala. Code §§ 22-21-210 through 22-21-227; *see also* Ala. Const. Amend.125. As we have seen, the State Highway Department makes grants to counties for partial payment of the salaries of county engineers and engineer trainees. Ala. Code §§ 11-6-4 and 11-6-23.

x. Civil Defense and Industrial Development Grants

State law authorizes matching state grants, as funds are appropriated for the purpose, for limited aspects of local civil defense and emergency preparedness programs. (Ala. Code §§ 31-9-2 and 31-9-24, Act No. 99-590, removed the limitations on the amount that can be sold or issued in any two-year period). Another law authorizes the State Industrial Development Authority to issue additional bonds and, from these proceeds, to make grants to local industrial development boards, subject to certain limitations, for making surveys incidental to industrial development and to grade and drain industrial sites and the means of access thereto. Ala. Code § 41-10-27.

xi. Wallace-Cater Act

Also important to counties is the Wallace-Cater legislation, developed over a number of years to provide for limited financing of private industrial projects through the issuance of revenue bonds by the state, municipality, or county. The county legislation appears in Ala. Code §§ 11-20-1 to 11-20-13. Under these sections, counties are authorized to issue revenue bonds without the previous necessity of operating through a separate public corporation. Before bonds for the development of any project (land and other facilities) may be issued, the project must be leased or sold to a private concern. Ala. Code § 11-20-4. However, before a lease on a project is secured, the State Industrial Development Authority may prepare the project site at state cost in order to make it more attractive to potential private lessees. Ala. Code §§ 41-10-26 and 41-10-27. These bonds are exempt from

Alabama taxes. Ala. Code § 11-20-12.

xii. Mineral Documentary Tax

The proceeds of a mineral documentary tax also are shared with the counties. The tax is paid to the probate judge admitting the legal document to record, and county general fund, or the judge if he is on a fee basis, receives 5% as a cost of collection thereof. Thereafter the judge remits 35% of the remainder to the county general fund; 35% to the county public school fund; and 30% to the State General Fund. Ala. Code §§ 40-20-30 through 40-20-37. Moreover, the entire proceeds of a severance tax on the production of coal or lignite is distributed among the local governments. Fifty percent of the tax collected on the severance of coal or lignite within the police jurisdiction or the corporate limits of a municipality is paid to the municipality. The entire amount of the tax paid on the severance of coal or lignite in non-municipal territory within a county is payable to the county concerned, along with the remaining 50% of the tax paid on coal produced within the corporate limits or police jurisdiction of a municipality located in the county. Having provided for the payment of the taxes collected to the local governments, the legislation prohibits any further local taxes on the severance of coal.¹¹ Ala. Code §§ 40-13-30 through 40-13-36.

xiii. Court Fees
Ala. Code §§ 12-19-20 through 12-19-11

Ala. Code §§ 12-19-20 through 12-19-211 govern the amount and manner of distribution of docket fees which shall be assessed and collected in district and circuit courts throughout the state. The docket fees are uniform throughout the state, except in those counties where additional court costs are authorized by Constitutional Amendment and local act.

¹¹Ala. Code § 40-13-9 contains a similar prohibition against local taxes on the excise or privilege of severing coal.

Additional information on filing fees may be found at www.alacourt.gov or by requesting additional information from the Director of the Administrative Office of Courts.

xiv. The Alabama Trust Fund

Another increasingly important source of revenue for county governments is the income allotted to the counties from the income received from the Alabama Trust Fund.¹² The Alabama Trust Fund was created and authorized by Amendment 450, which allotted the proceeds of all oil and gas capital payments received by the state pursuant to the sealed bids awarded on August 4, 1984, and funds earned pursuant to Ala. Code § 9-17-68 to be deposited into a trust fund for the state. Amendment 450, Ala. Code § 11-29-1 *et seq.*, and a 2000 amendment to the Constitution by Act 99-393 provide that 10% of the income of the trust fund be distributed to the counties once the trust income reaches \$60 million annually. That amount of money is to be deposited into the County Government Capital Improvement Fund to be used by county governments in the restoration and improvement of the county's infrastructure. Ala. Code § 11-29-1 *et seq.*

45.45% of the trust income is to be distributed equally to the sixty-seven counties throughout the state. The remaining 54.55% of the trust income is to be distributed among the counties based upon the population of each county compared to the population of the entire state, based upon the preceding decennial census. The funds may be used only for the following purposes:

- public buildings and the payment of rent on public buildings and the purchasing of lands for public buildings. Ala. Code § 11-29-6(a);

¹²The distribution to the counties is now located in the Alabama Constitution in two different places. Amendment 1 and Amendment 3 were ratified in the elections of 2000. (Now ratified as Amendments 666 and 668.)

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- the purchase of land for sanitary landfills, the purchase of solid waste handling and disposal equipment or facilities. Ala. Code § 11-29-6(b);
- the purchase of land, rights of way, equipment and supplies, and facilities for the treatment of public water and waste water. Ala. Code § 11-29-6(c);
- up to 50% of the funds may be used for the construction, maintenance, reconstruction, restoration, or resurfacing of county roads and bridges. Ala. Code § 11-29-6(d);
- the payment of valid obligations evidenced by bonds, notes, warrants, or other instruments, that were issued for the purposes enumerated previously. Ala. Code § 11-29-6(e);
- the operation and maintenance of the county health department. Ala. Code § 11-29-6(f); and
- the operation and maintenance of the county pensions and security department. Ala. Code § 11-29-6(g).

b. Federal Sources

i. General Categorical Assistance

Counties are eligible for various forms of federal categorical assistance, or grants-in-aid of specific projects or programs, which use the Farmers Home Administration to assist in the construction of rural water and waste disposal systems. Other examples of federal grants-in-aid available to county governments include those for airport and hospital construction, health services development, personnel management, Federal Aid Highway

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Funds, and those for the acquisition of recreational facilities.¹³ Federal funds accruing from receipts from national forests within the state are distributed among the counties in proportion to the area of national forests located in each county. Ala. Code § 9-13-2. Upon receipt of any such funds, the county commission must pay 50% of the receipts to the board of education of the county and must expend the remaining 50% of the receipts for the benefit of the county public roads. Ala. Code § 9-13-2. Although a relatively small amount of total county revenue in Alabama is derived from this source, receipts from national forests constitute a significant portion of the total receipts of several counties. Under federal legislation, counties receive payments in lieu of taxes as partial compensation for lost property tax revenues on certain federally owned lands exempt from state ad valorem taxation.¹⁴ In the past, the most important federal grants-in-aid to Alabama counties were those made by the Federal Law Enforcement Assistance Administration (through the Alabama Law Enforcement Planning Agency) for the improvement of the local law enforcement function, and public service employment grants made under the Comprehensive Training and Employment Act of 1973 (CETA). This was replaced by the 1983 Job Training Partnership Act, which has as its objective to prepare people for employment. This act was in turn replaced by the Workforce Investment Act, 29 U.S.C. Section 2801 *et. seq.*, which serves a similar purpose.

Federal assistance for local programs and projects has become increasingly important to Alabama's counties as a source of supplementary revenue. Recognizing this fact, counties usually employ a person, or designate some official such as the commission clerk, to become familiar with the federal funding assistance available to county governments and to coordinate and

¹³See "Federal Assistance and Grant Programs Available to Counties," Mr. County Commissioner, Vol. 20, No. 1 (January-February, 1976), p. 6, for example.

¹⁴Association of County Commissions of Alabama, Mr. County Commissioner, Vol. 21, No. 4 (July-August 1977), p. 6.

develop the county's grants procurement program. Use of these officials, who are commonly known as "intergovernmental coordinators," can be expected to enhance appreciably the capability of Alabama's counties to utilize federal assistance as an auxiliary funding source of specific projects and programs. Most medium to small counties use area block grant coordinators.

ii. Federal Block Grants

With the passage of the Housing and Community Development Act, of 1974, 42 U.S.C. Section 5301 *et. seq.*, Congress established the Community Development Block Grant Program to aid in the creation of viable communities able to provide residents with decent housing, a suitable living environment, and expanded economic opportunities. Through the block grant approach, the State of Alabama has the flexibility to distribute its allocation of these funds according to its own priorities as long as each funded activity meets at least one of the following mandates:

1. it must principally benefit low and moderate income people;
2. it must aid in the prevention or elimination of slums and blight; or
3. it must address needs having a particular urgency because they pose an immediate threat to the health and safety of the community.

In Alabama, the primary source of federal community development funds to non-metropolitan communities is the State Small Cities Community Development Block Grant Program, which is administered by the Alabama Department of Economic and Community Affairs. In fiscal year 1996 alone, this program distributed almost \$34.8 million in federal grants and loans to various counties, towns, and cities throughout the state that were used to finance needed projects such as water and sewer system construction, street and drainage improvements, housing rehabilitation, and the promotion of economic development

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opportunities. In 2011, 5.5 million dollars were distributed.

In administering the program, the State of Alabama has established certain policies to provide for an equitable distribution of these funds to non-metropolitan communities throughout the state. Separate funding categories for counties, large cities, small cities and towns, planning, economic development opportunities, and projects to address situations which pose imminent threats to public health and safety have been established to allow units of local government to compete with one another for the limited amount of grant assistance available through this program each year. Also, a rating system has been created to rank applications according to appropriateness and need, and only the most deserving projects out of the grant categories mentioned above are selected for funding.

Each year funding allocations for each grant category and an explanation of rating factors are included in the program's Final Statement, and an annual public hearing is held to receive public input and comments for suggested modifications. Additional information concerning the Community Development Block Grant Program in Alabama may be obtained by contacting CDBG Program Manager, Alabama Department of Economic and Community Affairs, 401 Adams Avenue, Montgomery, AL 36104. Their mailing address is P.O. Box 5690, Montgomery, AL 36103-5690.

B. ESTABLISHING THE COUNTY BUDGETS¹⁵

Ala. Code § 11-8-3 sets out the requirements and procedures for establishing the county general fund budget, which must be adopted no later than October 1 of each year. Ala. Code § 11-8-3. In order to adopt a budget by October 1, however, counties must begin work on the budget several months in advance.

Preparing the Budget: Submission of Financial Information to the County Commission

No later than 60 days prior to the meeting when the budget will be adopted, certain information must be provided to the county commission. Under Ala. Code § 11-8-3(d), the following information must be provided:

1. All county officials receiving public funds shall furnish a written estimate of revenues and expenditures for the next fiscal year;
2. All county officials and employees named by the county commission shall submit an itemized estimate of financial needs for the next fiscal year; and
3. Any official entitled to any ex officio fees must report the estimated amount to be received from such fees.

¹⁵The following information was provided by the County Government Education Institute.

The County Government Education Institute has developed a suggested budget schedule, which is available through the Association of County Commissioners. Additional information on the budgeting process is available through the County Government Education Institute.

County General Fund Budget Requirements

Ala. Code § 11-8-3(c) requires that the county's adopted budget, at a minimum, include reasonable expenditures for the operation of the offices of the judge of probate, tax officials, sheriff, county treasurer, the county jail, the county courthouse, and other offices as required by law. The appropriations made in the budget shall not exceed the estimated total revenue of the county for the budget year. Ala. Code § 11-8-3(b).

Ala. Code § 11-8-3(a) requires that the budget include the following:

1. An estimate of all anticipated revenue of the county, including unexpended balances as provided by Ala. Code § 11-8-6¹⁶;
2. An estimate of expenditures for county operations; and
3. Appropriations for expenditures.

Amendments to the Budget

The county commission may amend the budget during the fiscal year. Ala. Code § 11-8-3(g). In order to amend the budget, however, an affirmative vote of a majority of the members of the county commission is required. The budget may not be amended to authorize expenditures which will exceed anticipated revenue of the county except where specifically authorized by law. Ala. Code § 11-8-3(g). Pursuant to Ala. Code § 11-8-3(f), once the budget has been adopted, no obligation incurred by a county official or employee above the amount approved and appropriated by the county commission shall be an obligation of the county unless

¹⁶Ala. Code § 11-8-6 requires that unexpended balances from the previous fiscal year remain in the respective funds for the succeeding year, and shall constitute part of the income available for such fiscal year.

approved by a majority vote of the members of the county commission.

1. ISSUANCE OF WARRANTS

In the event that an emergency over which the commission has no control results in any appreciable obligation against the county over and above that which it had anticipated, and for which no moneys from the current year's income are available to pay, the commission may issue interest-bearing warrants in an amount sufficient to defray the emergency operation. The maturities of principal and interest of these emergency loans must be taken into consideration in the preparation of the budget for the year in which they mature. No such emergency loan may be made, however, unless the county commission investigates and determines that an emergency has actually arisen and records its findings in its minutes. Ala. Code § 11-8-15.

C. DISBURSEMENT OF COUNTY FUNDS

As noted, the care and custody of county funds are entrusted to a county treasurer or depository in lieu of treasurer. These funds are released upon the authorization of warrants signed by the proper county official, normally the chairperson of the county commission. Officers authorized to pay claims which have not first been approved by the county commission must issue warrants or checks in accordance with procedures established by the county commission. *See Ala. Code §§ 11-8-9 and 11-8-10.*

1. CLAIMS AND PREFERENCE OF CLAIMS

Counties in Alabama may appropriate funds only for such purposes as are required or authorized by law. They have no inherent authority to expend public funds. All claims against the county, except claims that are fixed and made certain by law, must be itemized by the claimant, or some other person having a knowledge of the facts, and presented to the county commission for audit and allowance by that body. If allowed by the

commission, the claims are registered and filed for future reference. Unless fixed by law, claims against counties normally are barred if not presented for allowance within 12 months after the time they accrue.¹⁷ Ala. Code §§ 11-12-4, 11-12-5, and 11-12-8.

The general laws of the state prescribe an order of preference in which claims against the county are payable. Ala. Code § 11-12-15. In former years when there were sometimes insufficient funds to meet all outstanding warrants, such an order of preference was necessary to provide funds for the support of some of the most essential functions of the county. Under the Financial Control Act of 1935, however, no warrant or order for the payment of money may be issued until funds are available for its payment upon presentation to the treasurer or depository.¹⁸ Ala. Code § 11-8-10. The county commission may, however, appropriate from the county's general or special funds money to reimburse contractors on public work contracts in payment of equitable or moral claims against the county. Ala. Code § 11-12-

¹⁷Reports of the Attorney General, Quarterly Report, Volume 14, January-March 1939, p. 123. *See Ala. Code* § 11-12-16 for provisions of law authorizing the county governing body to appropriate funds to reimburse persons who in good faith have performed services or advanced money or property for the use of the county in connection with lawful county purposes. This is a little-used provision of law designed to protect people who have performed services for the county in connection with lawful county purposes, but whose claims the county otherwise would have no authority to pay. *But see* *Tingle v. J.D. Pittman Tractor Co.*, 267 Ala. 29, 99 So. 2d 435 (Ala. 1957). *See also* *Merrill v. Blount County*, 272 Ala. 585, 133 So. 2d 212 (Ala. 1961), for an interpretation of Ala. Code §§ 11-12-4 and 11-12-5. In 1975, the Legislature amended § 11-12-5 to eliminate the requirement that claims had to be sworn to by the claimant.

¹⁸For an interpretation of the section, *see* *Taxpayers & the Citizens v. Lawrence County*, 273 Ala. 638, 143 So. 2d 813 (Ala. 1962).

16.

2. WARRANTS (Checks)

Warrants in payment of claims approved by the governing body usually are drawn on the county treasury by the probate judge or other chairperson of the county commission. County officers who are authorized to pay claims that are not required to be approved by the commission must present orders for the issuance of warrants to the chairperson of the county commission, or other officer authorized to issue warrants on the county treasury. Ala. Code § 11-8-9. The chairperson of the county commission (or other officer authorized to issue warrants on the county treasury) is required to audit all claims against the county, except claims that by law need not be approved by that body, to determine the factual and legal sufficiency of the claims presented for payment. The chairperson must refuse to sign or draw a warrant for the payment of any claim which may not be lawfully paid from the county funds. If the chairperson does draw a warrant upon the county treasurer or depository in payment of a claim not legally payable from county funds, the chairperson becomes personally liable, along with the other members of the county commission. Ala. Code §§ 11-12-10 through 11-12-12.¹⁹

3. UNEXPENDED FUNDS

Any unexpended balances remaining in the various funds in the county treasury at the end of the fiscal year are carried forward into the respective funds for the succeeding year. Such balances are treated as part of the income available for the next year and are managed, appropriated, and disbursed in the same manner as any

¹⁹A written opinion of the Attorney General, favorable to the payment, affords protection for these officers against the penalties prescribed for the unlawful expenditure of public funds. *See Ala. Code* §§ 11-12-12 and 36-15-19. The legislation is construed in *Tingle v. J.D. Pittman Tractor Co.*, 267 Ala. 29, 99 So. 2d 435 (Ala. 1957).

other income for that year. Ala. Code § 11-8-6.

4. PURCHASES AND THE COMPETITIVE BID LAW

The competitive bid law provides that all expenditures of funds made by county commissions (and other local governmental entities) for any of the following purchases or leases involving \$15,000 or more “shall be made under contractual agreement entered into by free and open competitive bidding, on sealed bids, to the lowest responsible bidder”: labor; services; work; purchase of materials, equipment, supplies, or other personal property; and lease of materials, equipment, supplies, or other personal property. Ala. Code § 41-16-50(a).

The Supreme Court has repeatedly held that the most important requirement of the competitive bid law is the good faith of the officials charged in executing the law. *See, e.g. White v. McDonald Ford Tractor Co.*, 287 Ala. 77; 248 So. 2d 121 (Ala. 1971). The attorney general frequently echoes this principle of law.

The competitive bid law does not apply to the sale or lease of real property. *See Cotton Bayou Association v. Department of Conservation*, 622 So. 2d 924 (Ala. 1993); *AG’s Opinion # 88-323*. The competitive bid law does not apply to public works contracts (i.e., contracts for the construction, renovation, or repair of roads, bridges, buildings, or other public structures). Those projects are governed by Title 39 of the Code and are discussed in detail in Section 5 of this Chapter.

a. Exemptions/Exclusions

Pursuant to Ala. Code § 41-16-51(a), competitive bids shall not be required for utility services, the rates for which are fixed by law, regulation, or ordinance. *See also Alabama-Tennessee Natural Gas Co. v. Southern Natural Gas et al.*, 694 So. 2d 1344 (Ala. 1997). In addition, the competitive bidding requirements shall not apply to the following;

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- (1) the purchase of insurance;
- (2) the purchase of ballots and supplies for conducting any primary, general, special, or municipal election;
- (3) Contracts for securing services of individuals possessing a high degree of professional skill where the personality of the individual plays a decisive part. Among those specifically named in the statute are attorneys, physicians, architects, engineers, teachers, superintendents of construction, artists, appraisers, consultants, CPAs and public accountants. If the professional services are incidental to the purchase of equipment, the purchase of equipment is subject to the bid law. *See AG's Opinion ## 95-303 and 84-262.* However, if the purchase of equipment is incidental to the professional services, it is exempt. *AG's Opinion # 96-046.* Security services are not professional services within this meaning. *See Layman's Security Co. v. Water Works and Sewer Board of City of Prichard, 547 So. 2d 533 (Ala. 1989).* Engineer consulting services are exempt, but there is no exemption for maintenance and construction services. *AG's Opinion # 95-096.* However, these services now generally fall under the public works law found in Ala. Code § 39-1-1 *et seq.* instead of the competitive bid law and if under \$50,000 would be exempt from competitive bidding; Consultants in the field of mapping or other related emergency telephone services are also exempt under this section. *AG's Opinion # 92-084;*
- (4) Contracts for employment in the regular civil services;

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- (5) Contracts for fiscal or financial advice or services. *AG's Opinion # 94-076*;
- (6) Purchase of products made or manufactured by the blind or visually handicapped under the direction of the Alabama Institute for Deaf and Blind;
- (7) Purchases of maps or photographs from any federal agency;
- (8) Purchases of manuscripts, books, maps, pamphlets, or periodicals;
- (9) The selection of paying agents and trustees for any security issued by a public body;
- (10) Existing contracts up for renewal for sanitation or solid waste collection, recycling, and disposal between municipalities or counties, or both, and those providing the service are also exempt;
- (11) Purchases of computer and word processing hardware when the hardware is the only type that is compatible with hardware already owned by the entity taking bids is exempt. *See, AG's Opinion ## 99-245; 99-139; and 91-282.* Custom computer software is exempt. The attorney general's office defines custom software as "software that will require substantial creative work by a professional/vendor to comply with unique specifications". *AG's Opinion ## 94-023 and 99-245*;
- (12) Professional service contracts for codification and publication of the laws and ordinances of municipalities and counties;
- (13) Contractual services and purchases of commodities

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for which there is only one vendor or supplier are exempt. See *Ericsson GE Mobile Communications, Inc. v. Motorola Communications & Electronics, Inc.*, 657 So. 2d 857 (Ala. 1995) and *General Electric Co. v. City of Mobile et al.*, 585 So. 2d 1311 (Ala. 1991); *AG's Opinion # 91-282*;

- (14) Purchases of dirt, sand, or gravel by a county governing body from in-county property owners in order to supply a county road or bridge project in which materials should be used;
- (15) And the purchases of services or products related to, or having an impact on, security plans or the security or safety of persons, structures, facilities, or infrastructures are exempt. Ala. Code § 41-16-51(a)(15);
- (16) Pursuant to Ala. Code § 41-16-51(a)(16), purchases made through U.S. Communities (NACO's cooperative bid alliance) provided the item has been bid through a process acceptable to the Examiners of Public Accounts and the item is not available from state bid list at a lower price, and the item is purchased from an Alabama vendor if one is available, it may be exempt. This exemption applies only to the purchase of goods. This exemption is not available for the purchase of goods for which a service or service contract is necessary to utilize the goods;
- (17) Purchases of goods or services, other than wireless communication services, whether voice or data, from vendors that have been awarded a current valid Government Services Administration Contract. Ala. Code § 41-16-51(a).

The competitive bid law also does not apply in the

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situations set forth in Ala. Code § 41-16-51(b), which includes the following: purchases of products the price which is already regulated by state law, and purchases for public hospitals and nursing homes operated by the governing board of instrumentalities of the state, counties and municipalities. *See Ala. Code* § 41-16-51(b), for a complete list of exempt purchases.

The Legislature enacted an exemption to the bid law in 2004 which allows counties to purchase services (not materials, equipment, etc.) without bidding, if the price does not exceed the price which the state has established through the competitive bid process. Ala. Code § 41-16-51.1. This will have very limited applications.

Ala. Code § 41-16-53 provides that in case of an emergency affecting public health, safety, or convenience, contracts may be let to the extent necessary to meet the emergency without public advertisement.²⁰ The emergency must be declared in writing by the awarding authority, and must set forth the nature of the danger involved in delaying the award (*see, AG's Opinion # 2000-75*) and the action and the reasons therefore shall immediately be made public by the awarding authority.

Although this issue is not specifically addressed in the statute, the attorney general has consistently held, in opinions dating back at least as far as the late 1960's, that the competitive bid law does not apply to contracts for goods or services between governmental entities of the state, including counties and municipalities. *See, e.g., AG's Opinion ## 96-271, 91-131 and # 2004-111.*

Ala. Code § 41-16-52 provides a limited exception to the provisions of the bid law for the repair and/or lease of certain

²⁰There is an identical Code section applicable to state contracts and bidding, Ala. Code § 41-16-23. There is also a similar provision for public works contracts found in Ala. Code § 39-2-2(e).

heavy-duty off-highway construction equipment with a gross vehicle rating of 25,000 pounds or greater.

i. Sole Source

The county may not specify the use of materials or systems by a sole source unless it can document to the satisfaction of the State of Alabama Building Commission that the “sole source” product is of an indispensable nature, that all other viable alternatives have been explored, and that only this product or service will fulfill the function; it has been recommended by the architect or engineer who also documents that there is no other product available, that it is of an indispensable nature, and why; and all information substantiating the use of the sole source specification is documented and in the project file. Ala. Code § 41-16-57(b).

For a good discussion of “sole source” *See* Ericsson GE Mobile Communications, Inc. v. Motorola Communications & Electronics, Inc., *supra*, and General Electric Co. v. City of Mobile et al., *supra*.

b. Advertising

All proposed purchases in excess of \$15,000 shall be advertised by posting notice on a bulletin board maintained outside the purchasing office and in any other manner and for any length of time as may be determined. Sealed bids or bids to be submitted by a reverse auction shall also be solicited by sending notice by mail or other electronic means to all persons, firms, or corporations who have filed a request in writing that they be listed for solicitations on bids for the particular items that are set forth in the request. Ala. Code § 41-16-54(a).

A county cannot limit the number of vendors to whom it will send a request for proposal. *AG’s Opinion # 2005-008*. The county may cancel the listing of anyone on the bidder’s list who fails to respond to any solicitation for bids after receipt of three

solicitations. Ala. Code § 41-16-54(a). Additionally, if a bidder participates in collusion as defined in Ala. Code § 41-16-55, he or she will be disqualified from submitting bids on future purchases. Bids may be requested (*but not received*) by telephone. *AG's Opinion # 83-199*.

c. Bidders Requirements

Ala. Code § 41-16-54(b) provides that all bids shall be sealed when received. Bids cannot be received or accepted by telephone. *AG's Opinion # 83-199*. A faxed bid does not meet the requirements of the statute because it is not sealed. *AG's Opinion # 91-016*. However, a written proposal on the outside of a sealed bid made prior to the opening can be considered part of the bid proposal. *AG's Opinion # 2005-160*.

Ala. Code § 41-16-50(c) may require a bid bond for a particular bid solicitation if the bonding requirement applies to all bidders, is included in the written bid specifications, and if bonding is available for the services, equipment, or materials. A bond for faithful performance of the contract may be required in an amount specified in the advertisement for bids. Ala. Code § 41-16-58. This is a separate bond from the bid bond required under Ala. Code § 41-16-50 (c).

d. Award of Contract

i. Lowest Responsible Bidder

Alabama Bid Law requires that the contract award shall be made to the lowest responsible bidder, determined by taking into consideration the qualities of the commodities proposed to be supplied, their conformity with specifications, the purposes for which required, the terms of delivery, transportation charges, and dates of delivery. Ala. Code § 41-16-57(a). For a good discussion of “lowest responsible bidder”, *see*, *Ericsson GE Mobile Communications, Inc. v. Motorola Communications & Electronics, Inc.*, *supra*; *Crest Construction Corp. v. Shelby County Board of*

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Education, 612 So. 2d 425 (Ala. 1992).

The Supreme Court has held that courts will not interfere with the discretion of the awarding authority in determining who was the lowest responsible bidder unless the decision was based upon misconception of the law, was the result of improper influence, was made in violation of the law, or was based upon ignorance through lack of inquiry. *TFT, Inc. v. Warning Systems, Inc.*, 751 So 2d 1238 (Ala. 1999).

The county shall give preference to commodities produced in Alabama or sold by Alabama companies provided there is no sacrifice or loss in price or quality. Ala. Code § 41-16-57(b).

e. Public Inspection

Ala. Code § 41-16-57(e) requires that each record regarding the award of the contract shall be open to inspection. The record shall indicate the successful bidder, and state the reasons for the award if not made to the lowest bidder.

f. Contract Requirements

Contracts for the purchase of personal property or contractual services shall not be for periods greater than three years. Ala. Code § 41-16-57(f). Lease purchase contracts may be for periods not greater than ten years. The Supreme Court has held that Ala. Code § 41-16-57(f) only applies to contracts which are competitively bid. *Alabama-Tennessee Natural Gas Co. v. Southern Natural Gas and City of Huntsville*, supra. *See also AG's Opinion ## 2005-192; 2001-049; and 89-173.* A public works contract is not subject to time limits. *AG's Opinion # 2002-072.*

Where there is no contract and the competitive bid process will not be used (as where construction services are donated), no bond is necessary. *AG's Opinion # 2000-003.*

i. Assignment of Contract

Ala. Code § 41-16-59 prohibits assignment of the contract by the successful bidder without the written consent of the awarding authority. Ala. Code § 41-16-59 also provides that a contract cannot be assigned to an unsuccessful bidder whose bid was rejected because he was not a responsible bidder.

ii. Change of Orders

The competitive bid law does not specifically provide for change orders, but they have consistently been allowed by the attorney general's office pursuant to guidelines it has articulated in interpreting the intent of the bid law. *AG's Opinion ## 2000-098 and 93-105.*

g. Prohibitions/Violations

The Bid Law prohibits any agreement or collusion among bidders or prospective bidders to bid at a fixed price or to refrain from bidding in restraint of freedom of competition. Ala. Code § 41-16-55. Any disclosure in advance of the terms of a bid submitted in response to an advertisement for bid shall render the proceedings void and require readvertisement and award. *See AG's Opinion # 94-112.* The law also prohibits dividing a purchase or contract into parts involving \$15,000 or less for the purpose of avoiding the competitive bid law. Ala. Code § 41-16-54(f), *see also AG's Opinion # 82-343.*

The attorney general's office has held that a county cannot purchase items which meet the competitive bid requirements from an auction. *AG's Opinion # 91-037.*

h. Contracts Violating Competitive Bid Law

Any contract entered into in violation of the competitive bid law is void. Ala. Code § 41-16-51(d). *See also, Ex parte Ballew, 771 So. 2d 1040 (Ala. 2000); Layman's Security Co. v.*

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Water Works and Sewer Board of City of Prichard, *supra*. An awarding authority cannot agree to “correct” any problems with the bid after the contract is entered into, and any attempt to correct is void. Board of School Commissioners of Mobile County v. Coastal Builders, 945 So 2d 1059 (Ala. Civ.2005).

Ala. Code § 41-16-51(d) also provides that anyone who violates the competitive bid law shall be guilty of a Class C felony, which is punishable by a sentence of one to ten years and/or up to a \$5,000 fine.

i. Governmental Leasing

Ala. Code § 41-16A-2 states a declaration by the Legislature of Alabama that it is in the public interest to have flexibility to finance the acquisition, installation, equipping, and/or improvement of certain property through the use of lease, lease-purchase, or installment-purchase financing. To this end, Chapter 16A of Title 41 of the Code of Alabama provides for “alternative financing” for purchases of eligible property by governmental entities in the state. Counties are included in the definition of “governmental entity.” Ala. Code § 41-16A-3(b).

5. PUBLIC WORKS CONTRACTS

Alabama’s Public Works Law, found in Title 39 of the Code of Alabama 1975, was substantially rewritten in 1997 (Act No. 97-225). The most significant change for counties is that the public works law now applies to county governmental entities.²¹ Many of the provisions in the public works law are similar or identical to the provisions of the competitive bid law. Therefore, many of the cases and attorney general’s opinions will apply to

²¹Ala. Code § 39-2-1(1) makes the public works law applicable to counties by defining an “awarding authority” as, “Any governmental board, commission, agency, body, authority, instrumentality, department, or subdivision of the state, its counties and municipalities....”

public works projects as well. However, the rules for public works projects, outlined below, are in many respects more restrictive and burdensome than those for purchases made under the competitive bid law.

The public works law applies to any public works project in excess of \$50,000 involving an expenditure of public funds. Ala. Code § 39-2-2. Ala. Code § 39-5-6 states that the provisions of the public works law are mandatory and shall be construed to require strict competitive bidding. However, *see AG's Opinion # 2004-018* for a good discussion of the "substantial compliance" principle. There is a two-prong test to determine whether the public works law applies: (1) is the work on public property (or property which will become public) and (2) is the work to be paid for, in whole or in part, by public funds. *See AG's Opinion # 2004-026.*

Ala. Code § 39-2-2 (a) provides that the county must advertise for sealed bids once each week for three consecutive weeks in a paper of general circulation in the county. For contracts in excess of \$500,000, the county must also advertise at least once in three newspapers of general circulation throughout state.

Ala. Code § 39-3-5, addresses the preference to resident contractors in letting public works contracts, and requires that a copy of that Code section be made a part of the advertised specifications of all projects affected by it.

a. Exemptions/Exclusions

1. Professional - Ala. Code § 39-2-2(d). Contracts with persons who shall only perform architectural, engineering, construction management, or project management services are exempt from the public works law. *See, AG's Opinion # 99-056.* However, Ala. Code § 41-16-70 *et seq.*, establishes specific procedures for the procurement of professional services for any contract with the state. *See, in particular, Ala. Code § 41-16-72.* This act does not apply

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to counties. Ala. Code § 41-16-78. *See, also, AG's Opinion # 2005-192.* However, it may affect any county contracts involving the Department of Transportation or other state agency.

2. Exempt Public Authorities - Ala. Code § 39-2-1(1). The public works law exempts from the definition of an awarding authority any entity exempted by statute from the competitive bid law.
 - Municipal public building authorities created pursuant to Ala. Code § 11-56-1 *et seq.* are exempt from the competitive bid law, and as such, from the public works law. *AG's Opinion ## 99-218 and 99-224.*²²
 - Industrial development boards are exempt from the competitive bid law, and as such, from the public works law. *AG's Opinion ## 99-051 and 82-394.*
 - An “exempt” entity must comply with the bid law when it is submitting a bid in response to an invitation for bid from a governmental entity subject to the competitive bid law. *AG's Opinion # 2005-119.*
 - Public park and recreation boards are exempt from the competitive bid law, and as such, from the public works law. *AG's Opinion # 99-056.*
 - Public corporations which do not have a specific exemption are subject to the public works law

²²This exemption would not apply to a county building authority created under Ala. Code § 11-15-1 *et seq.* However, Ala. Code § 11-56-2 specifically provides that a municipal building authority may provide buildings and facilities for lease and use to the county.

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where public funds are expended. *AG's Opinion # 2005-045.*

3. Convict Labor - Ala. Code § 39-2-6(e). The law specifically states that nothing in the public works law shall preclude the use of convict labor by the awarding authority. A contract between the county commission and Alabama Correctional Industries is not in violation of the public works law and the competitive bid law. *AG's Opinion # 97-202.*

4. Employee Projects - Ala. Code § 39-2-6 (e). The act also does not apply to routine maintenance and repair jobs or road or bridge construction work performed by county employees with equipment of the awarding authority. And the cost of work performed by employees is excluded in determining the cost of the project and whether the public works law applies. *AG's Opinion # 2004-083.*

5. Emergencies - Ala. Code § 39-2-2(e). Ala. Code § 39-2-2(e) provides that, in an emergency “affecting public health, safety, or convenience”, contracts may be let to the extent necessary to meet the emergency without advertisement. This provision is identical to the emergency exemption found in the competitive bid law and the same rules apply.

6. Homeland Security Exemption - Ala. Code § 39-2-2(g). This Code section provides that certain contracts affecting homeland security may be let by informal bid and without public advertisement. The Homeland Security Director must acknowledge in writing that the proposed public works project has a direct impact on safety or security of persons and requires confidentiality.

b. Bidding Options

i. Prequalification²³

(1) Procedures and Criteria - Ala. Code § 39-2-4

Prequalification of bidders is not required but is permitted if proper procedures are applied. To prequalify bidders, the awarding authority must establish written prequalification procedures and criteria that: (1) are published in the same manner specified for bid advertisement and are published sufficiently in advance of contract to allow a bonafide bidder to obtain prequalification prior to preparing bid; (2) are related to the purpose of the contract or contracts affected; (3) are related to contract requirements or quality of product or service in question; (4) are related to the responsibility of bidder, including his or her competency, experience, and financial ability; and (5) will permit reasonable competition at a level that serves the public interest. Pre-qualification publication may run concurrently with bid advertisement publication provided it produces the required advance notice. Ala. Code § 39-2-4(b).

(2) Prequalification Determination - Ala. Code § 39-2-4(d)

Any bidder who has prequalified shall be deemed “responsible” for purposes of award unless prequalification is revoked by the awarding authority. Under Ala. Code § 39-2-4(c), the awarding authority has the right to determine whether prequalification procedures and criteria are met, but the determination must be “within the bounds of good

²³These procedures do not apply to the Department of Transportation which has its own statutory prequalification procedures. Ala. Code § 39-2-4(b).

faith.”

ii. Sole Source²⁴

Ala. Code § 39-2-2(f) provides that no awarding authority may specify the use of materials, products, systems, or services by a sole source unless all of the following requirements are met:

1. Except in contracts involving roads, bridges, or water and sewer facilities, the awarding authority can document to the satisfaction of the State Building Commission as follows:
 - a. The sole source product, material, system, or service is of indispensable nature for the improvement, and
 - b. There are not other viable alternatives, and
 - c. Only this product fulfills the function for which it is needed.
2. The sole source specification has been recommended by the architect or engineer as an “indispensable item” for which there is no viable alternative.
3. All information substantiating use of a sole source specification, including architect or engineer recommendation, is documented and made available for examination at the time of advertisement for sealed bids.

c. Awarding Authority Options

All bidders must file either a cashier’s check drawn on an Alabama bank or a bid bond executed by a surety authorized to

²⁴For a good discussion of “sole source” see, *Ericsson GE Mobile Communications, Inc. v. Motorola Communications & Electronics, Inc.*, *supra*, and *General Electric Co. v. City of Mobile et al.*, *supra*.

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make such bonds in Alabama. The check or bond shall be in an amount not less than 5% of the estimated cost but not to exceed \$10,000. Ala. Code § 39-2-4(a).

1. Lowest Responsible and Responsive Bidder - Ala. Code § 39-2-6. The contract shall be awarded to the lowest responsible and responsive bidder unless the awarding authority finds that all bids are unreasonable or that it is not in the awarding authority's interest to accept any of the bids. Ala. Code § 39-2-6(a).

2. Rejection of Bids - Ala. Code § 39-2-6(b), (c), and (d). If no bids or only one bid is received, the awarding authority may do any of the following: advertise for and seek other competitive bids, direct that work be done by force account under its direction and control (discussed below) or negotiate work through informal bids not subject to bid requirements, provided that, where only one responsible and responsive bid is received, any negotiation must be for a price lower than that bid.

3. Force Account - Ala. Code § 39-2-6(c). If the county rejects all bids as unreasonable or not in its interest, it may direct that work be done by force account under its direction and control. "Force account work" is defined in Ala. Code § 39-2-1(2) as "Work paid for by reimbursing for the actual costs for labor, materials, and equipment usage incurred in the performance of the work, as directed, including a percentage for overhead and profit, where appropriate."

d. Payment Options

In 2012, the legislature made some changes regarding payment on contracts. *See Ala. Act 2012-379*. Counties must make their final payments on public works contracts within 45 days after the project is complete and has received county approval. Any agreement to increase the 45-day period for payment after the execution of the contract is unenforceable. Ala. Code § 39-2-12(i)(2). Interest will build on any delinquent payment and the

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interest rate for payments shall be the legal amount currently assessed for under payment of taxes pursuant to Ala. Code § 40-1-44(a). The interest shall be paid from the same fund source from which the contract principal is paid. Ala. Code § 39-2-12(i)(2). In cases where the county awarding authority deems that a contractor has been overpaid, the contractor shall have 60 days from the receipt of a repayment demand to reimburse the full amount requested. Ala. Code § 39-2-12(j). A failure to repay shall disqualify the contractor from future bids as a prime contractor or work as a subcontractor on public bridge, highway, or road projects until the reimbursement is made. The county awarding authority is entitled to interest from the contractor beginning on the 61st day after the contractor's receipt of demand and the interest rate shall be the rate assessed for under payment of taxes under Ala. Code § 40-1-44(a). Ala. Code § 39-2-12(j).

Ala. Code § 39-2-12(k) provides that the contract between the contractor and the awarding authority shall contain provisions outlining the funding source for the contract, including whether the funds are held by the awarding authority at the time the contract is executed or whether they will become available following execution of the contract. If the source of the funds for payment of the contract is a grant, award, or direct reimbursement from the state, federal government, or other source which will not be available until after the execution of the contract, then this fact shall be disclosed in the contract. In such instance, the provisions regarding prompt payment shall not apply until the awarding authority is in receipt of the funds as provided in the contract. Upon receipt thereof, the 45 day requirement commences and is enforceable. Ala. Code § 39-2-12(k). *See Ala. Act 2012-379.* Contractors also are ineligible to bid on public contracts unless they have arranged to collect and remit all applicable state and local lease, sales, and use taxes on any items sold in the state. Ala. Code § 41-4-116(c).

e. Accounting

Once the budget is adopted, the actual financial operations

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for the period covered by the budget must be recorded, summarized, and analyzed. The means of accomplishing this is the accounting system. See the Alabama County Finance Manual, first adopted by the Examiners of Public Accounts in 1980, and last updated in 2008.

Accounting topics covered in the Alabama County Finance Manual include “Overview of Governmental and Reporting Standards” and “Budget Preparation and Schedule.”²⁵

f. Financial Reporting

Financial reports and statements that show the current condition of both budgetary and transaction accounts should be prepared periodically to help control financial operations. The purpose of recording, summarizing, and analyzing financial information is to issue financial statements that present accurate and unbiased information and that are useful to a variety of people, including citizens, commissioners, auditors, and investors. There are two kinds of financial reports: internal reports for purposes of budgeting and financial control, and external reports to meet legal and contractual requirements and National County Government Association recommendations for financial reporting.

Effective budgeting requires, in part, the availability of accurate financial information. This information normally will be presented as part of the proposed annual budget, usually in the form of prior and current year revenues and expenditures. Internal financial reports that present the county's actual versus planned financial operations for the current fiscal year also should be periodically prepared for use by county commissioners and key administrators.

Legal reporting requirements for Alabama counties are prescribed by Ala. Code § 11-3-21. As soon as practical after

²⁵ For a detailed explanation of the accounting requirements, see the ALABAMA COUNTY FINANCE MANUAL (2008).

closing the fiscal year, but no later than December 31 of each year, counties must publish a statement of the county's financial status for the 12-month period ending on September 30 of that year in a local newspaper. This statement shall include (1) an itemized report of the county's receipts by source and disbursements by functions or purposes of both, (2) The outstanding indebtedness of the county of any kind or character, (3) The schedule by years for retiring indebtedness, separating funded indebtedness from unfunded indebtedness, and (4) The resources available to pay unfunded indebtedness. Ala. Code § 11-3-21.

In addition to the local reports, the law also requires the state reporting of county financial statistics. The State Department of Examiners of Public Accounts is required to furnish the chairperson of the governing body of each county an annual fiscal statement of the county, showing its receipts, disbursements, outstanding indebtedness, and securities owned. Ala. Code § 41-5-6.

g. County Indebtedness

i. Forms of Indebtedness

Counties have no inherent authority to incur indebtedness; "[t]hey must be authorized either by the Legislature or by the Constitution to create bonded indebtedness."²⁶ Under Section 222 of the Constitution, the Legislature may enact general laws authorizing counties to issue bonds. In pursuance of this section of the Constitution, the Legislature has authorized the counties to

²⁶William V. Halloway and Charles W. Smith, Jr., *Government and Politics in Alabama*, (University of Alabama, 1941), p. 158; Institute for Government Research of the Brookings Institution, *County Government in Alabama*, Vol. 5, Part 4, of Report on a Survey of the Organization and Administration of the State and County Governments in Alabama (Montgomery, 1932), Chapter LVII. See also *Gunter v. Hackworth*, 182 Ala. 205, 62 So. 101 (1913).

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issue bonds for a number of specific purposes or improvements. Ala. Code §§ 11-8A-1 through 11-8A-5 provide that no county commission may enter into a bond financing agreement or transaction related to bond indebtedness without executing a county government bond financing review form. The standard review form is prepared by the Department of Examiners of Public Accounts. *See Ala. Code* §§ 11-8A-3 and 11-8A-4 for requirements. The county governing bodies may make loans in anticipation of taxes up to the amount of \$400,000 annually. Ala. Code §§ 11-10-1 through 11-10-6. Counties are authorized under Ala. Code § 11-10-6 to make temporary loans in anticipation of receipt of payments from the U.S. government under the Local Fiscal Assistance Act of 1972 (31 U.S.C. Section 6702). Ala. Code § 11-11-1, *et. seq.*, allows certain counties to issue warrants in anticipation of gasoline taxes. Counties also can issue warrants in anticipation of ad valorem taxes (Ala. Code § 11-11A-1 *et. seq.*) and can issue securities in anticipation of any grant. Ala. Code § 11-11B-1 *et. seq.*.

Each county is authorized to sell and issue warrants for the purpose of financing the cost of acquiring, by construction, purchase or otherwise, any public facilities such as courthouses, schools, roads, water and sewer systems and other specific facilities. The warrants may evidence a general or limited obligation debt of the county, provided the funds are irrevocably pledged for the payment of the principal and interest. Ala. Code §§ 11-28-1 through 11-28-7.

ii. Debt Ceiling

The Constitution contains several provisions that place restrictions on the borrowing powers of Alabama counties. Section 94 of the Constitution provides that the Legislature may not authorize any county (or other subdivision of the state) to lend its credit or to grant public money or anything of value in aid of any individual, association, or corporation, by issuing bonds or

otherwise or to become a stockholder in any corporation.²⁷ Under Section 224 and Amendment 342 of the Constitution, the amount of a county's indebtedness is normally limited to 5% of the assessed valuation of its taxable property.²⁸

iii. Industrial Revenue Bonds

Another limitation was statutorily imposed by Ala. Code §§ 8-6-110 through 8-6-122, which established a notification procedure for the issuance of industrial revenue bonds by counties and other local governmental entities. Prospective issuers of such bonds must give prior notice to the director of the state Securities Commission, who may issue stop orders to delay, and perhaps prevent, industrial revenue bond issues found to be improvident. Notifications made under the act must be accompanied by a filing fee equal to 1/20% of the proposed bond issue, but no filing fee may be less than \$25 or greater than \$1,000.

iv. Exemptions from Debt Limitations

It should be noted that as a result of the judicial policy-making process numerous classes of debt are exempt from the application of the constitutional debt limitation. Indebtedness incurred for the purpose of financing the cost of a particular project is not subject to the constitutional debt limitation if the indebtedness is paid off solely from the revenue generated by the project. Certificates of indebtedness issued in anticipation of current taxes have been held by the courts not to constitute county debt within the meaning of Section 224 of the Constitution.²⁹

²⁷Numerous "Industrial Development Amendments" to the state Constitution exempt specific counties from these provisions.

²⁸A number of statutes enacted in 1975 exempt various instruments of indebtedness issued by counties from the state usury laws. *See Ala. Code* §§ 8-8-7, 11-9-27, 11-11-8, 11-11A-4, 11-14-18, 11-20-5, and 40-7-99.

²⁹*Troy Nat'l Bank v. Russell County*, 291 F. 185 (M.D. Ala. 1923).

However, obligations secured by a pledge of income from subsequent years do constitute debt within the meaning of that section.³⁰ The courts have further ruled that gasoline tax anticipation warrants, when payable solely out of the county's share of the state gasoline tax proceeds, are not a charge on either the general revenue of the county or on the proceeds of any county levy for special county purposes and thus do not constitute debt within the meaning of the constitutional debt limitation.³¹ It also has been held that obligations secured by the income from privilege license taxes duly levied and pledged,³² the debts of a public corporation or quasi-corporation,³³ and certain warrants issued by the county boards of education,³⁴ are not debts within the meaning of Section 224. A county may finance indirectly the costs of public buildings without incurring a debt through the issuance of warrants by a public building authority. *See* Chapter V, Section D of this work.

v. Bond Referenda

County indebtedness also is controlled by a constitutional provision that states that all local government bonds proposed to be issued under general laws first must be authorized by a majority vote of the qualified electors of the county or other political subdivision involved. Ala. Const. § 222. Section 104 of the Constitution prohibits the Legislature from enacting a local law to

³⁰Abrasley v. Jefferson County, 241 Ala. 660, 4 So. 2d 153 (Ala. 1941).

³¹Isbell v. Shelby County, 235 Ala. 571, 180 So. 567 (Ala. 1938); Lyon v. Shelby County, 235 Ala. 69, 177 So. 306 (Ala. 1937); In re Opinions of the Justices, 230 Ala. 673, 163 So. 105 (Ala. 1935).

³²Wharton v. Knight, 241 Ala. 218, 2 So. 2d 310 (Ala. 1941).

³³Coxe v. Water Works Bd. of the City of Birmingham, 288 Ala. 332, 261 So. 2d 12 (Ala. 1972); Opinion of the Justices, 254 Ala. 506, 49 So. 2d 175 (Ala. 1950).

³⁴In re Opinions of the Justices, 231 Ala. 152, 164 So. 572 (Ala. 1935).

permit any county or other political subdivision to issue bonds or other securities until the matter has been approved by a vote of the qualified electors of the subdivision concerned. Exceptions to the requirement of a referendum on the question of whether bonds shall be issued include bonds to refund bonds existing or authorized before the ratification of the Constitution and special assessment bonds issued or to be issued for street and sidewalk improvement or for sanitary or storm sewers. Ala. Const. § 222.

vi. Bonds Distinguished From Warrants

There is a distinction between county warrants and county bonds, and the issuance of warrants, even though they bear interest and are payable at future dates, apparently need not be authorized by the election required by Section 222 of the Constitution for the issuance of bonds.³⁵ The Supreme Court of Alabama has stated:

There is, hence, a marked fundamental difference between county warrants and the county bonds to which Section 222 of the organic law makes governing reference. The fact that both county warrants and county bonds may be made presentable and payable at a future specified date, and that they bear interest for prescribed periods does not suffice to eliminate the state characteristic distinctions between them. One, the warrant, is an order to pay when in funds; while the other, the bond, is a promise to pay The issuance by the authority of a commissioner's court of interest bearing warrants on the county treasurer, payable at stated times in the future, to pay for public buildings, public roads and bridges, is not the issuance of bonds by the county within the provisions of Section 222 of the Constitution Not being bonds, the right to issue them [warrants]

³⁵*See, e.g., Tally v. Comm'rs' Court of Jackson County*, 175 Ala. 644, 39 So. 167 (Ala. 1905).

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for the purpose stated did not depend upon a favorable election held as provided in Section 222 of the Constitution.³⁶

Notes made for temporary financing in anticipation of taxes, when the proceeds of the loans are used for the purposes for which the taxes are levied; certain warrants issued by county boards of education in counties levying special school taxes; and revenue bonds all have been excluded, under judicial policy statements, from the requirement of an election when authorized by general laws.³⁷ On the other hand, the courts seem to construe quite literally Ala. Const §104(17), which forbids the Legislature to enact local laws authorizing local governments to issue bonds or other securities unless the issuance of the bonds or securities had been authorized, before the enactment of the local law, by an election held in the subdivision concerned.³⁸

³⁶*Littlejohn v. Littlejohn, County Treasurer*, 195 Ala. 614, 71 So. 448 (Ala. 1916). *See O'Grady v. City of Hoover*, 519 So. 2d 1292 (Ala. 1987).

³⁷Illustrative decisions include: *Opinion of the Justices*, 280 Ala. 692, 198 So. 2d 269 (Ala. 1967); *Rogers v. City of Mobile*, 277 Ala. 261, 169 So. 2d 282 (Ala. 1964); *Opinion of the Justices*, 230 Ala. 673, 163 So. 105 (Ala. 1935) (relative to gasoline tax anticipation warrants) and *Opinion of the Justices*, 231 Ala. 152, 164 So. 572 (Ala. 1935) (relative to school warrants); 228 Ala. 140, 152 So. 901 (Ala. 1934); *In re Opinions of the Justices*, 226 Ala. 570, 148 So. 111 (Ala. 1933); *Parsons v. City of Birmingham*, 223 Ala. 610, 137 So. 665 (Ala. 1931).

³⁸*See, e.g., Newton v. City of Tuscaloosa*, 251 Ala. 209, 36 So. 2d 487 (Ala. 1948). This case designated as dictum the statement in 230 Ala. 673, above, that securities which are not general obligations of the county are not bonds within the contemplation of Sections 104(17) and 222 of the Constitution. Holding that the term "bonds or other securities" in Section 104(17) contemplates "warrants," the Supreme Court of Alabama, in this case, invalidated an act (passed without an election having been held on the proposed indebtedness) levying a sales tax in Tuscaloosa

vii. Warrants for Public Construction

The Legislature granted to all counties in the State of Alabama the power to issue warrants to finance the costs of acquiring, constructing, equipping and improving a wide variety of public facilities.³⁹ The types of public facilities for which counties may borrow pursuant to the County Warrant Act include (i) county buildings, such as courthouses, jails, hospitals, school buildings, and libraries; (ii) roads, bridges, and related transportation improvements; (iii) utility systems, such as water distribution systems and sanitary sewer systems; (iv) capital equipment, such as computers, motor vehicles, and construction and maintenance equipment; and (v) any other public facilities that counties have been or may be authorized to acquire. Ala. Code § 11-28-1.1 Warrants issued pursuant to the County Warrant Act may be either general obligations that are secured by the full faith and credit of the issuing county or special limited obligations that are payable solely out of certain pledged tax proceeds or revenues from a specified project or enterprise. Ala. Code § 11-28-2.

h. State Administrative Supervision

County fiscal operations in Alabama are, to an appreciable extent, subject to regulation by state agencies, especially the Department of Revenue and the Department of Examiners of Public Accounts. The Department of Revenue is vested with extensive statutory powers of supervision over local assessment procedures and tax officials, and it also possesses powers of re-assessment and equalization of assessments.⁴⁰

County and authorizing the issuance of warrants or revenue bonds in anticipation of the tax proceeds.

³⁹The County Warrant Act is codified at Ala. Code §§ 11-28-1 through 11-28-7.

⁴⁰Tennessee Valley Authority, *op cit.*, p. 32; and, for example, Ala. Code §§ 40-2-11 and 40-2-16.

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The Department of Examiners of Public Accounts exercises supervisory powers over county accounting procedures and audits the various offices and agencies comprising the county governments. This department is authorized to prepare for all the various state and county offices the bookkeeping, accounting, and reporting systems, procedures, records, and forms necessary for the installation of a uniform system of accounting and reporting in such offices. Ala. Code § 41-5-6(10). All state and county officers are required to maintain their books, records, and accounts in accordance with the systems and procedures prescribed by the Department of Examiners of Public Accounts. Ala. Code §§ 41-5-1 and 41-5-23.

The department is required to examine and audit the records of all state and county offices and to report to the supervisory legislative committee, the Legislative Committee on Public Accounts, and the Governor every expenditure or contract found to have been made in violation of law. Ala. Code § 41-5-6(9) and (11). Illegal expenditures can be charged to the commissioners. Ala. Code § 11-12-12 . It is provided by statute, however, that a written opinion of the Attorney General affords protection to public officers in the performance of their official acts. Ala. Code § 36-15-19.

The Department of Examiners of Public Accounts also prepares the standard review form to be filled out by the county commission prior to the commission entering into any bond financing agreement or other transaction related to establishing bond indebtedness. *See Ala. Code* §§ 11-8A-1 through 11-8A-5.

CHAPTER V

ELECTIONS¹

A. OFFICE OF COUNTY COMMISSION

The county commission is the chief legislative body of the county, with a wide range of responsibilities including elections. Members are elected by the voters of their county.

For elections, the county commission makes basic decisions about precincts, voting equipment, and voting place administration.

The county commission provides funding for a number of election functions. The state reimburses counties for certain election expenses in part or in full, depending on the type of election.

B. POLL WORKERS AND ELECTION EXPENSES

The county commission pays poll workers according to state law. The state reimburses for all or part of the compensation depending on the election.

Under Alabama law, election officials are paid a minimum of \$50 per day in all elections. Ala. Code § 17-8-12(a). In a statewide election, this cost is split equally between the State and the county. However, counties are responsible for the entire cost if there are only county offices or referenda on the ballot. In statewide elections only, returning officers and clerks are paid \$75 per day and inspectors are paid \$100 per day. Ala. Code § 17-8-12(b). The state is responsible for the additional amounts required to make these increased payments. Also, a \$25 supplement paid by the state will apply in a statewide election for

¹Alabama Election Handbook, 15th Edition, Chapter 15.

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all election officials who complete a local election school or are certified by the probate judge as a qualified poll worker. Ala. Code § 17-8-12(b)².

As noted here, the State is responsible for any additional amount required to ensure that election officials receive this additional compensation. However, these increases shall not increase or decrease any salary supplements paid under a local law in place on October 1, 2005, meaning that any county paying a local supplement will continue to pay the supplement amount.

Any local act that provides for amounts less than that indicated above is superseded by Ala. Code § 17-8-12. If a local act provides for amounts in excess of Ala. Code § 17-8-12, the county commission must pay the greater amounts.

The appointing board shall appoint necessary precinct election officials, which shall include at least one inspector for each voting place. The appointing board may appoint the number of precinct election officials necessary for each precinct, provided that, absent consent of the county commission, the total number of precinct election officials appointed in a county shall not exceed the total number of precinct election workers who were paid by the county for the general election held in November 2004. Ala. Code § 17-8-1.

If the number of precincts or voting places utilized in an election within a county is increased or decreased, the total number of officials who may be appointed without consent of the county commission shall be increased or decreased proportionately based on the average number of workers utilized in each precinct or

²If the probate judge determines it is necessary, poll workers, other than the inspector, may work split shifts of not less than 6 hours and are paid one-half of the per day compensation. *See Ala. Code § 17-8-1(c).*

polling place within the county. Ala. Code § 17-8-1.

Any precinct election officials who work for an employer with more than twenty-five employees shall be excused from their employment without loss of time to perform their duties on election day. Ala. Code § 17-8-13. Such employers may choose, but are not required, to pay those employees' regular salary that day.

The probate judge must publish the voter registration list 20 days before the primary. The lists may be published, at the discretion of the county commission, as a preprinted or inserted advertising supplement at a cost no greater than the selected newspaper's lowest applicable national insertion rates. A county commission is not prohibited from publishing the list of voters in more than one newspaper within the county at the county commission's discretion. Ala. Code § 17-4-1. The state shall reimburse the county for the cost of publishing the list in state elections. Ala. Code § 17-16-3.

C. STATE REIMBURSEMENT

The state reimburses the counties fully for poll worker compensation and election supplies in elections involving only state races or issues. This includes elections where only candidates for federal and state offices are nominated or elected and elections involving only constitutional amendments that involve the state as a whole. Ala. Code §§ 17-16-4 and 17-16-6.

State law defines election expenses as the per diem and mileage provided to election officials, the per diem and mileage provided to the absentee election manager, the cost of ballots, supplies and other materials used by election officials, the cost of absentee ballots and associated materials, the cost of preparing and furnishing the list of qualified electors to the election officials; and the cost of publishing any notice or other item related to any election. Ala. Code § 17-16-2.

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Ala. Code § 17-16-2.1 establishes the Election Expense Reimbursement Committee which met for the first time 90 days prior to the March 2012 state primary to develop and approve a list of reimbursement expenses for the upcoming election cycle (not included in Ala. Code § 17-16-2) to be included for the upcoming election cycle.³

The state reimburses half of the compensation given to poll workers and election supplies in elections where federal or state and county offices are nominated or elected. Ala. Code § 17-16-3. The state also will pay half for any election in which there are constitutional amendments that affect the state as a whole and amendments that only affect one or more counties or a subdivision of a county or counties. Ala. Code § 17-16-5.

The state does not reimburse the county for any other elections.

In calculating how much to reimburse the county, the state takes into account all per diem and mileage given to election officials. Ala. Code § 17-16-2.

The state will reimburse counties for all costs incurred in the automatic recount of any statewide race if the recount is mandated under Ala. Code § 17-16-20.

D. PRECINCTS

The county commission draws precinct boundaries and provides a place in each precinct for voters to vote, assigns groups of electors to designated boxes or machines. Polling hours are set by law from 7:00 a.m. - 7:00 p.m. Ala. Code § 17-9-6.

³Questions were raised about whether this committee could constitutionally approve a list of reimbursable expenses. Therefore, the committee declined to prepare a list for the 2012 election cycle.

1. PRECINCT BOUNDARIES

The county commission divides the county into precincts for the purpose of voting. Ala. Code § 17-6-2. A precinct must have visible, definable, and observable physical boundaries that conform to the most recent federal and decennial census tract and block map. Ala. Code §§ 17-1-2(19) and 17-6-2(a).

Voters must vote in the voting place of their domicile. Ala. Code § 17-9-10.

The commission must follow standards set by the Association of County Commissions of Alabama and the permanent Legislative Committee on Reapportionment in numbering and naming their precincts. Ala. Code § 17-6-3(e).

a. When Precinct Boundaries Change

Only the county commission can change precinct boundaries and only under specific situations set by law. The law allows boundary changes for precincts when:

1. Population changes mandate a change in precincts.

While not setting population limits for precincts, the law does place a limit of 2,400 qualified voters to a single electronic voting machine. Ala. Code § 17-6-3(a).

When a precinct exceeds those limits, the county commission can subdivide the precinct. The commission also can add additional electronic voting machines to a polling place or establish voting districts within the precinct with separate locations to vote. Ala. Code § 17-6-3(a).

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The county commission identifies precincts that exceed those limits during its first meeting in March in even-numbered years. Ala. Code § 17-6-3(b). After an election, the county commission also must determine if more than 2,400 votes on an electronic voting machine are anticipated. Ala. Code § 17-6-6(c).

2. Electoral changes mandate a change in precinct boundaries.

State law requires a uniform ballot for each polling place. Ala. Code § 17-6-23. This, in effect, mandates precincts that do not cross boundaries of any other electoral districts. The boundaries of county commission districts, legislative districts, congressional districts, and other electoral boundaries must be taken into account to maintain a uniform ballot.

Keeping boundaries within electoral districts makes sense for other reasons. For instance, drawing precincts to cross municipality boundaries would result in different voter lists for municipal and county elections, causing considerable confusion for voters and poll workers.

With this in mind, commissioners must examine their precinct boundaries every time the electoral boundaries in their counties change, such as through local redistricting or annexation.

b. When Precinct Boundaries Do Not Change

Precincts and their polling places must not be changed within three months prior to an election. Ala. Code § 17-6-4(d).

c. How Precinct Boundaries Change

The county commission has the authority to change precinct boundaries. Ala. Code § 17-6-6(a). State law provides any precinct drawn must be a “contiguous compact area.” The precinct must follow distinguishable ground features such as highways, roads, streets, rivers or correspond with the county boundary. Ala. Code § 17-6-2(b).

Changes in precincts must be reflected on the map the county commission maintains outlining the precinct boundaries. Ala. Code § 17-6-3(d). A copy of the changed map, with a description of the most recent precinct boundaries, must be sent to the county board of registrars, the probate judge, and the permanent Legislative Committee on Reapportionment. The map must indicate the date of last revision. Ala. Code § 17-6-2. The copy sent to the Legislative Committee on Reapportionment must be certified and sent within thirty days of adoption of the changes. Ala. Code § 17-6-6(e).

d. Preclearance

The Voting Rights Act of 1965 requires that changes in precinct boundaries be approved by the U.S. Justice Department in a process called preclearance.

The Justice Department reviews changes to prevent moves that would have the purpose or effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group.

The Justice Department has up to sixty days to object or to request more information on a submission. A county may not know until that time whether its changes are acceptable. The commission must work with their county attorneys to submit changes as early as possible before an election.

Because changes to precincts are not final until after preclearance, county commissions may wait until after Justice Department approval before modifying the maps sent to the county commission, probate judge, board of registrars, and the reapportionment task force. 187 Att. Gen. Op. 91 (1990).

E. SELECTING POLLING PLACES

The county commission selects at least one polling place for each precinct. Ala. Code §§ 17-6-3 and 17-6-4. Names of the polling places must be submitted to the probate judge along with the map outlining precinct boundaries. Ala. Code § 17-6-3(a) and (d).

Polling places cannot be changed within three months of an election. Ala. Code § 17-6-4(d). The courthouse serves as the polling place for the precinct in which it is located unless the county commission determines otherwise. Ala. Code § 17-6-4(e).

Polling places designated by the county commission must be used for primary, general, and special elections involving federal, state, district, and county offices. Ala. Code § 17-6-4(d).

Changes in polling places are subject to preclearance. In addition, county commissions must pick locations that meet accessibility standards under the federal Voting Accessibility for the Elderly and Handicapped Act of 1984.

F. ASSIGNING BALLOT BOXES AND VOTING MACHINES

The county commission has the responsibility for assigning ballot boxes and electronic voting machines to the precincts. Ala. Code § 17-6-4(a).

Each ballot box or machine must be designated for a specific group of voters. Ala. Code § 17-6-3(a). This is done by

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either dividing the precinct into voting districts or subdividing the list of qualified electors for that precinct alphabetically and assigning the segments of the list to individual ballot boxes or voting machines. Ala. Code § 17-6-3.

There may be a maximum of 2,400 voters assigned to each electronic voting machine. Ala. Code § 17-6-3(a). Election officials must determine the number of electronic voting machines based on the manufacturers' recommended maximum number of ballots if that number is less than 2,400. Ala. Code § 17-6-3(c).

The commission, at its first regular meeting in March in each even-numbered year, meets to examine the list of registered voters to determine if the number of voters exceeds the legal limits in any of the precincts. Ala. Code § 17-6-3(b).

Also, the county must look at information to determine if more than 2,400 votes are anticipated at any voting machine or ballot box. Ala. Code § 17-6-6(c).

When the limits are exceeded, the commission must act to remedy the situation. It can change precinct boundaries Ala. Code § 17-6-6(c), subdivide the precinct into voting districts Ala. Code § 17-6-3(a), or alphabetically divide the list of registered voters for that precinct to fit within the guidelines. Ala. Code § 17-6-3(a). The last option might entail adding additional boxes or machines to the polling place or simply adjusting how the voter list for that precinct is split so that the number of voters assigned to each machine or box falls within the guidelines.

G. VOTING DISTRICTS

Along with the addition of electronic voting machines or boxes, the commission also can divide a precinct into voting districts to solve overcrowding. Ala. Code § 17-6-3(b).

When an election precinct has been divided into voting

districts, a description of the boundaries of the district must be filed with the probate judge immediately, and a copy must be posted at the courthouse. Ala. Code § 17-6-3(d).

Unless the county uses voting centers, no voter can vote outside his voting district, so a polling place for each district must be designated by the commission. Ala. Code § 17-6-4. Division of a precinct into voting districts is subject to preclearance by the U.S. Justice Department.

H. VOTING CENTERS

To reduce costs for elections, some counties have moved to voting centers. Voting centers combine voters from two or more precincts and allow them to vote in a centralized location.

Voting centers can be established by local law. Ala. Code § 17-6-4(c). A county commission interested in voting centers must consult with local lawmakers and the county attorney for more information and the proper procedure toward implementation.

I. VOTING EQUIPMENT

Due to requirements imposed by the Help America Vote Act of 2002, counties must use electronic vote counting systems that comply with the provisions of Ala. Code § 17-2-4. Expenses for the use of supplies for such equipment will be fully or partially reimbursed by the state, depending on the type of election. Ala. Code § 17-2-4(h).

According to state law, electronic voting machines must meet the following requirements (Ala. Code §§ 17-7-21(b)(1) through 17-7-21(b)(12)):

- 1) Permit and require voting in secrecy.
- 2) Permit each elector to vote at any election for all

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persons and offices for whom and for which he or she is lawfully entitled to vote; to vote for as many persons for an office as he or she is entitled to vote for; and to vote for or against any question upon which he or she is entitled to vote.

- 3) Permits the voter at other than primary elections to vote a straight political party ticket in one operation.
- 4) Permits such automatic tabulating equipment to be set to reject all votes for any office or question when the number of votes therefor exceeds the number which the voter is entitled to cast or when the voter is not entitled to cast a vote for the office or question.
- 5) Is capable of correctly counting votes.
- 6) When used in primary elections, counts only votes for the candidates of one party, rejects all votes for an office when the number of votes therefor exceeds the number which the voter is entitled to cast, and rejects all votes of a voter cast for candidates of more than one party.
- 7) At presidential elections, permits each elector, by one operation, to vote for all presidential electors of a party or independent candidates for president or vice president.
- 8) Provides a method for write-in voting.
- 9) Is capable of accumulating a count of the specific number of ballots tallied for a precinct; accumulating total votes by candidate for each office; and accumulating total votes for and against each question for such precinct.

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- 10) Is capable of tallying votes from ballots of different political parties from the same precinct, in the case of a primary election.
- 11) Is capable of automatically producing precinct vote totals in printed, marked, or punched form, or a combination thereof.
- 12) Is capable of accurately and correctly tabulating each vote and having the same so certified.

According to state law, electronic voting systems must meet the following requirements §§ 17-2-4(a)(1) through 17-2-4(e):

- 1) Permit the voter to verify, in a private and independent manner, the votes selected by the voter on the ballot before the ballot is cast and counted.
- 2) Provide the voter with the opportunity, in a private and independent manner, to change the ballot or correct any error before the ballot is cast and counted, including the opportunity to correct the error through the issuance of a replacement ballot if the voter was otherwise unable to change the ballot or correct any error.
- 3) Notify the voter that the voter has selected more than one candidate for a single office on the ballot before the ballot is cast and counted for the effect of casting multiple votes for the office.
- 4) The system shall ensure that any notification required preserves the privacy of the voter and the confidentiality of the ballot.

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- 5) The voting system shall produce a record with an audit capacity for such system.
- 6) The voting system shall provide the voter with an opportunity to change the ballot or correct any error before the permanent paper record is produced. The paper record produced shall be available as an official record for any recount conducted with respect to any election in which the system is used.
- 7) The voting system shall be accessible for individuals with disabilities, including non-visual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation, including privacy and independence, as for other voters.
- 8) The voting system shall provide alternative language accessibility.
- 9) The error rate of the voting system shall comply with the error rate standards established under §3.2.1. of the voting systems standards issued by the Federal Elections Commission.

J. VOTER REGISTRATION FUNCTIONS

The commission has several funding responsibilities in connection with the voter registration function.

1. SUPPORT FOR THE BOARD OF REGISTRARS

Commissions expend county funds to provide supplies, equipment, telephone service, office space, and clerical help to their boards of registrars. Ala. Code § 17-3-10.

The commission must provide office space for the board of

registrars. Ala. Code § 17-3-60. The board of registrars selects the clerical help, but the county commission sets the level of compensation. Ala. Code §17-3-10. The commission also can increase registrars' compensation once without legislation as long as no state funds are used to pay for the increase. Ala. Code § 17-3-13.

2. SUPPORT FOR THE PROBATE JUDGE

In counties between 100,000 and 350,000 in population, the probate judge may hire a clerk to help the board of registrars. The probate judge can set the clerk's compensation at up to \$250 a month, and the clerk is paid from the county treasury. Ala. Code § 17-3-60.

The commission pays the probate judge an amount not to exceed five cents a name for the preparation of the lists of qualified electors that are used in the polling places. Ala. Code § 17-3-60. Except where compensation has been removed by local law, probate judges are entitled to five cents per name regardless of whether they are on the fee system or salaried. Opinion of the Justices, 407 So. 2d 122 (Ala. 1981).

3. VOTING HOURS

State law requires that polls must be open at 7 a.m. and shall close at 7 p.m. Ala. Code § 17-9-6.

4. ABSENTEE ELECTIONS

Absentee election managers receive the same pay as election inspectors. *See Ala. Code* §§ 17-11-14 and 17-8-2. Attorney Gen. Op. 2002-272. Absentee election managers must be compensated for 45 days, including election day. Ala. Code § 17-11-14.

Compensation is paid from the county treasury. Ala. Code

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§ 17-11-14. Additional compensation of election officials for completing the election school is paid exclusively by the state. Attorn. Gen. Op. Jan. 2007-94 (May 7, 2007). An absentee election manager who has also completed or taught at a local election school is entitled to \$125 per day, which is the same compensation as an inspector. Opinion of Justice 2010-080 (Honorable Billy Yates, July 15, 2010)

Costs for absentee ballots, supplies, and other materials are funded from the county treasury, with possible compensation from the state along the same guidelines as other election expenses. Ala. Code § 17-16-2.

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CHAPTER VI

OTHER FUNCTIONS

A. COOPERATIVE EXTENSION SYSTEM

The Alabama Cooperative Extension System is a division of Auburn University and Alabama A & M University. The duties of the extension service include the following: to aid in the diffusion among the people of Alabama of useful and practical information on subjects relating to agriculture, forestry and natural resources, family and individual well being, youth development, community and economic development, and urban affairs; and to aid in securing for Alabama the full amounts of federal funds conditionally appropriated under the Smith-Lever Act and related federal legislation for extension work in agriculture and home economics. Ala. Code § 2-30-2. *See generally* Ala. Code §§ 2-30-1 through 2-30-4.

The state director of the extension service has authority, subject to the policies of the appropriate university, to appoint, discharge, and fix the compensation of all employees of the extension service. Ala. Code § 2-30-3.

Agricultural extension work is financed by federal, state, and local funds. Federal funds for extension work are received under appropriations made by the Smith-Lever Act and a number of other related and supplementary federal statutes.¹ The state makes regular appropriations for extension service in the education appropriation act, and from time to time makes supplementary appropriations for specific purposes. Any county may appropriate county funds to be used in cooperative extension work. Ala. Code § 2-30-23. A portion of the state sales tax receipts distributed among the counties also may be used for extension service in cooperation with the state and federal agencies.

¹P.O. Davis, *A Century of Science on Alabama Farms* (Auburn, Ala., 1952), p. 29.

B. PLANNING, ZONING, AND EMINENT DOMAIN

1. LAND USE CONTROL

County commissions are authorized to adopt building laws and codes by ordinance for all unincorporated areas of the county. These ordinances may apply in incorporated areas with the express consent of the municipalities. The county commission may employ building inspectors to see that its laws are not violated and that the plans and specifications for buildings are not in conflict with ordinances of the county. Ala. Code § 34-14A-12(a) and (b). The county commission also may charge fees to the owners of properties that are inspected and may condemn buildings, parts of buildings, or structures dangerous to the public. Ala. Code § 34-14A-12 (c). *See generally* Ala. Code §§ 34-14A-1 through 34-14A-17.

County commissions also are given express authorization to exercise zoning authority over certain non-municipal territory in the interest of county airport safety. Ala. Code § 4-6-4. Each county governing body, moreover, is authorized to adopt a comprehensive land management and use program for flood-prone areas in the county lying outside the corporate limits of municipalities. The land-use and control measures authorized include zoning ordinances, subdivision regulations, building codes, health regulations, and other applications of the police power, to provide safe standards of occupancy and for the prudent use of flood-prone areas.² Ala. Code § 11-19-3.

Counties have some control over the planning of subdivisions outside the limits of any municipality. Under the code, no subdivision plat may be developed without approval from the county commission and a permit from the county engineer at the time of approval. Ala. Code § 11-24-1. A developer may not file a final plat until it has been approved, and once construction is

²This legislation is construed in *Jefferson County v. Johnson*, 333 So. 2d 143 (Ala. 1976).

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complete, the owner or developer must obtain the signature of the county engineer verifying the final plat meets the county's subdivision regulations. In 2012, the Alabama Legislature attempted to resolve decade-old conflicts regarding the construction of rural subdivisions that are inside the jurisdiction of a municipal planning commission. Effective Oct. 1, 2012, subdivisions outside the municipal limits, but inside the jurisdiction of the planning commission, will be governed by the county's subdivision regulations unless (i) the county agrees to allow the planning commission to control the construction, or (ii) both the municipal governing body and the municipal planning commission adopt resolutions to exercise jurisdiction over subdivision development, the municipal planning commission at all times employs or contracts with a licensed professional engineer to enforce the regulations, the county commission can require and execute on a bond from the developer. Act 2012-297.

Should the planning commission exercise control under one of the two options outlined in the new law, the county commission is prohibited from accepting the subdivision roads into the county's road maintenance system unless they meet the county's road standards.

In 2001, the Legislature approved the Alabama Land Recycling and Economic Redevelopment Act Ala. Code § 22-30E-1 *et seq.*, which allows the Alabama Department of Environmental Management to oversee a voluntary cleanup program for potentially contaminated property. The act places no requirements on counties, but its provisions could affect any eligible property that the county owns.

2. REGIONAL PLANNING COMMISSIONS

In 1969, legislation was proposed to provide for the formation of planning and development regions by the Governor and for the establishment of a regional planning and development commission for each of the designated regions. Ala. Code §§ 11-85-50 *et seq.* Under this legislation, governmental units

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representing at least a majority of the population within a region could adopt a written agreement for the formation of a regional planning and development commission and petition the Governor to certify the commission for the region.

All governmental units that were parties to the agreement providing for the establishment of a regional planning and development commission had to be represented on the commission. The statute provides, however, that small governmental units can select a common representative and that larger units may select more than one representative, but there must be at least one representative on the planning and development commission for each county and for each city with a population above 10,000. At least a majority of the membership of a commission must be composed of elected public officials of the participating governmental units. Ala. Code § 11-85-53(a). The agreement adopted by the participating governmental units sets out the terms, manner of selection, and method of replacement of the commission membership; the formula by which participating governments contribute to the financing of the commission; and the procedure for amendment of the agreement. It also provides for the addition of other governmental units within the region that were not parties to the original agreement, for a governmental unit's withdrawal from the agreement, and for the dissolution of the commission. Ala. Code § 11-85-53 (b) and (c).

A regional planning and development commission carries on continuous comprehensive planning for the region, prepares a plan for the development of the region, and prepares an annual development program to implement the policies set out in the regional plan. Additionally, the commission provides planning and technical assistance to governmental units and other public agencies in the region, and coordinates regional planning activities with those of the state, the governmental units within the region and in neighboring regions, and programs of federal departments, agencies, and regional commissions. In this connection, the regional planning and development commission now serves as the local clearinghouse to review and comment on applications by

governmental units within the region for state or federal loans, grants-in-aid, or other forms of financial assistance. One of the main purposes of this review, of course, is to provide for the coordination of projects and programs proposed by local governmental units within the region. Ala. Code § 11-85-56.

3. EMINENT DOMAIN

County commissions have legal authority to condemn lands for public building sites, public roads, material for building public roads, or any other public use. Ala. Code §§ 11-80-1 and 23-1-82. The Legislature placed a firm limit on the exercise of this power by prohibiting its use for purposes of private retail, office, commercial, industrial, or residential development; or “primarily for enhancement of tax revenue; or for transfer to a person, non-governmental entity, public-private partnership, corporation, or other business entity.” Ala. Code §§ 11-80-1(b), 18-1B-2. Also, if property condemned for an authorized purpose is ever used for a purpose other than that for which it was condemned or for some other public use, it must be offered for sale either to the owner from whom it was taken or to the owner’s heirs or assigns, if any. Ala. Code § 11-80-1(c). These restrictions do not apply to land found to blight an area covered by a redevelopment or urban renewal plan. Ala. Code §§ 11-80-1(b) and 24-2-2. Also, Ala. Code § 35-18-2 prohibits the use of eminent domain power to create or expand a conservation easement.

Specific examples of public purposes recognized by law include the condemnation of land that the county finds necessary to provide approach protection for aircraft, Ala. Code § 4-6-13; land being used as a water supply, water distribution, or sewer system, or land being used in the furnishing of fire protection service, Ala. Code § 11-89-7(15)(a); land intended for recreational use, Ala. Code § 11-86-5 and 18-1B-2(a); land to be used as part of a public hospital, Ala. Code §§ 11-95-14, 22-21-180; and land considered necessary for any government housing project, Ala. Code §§ 24-1-67, and 24-1-68. More general provisions for county acquisition of land for public purposes can be found in Ala. Code §§ 11-18-1 to

11-18-24.

4. EMERGENCY PLANNING

The Emergency Planning and Community Right-to-Know Act, 42 U.S.C. Section 11046, and Ala. Code §§ 31-9-1 through 31-9-40 require emergency management plans. Normally, county emergency operations plans identify the hazards affecting the jurisdiction and identifies the emergency responsibilities for planning, response, recovery and mitigation. The county commission has significant responsibilities in assuring the plan is current and exercised on a recurring basis.

Also, after the passage of the Alabama Homeland Security Act of 2003 Ala. Code §§ 31-9A-1 through 16, the Governor will appoint one representative of county government to serve on the Homeland Security Task Force, which shall meet at least twice a year to advise the state Homeland Security Director on the comprehensive plan for homeland security as determined by the task force. Ala. Code § 31-9A-12 (a)(12) and (d). Alabama became a signatory to the Emergency Management Assistance Compact in 2001, allowing the state to receive help from other states during emergencies in exchange for offering help to those states in their times of crises. Emergency personnel may not be sent to an out-of-state disaster without their employers' consent, and liability for the personnel shall lie with the requesting state while the personnel render aid there. Ala. Code § 31-9-40.

C. PUBLIC BUILDING AUTHORITIES

Any county may form a public corporation to provide buildings for use by the county in the performance of its governmental and public functions. Ala. Code §§ 11-15-1 through 11-15-19. The statute invests such a corporation with all powers necessary to accomplish its purposes, including the authority to lease its buildings to the county and to issue interest-bearing revenue warrants to pay the costs of acquiring, constructing, improving, enlarging, and equipping the project. Ala. Code §§ 11-

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15-8 and 11-15-9. The county is authorized to pay rentals out of its current revenues for the facilities leased from the corporation. The corporation's securities are payable solely from its rentals; its securities do not constitute a debt of the county. Ala. Code § 11-15-9. Apparently a few counties have used this statute to erect a new courthouse and jail without issuing general obligation bonds.

Ala. Code § 41-9-166 empowers each county commission to adopt, and to enlarge, if necessary, the state building code. The commission can adopt the code of resolution (duly recorded in the commission's minutes) following four weeks' notice via weekly publication in some county newspaper and by notices posted at the door of each courthouse in the county. The code itself need not be posted. The commission may not, however, apply the provisions of the code to state buildings or to the construction of public schoolhouses.

D. CORPORATE SERVICES

As noted in Chapter 1, the county is a quasi-corporation that exists primarily as an agent of the state. In legal theory, it is a political subdivision of the state created to assist in the administration of state functions. A municipal corporation, on the other hand, functions not only as an agent of the state, but also as an instrument for the satisfaction of local needs. However, it is important to note the changing nature of county functions, for Alabama, in common with other states, has authorized its counties to render numerous local services of the type usually associated with municipal corporations.³ Local or corporate services that may

³The reader will note that this subdivision is titled "Corporate Services." In so doing, the term "corporate" is used to distinguish the services provided by local governments for the satisfaction of local needs from the services rendered by local governments as agents of the state. Jefferson County was assigned responsibility for handling sewage disposal as early as 1901. At that time, this function generally was considered as wholly municipal in character. Nevertheless, the sanitary problems caused by the

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be performed by Alabama counties include utility services, airport service, hospital service, library service, water conservation and irrigation services, forest protection, fire protection, and the provision of public housing and recreational facilities.⁴

uncoordinated disposal activities of some seventeen separate municipalities within the county called for drastic action, and the framers of the legislation readily assigned this function to the county. The 1901 act created a sanitary district with boundaries coterminous with the county and authorized the levy of a countywide tax for the construction and operation of sewers and sewage disposal facilities. Originally, the district was governed by a commission, which was made accountable to the Jefferson County governing body in a number of ways, but an act of 1909 abolished the commission and transferred its functions and duties to the governing body of the county. Weldon Cooper, Metropolitan County: A Survey of Government in the Birmingham Area (University of Alabama: Bureau of Public Administration, 1949), Ch. VIII. The Jefferson County sanitary system was provided for by special constitutional and statutory provisions, and is not, therefore, an illustration of a county sewer system acquired, and operated under the general laws described below. It should be pointed out, also, that the courts held that the Jefferson County sanitary system, for purposes of determining tort liability, was a "governmental" rather than a "corporate" activity. Jones v. Jefferson County, 206 Ala. 13, 89 So. 174 (1921)(cited in Cooper, op. cit., p. 54).

⁴Ala. Code §§ 11-81-140 through 11-81-150 authorize the issuance of public improvement revenue bonds for the acquisition or construction of a number of county "undertakings," including causeways, tunnels, viaducts, bridges, highways, parks, airports, docks, hospitals, public markets, tennis courts, swimming pools, golf courses, auditoriums, incinerator plants, electric systems, cold storage plants, and plants for the conversion of agricultural produce into marketable products.

1. UTILITY SERVICES

Under general provisions of law applicable to both counties and municipalities, any county in Alabama may acquire any one or more of the following utility systems: a water works system, a sanitary sewer system, a gas system, and an electric system.⁵ However, no county may construct a utility system in any portion of the county in which a private company operates a similar system. Ala. Code §11-81-161(a). Any county owning and operating a utility system may improve, enlarge, extend and repair the system and furnish the services of the system to domestic or industrial users, or both, either within or outside the county boundaries. The county also may consolidate any two or more of its utility systems and provide for the operation of the consolidated system as one unit. Ala. Code §11-81-162(c).

Further, counties may exercise eminent domain power to secure land for purposes of establishing a public utility, subject to the provisions of Title 18. Ala. Code § 11-89-7(a)(15).

The county may issue its revenue bonds either to finance acquisition, improvement, enlargement, extension, or repair of the utility system or to refund any outstanding bonds, or both, to finance a project and to refund its bonds. Ala. Code § 11-81-

⁵Ala. Code §§ 11-81-160 through 11-81-190. Ala. Code § 11-3-11, which relates to the authority of county governing bodies generally, authorizes counties to lay trunk lines of sewers and to construct sewage disposal plants. Ala. Code § 11-3-11(a)(15). This authority is granted on the basis that such measures are necessary to improve health conditions in the county, and the section stipulates that no sewers may be laid without the written approval of the State Health Officer. Ala. Code §§ 11-81-200 through 11-81-206 contain an alternative system of acquiring an electric system. Under Ala. Code § 11-81-172.1, a county may issue revenue bonds to refund outstanding warrants issued in connection with the acquisition, repair, etc., of a waterworks system, gas system, electric system, or sanitary sewer system.

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166(a). Bonds issued for utility purposes are payable solely from revenues derived from the operation of utility systems, but may be made payable from any utility revenues regardless of whether the bonds were issued in connection with the utility from whose revenues the bonds are made payable. Ala. Code § 11-81-166(b). Interest-bearing notes may be issued to borrow money temporarily in anticipation of the sale and issuance of the revenue bonds.

Rates charged for services furnished by county utility systems are not subject to supervision and regulation by the Alabama Public Services Commission. Ala. Code § 11-88-21. Neither is it necessary for any county to obtain any franchise, certificate, or permit, other than from the State Board of Health (in connection with sanitary sewer systems), to construct, improve, extend, or repair an authorized utility system.

Water service, sewer service, and fire protection service may be provided under related statutes that authorize the creation of authorities and districts empowered to furnish such services, or any one or more of them, within a defined service area. The authority (or district) is authorized to issue revenue bonds to provide funds for its corporate functions. Payment of the principal and interest on the bonds is to be made out of the revenues derived from the operation of the water system, sewer system, or fire protection facility. Rates and charges for these services must be fixed at such amounts as will pay the costs of operating, maintaining, and improving the systems and facilities, as well as the bonds and other obligations assumed by the authority that are payable out of its revenues.⁶ Ala. Code §§ 11-88-1 through 11-88-21. Ala. Code § 11-88-15.1 allows water systems to solicit voluntary donations to local volunteer fire departments as a check-

⁶Ala. Code §§11-88-41 and 11-88-42 provide for the construction of sewage treatment or disposal plants, etc., by any such authority whose service district includes a resort area. The cost of these improvements is assessed against the property benefitting from the improvement. Ala. Code §§ 11-88-41 and 11-88-42.

off on their bills to customers.

2. AIRPORTS

The general laws of Alabama authorizing the establishment and operation of municipal airports also are applicable to counties.⁷ Ala. Code §§ 4-4-1 through 4-4-16. Under this legislation, any county may acquire privately owned lands for airport purposes by the exercise of the right of eminent domain, by purchase, or by gift. Ala. Code §§ 4-4-6. When the necessary land has been acquired, the county commission may develop the land into an airport and improve, operate, and regulate the airport and its facilities. The commission may adopt regulations for the government of the airport, prescribe penalties for violations of these regulations, and establish and collect fees and charges for the use of the airport or any airport equipment or facility. Ala. Code § 4-4-7. A county may issue bonds either to finance the acquisition of lands for airport purposes, or to extend, enlarge, or improve an existing airport, after the voters have approved the proposal at an election held for that purpose. Ala. Code § 4-4-11. The statute also authorizes the counties to make contracts with each other (or with municipalities) for the establishment and operation of joint airports. Ala. Code § 4-4-12. In the interest of eliminating airport hazards, any county having an airport may exercise airport zoning authority over all unincorporated territory in the county, except within two miles of a municipal airport, when the municipality also exercises zoning control over these areas. Ala. Code §§ 4-6-1 through 4-6-15.

Statutes authorize and regulate the issuance of county general obligation bonds, warrants, and certificates of indebtedness for airport purposes. Ala. Code §§ 4-1-1, 4-5-1 through 4-5-5. Under the terms of the 1955 act, any county issuing warrants and

⁷The definition of the word "municipality," as used in the legislation governing municipal airports is as follows "Any county, city, town or incorporated village of the State of Alabama." Ala. Code § 4-4-1.

certificates of indebtedness for airport purposes may pledge for the payment of such warrants or certificates the proceeds of any county privilege, license, or excise tax levied in the county to construct, maintain, and operate a county airport. Ala. Code § 4-5-3.

Under other statutory provisions, counties may authorize, or participate in the authorization of, the incorporation of airport authorities to establish and operate airports, heliports, and other related facilities. Such an authority may issue revenue bonds to finance its activities, with the bonds payable from the revenues derived by the authority from the operation of its airport and other facilities or property. An authority organized under the statute has the same zoning powers, with respect to unincorporated territory, as are conferred on municipalities by the Airport Zoning Act enacted in 1963.⁸ Ala. Code §§ 4-3-1 through 4-3-24.

There is an alternative procedure for incorporating airport authorities and for regulating the affairs of such authorities upon their incorporation. Ala. Code §§ 4-3-40 through 4-3-62.

In 2006, the Legislature amended these provisions to clarify that directors and employees are not personally liable for the authority's obligations. The legislation also elaborated on the procedures for filling vacancies and provided for the authority to establish its directors' compensation in its bylaws. However, the county commission has thirty days within which to withdraw any such pay increases. Ala. Code § 4-3-45.

3. HOSPITALS

County hospitals may be established in Alabama under general enabling legislation that provides that any county in the state may authorize the organization of one or more public corporations to acquire, own, and operate public hospitals and

⁸Municipal powers regarding airport zoning regulations are set out in Ala. Code § 4-6-4.

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other public health facilities within the county or a portion of the county.⁹ Ala. Code §§ 22-21-70 through 22-21-112. Any three or more persons may file an application with the county commission for authority to incorporate a public corporation for hospital purposes. If the county commission determines that the applicants are qualified electors and property owners in the county, or of the appropriate portion of the county if the corporation is to function in only a part of the county, and that it is expedient that such a corporation be formed, the commission shall adopt a resolution authorizing the applicants to proceed with the organization of the corporation. Ala. Code § 22-21-72. After its organization, the corporation is governed by a board of directors, whose members serve for staggered terms of six years and are elected by the county commission. Ala. Code § 22-21-76.

In addition to other powers, a county hospital corporation organized under this legislation may acquire, construct, equip, enlarge, improve, maintain, and operate a hospital, including the provision of ambulance service in connection with the operation of the hospital,¹⁰ or lease the facilities; conduct nurses' training schools; borrow money and issue interest-bearing securities in evidence of its borrowing; mortgage, pledge, or otherwise convey its property and its revenues; appoint and employ such officers and agents as its business may require; establish, alter, and collect charges for services rendered and supplies furnished by it; and prescribe rules and regulations for the treatment of charity patients and for the conduct of the hospital. Revenues that may be

⁹The county hospitals described here refer to those mentioned in §§ 22-21- 70 through 22-21-112 and 22-21-170 through 22-21-191. Ala. Code § 22-21-5 gives county hospitals the option of converting themselves into "hospital authorities," which provides for some additional powers as specified in Title 11 of the Alabama Code.

¹⁰See Quarterly Report of the Attorney General of Alabama, January-March 1967, p. 46. *But see* the section on "Powers" in this work for reference to statutory authority to provide ambulance service.

mortgaged or pledged by the corporation as security for the payment of its securities include taxes levied for the support of the hospital, or the proceeds of which have been appropriated to the corporation by either the Legislature or the governing body of any county or municipality; and revenues derived from the operation of the hospital. *See Ala. Code § 22-21-1 et seq.*

Any county that levies a special county tax for hospital purposes may designate a hospital corporation formed within the county as agent for the acquisition, construction, operation, and maintenance of public hospital facilities. After the county has designated the corporation as its agent, the tax collector pays over to the corporation the proceeds of the special hospital tax. Ala. Code § 22-21-102. The corporation may issue securities in anticipation of the proceeds derivable from the county hospital tax, but such securities are solely the obligations of the corporation. Ala. Code § 22-21-106. The county is not liable for any obligation created by the hospital corporation, and its securities do not constitute county indebtedness. Ala. Code §§ 22-21-100 through 22-21-102, and 22-21-106.

Some counties have local constitutional amendments permitting the use of ad valorem taxes to be used for hospitals.

4. INDIGENT HEALTH CARE

The county commission has the "jurisdiction, power, and authority necessary and proper for the relief and support of the poor of its county." Ala. Code § 38-8-1. The commission's power includes the power to acquire and hold property, as well as to employ people for the task. Ala. Code § 38-8-1. In addition, the county commission is charged with providing the necessary burial expenses for indigents who die within the county without estates or relatives in the county who are able to provide the burial expenses. Ala. Code § 38-8-2. The commission also may act in conjunction with the State Department of Human Resources to provide needed care for the indigents resident in the county. Ala. Code § 38-8-3.

Other Functions

The ultimate financial responsibility for treatment received at a regional referral hospital is the obligation of the county of the patient's residence. However, a county is not obligated to pay for services at the regional referral hospital when such services are available at a local hospital in the patient's home county. Further, the county is not required to pay until all obligated third-party payors have paid. Ala. Code § 22-21-293 of the Health Care Responsibility Act.

The Alabama Supreme Court shed some different light on the county's liability regarding indigent care. In the case of *Childree v. Health Care Authority*, 548 So. 2d 419 (Ala. 1989), the Court held that when a county involuntarily commits one of its own indigent citizens to the Department of Mental Health, the county, rather than the department, bears the financial responsibility. The Alabama Supreme Court also held that all sections of the Health Care Responsibility Act should be read *in pari materia*¹¹ with the involuntary commitment statutes and required the county to pay the hospital bills of indigent residents involuntarily committed.¹² In *University of South Alabama v. Escambia County*,¹³ the Alabama Supreme Court extended this holding and ruled that Ala. Code § 14-6-19, which places the responsibility of providing health care for indigent inmates upon the county, should be read *in pari materia* with the Health Care Responsibility Act to give effect to the provisions of each. The Court held that the university's contractual agreement not to file claims against Escambia County under the Health Care Responsibility Act precluded the university from seeking compensation from the County under Ala. Code §14-6-19.

¹¹Black's Law Dictionary, 9th Ed., defines *in pari materia* as "on the same subject matter, relating to the same matter. It is a canon of construction that statutes that are *in pari materia* may be construed together, so that inconsistencies in one statute may be resolved by looking at another statute on the same subject."

¹²Health Care Auth. of the City of Huntsville v. Madison County, 601 So. 2d 459 (Ala. 1992).

¹³ 812 So. 2d 336 (Ala. Civ. App. 2000).

5. WATER CONSERVATION AND IRRIGATION

A 1955 act authorized the governing body of any county in the state to provide for the creation of a water conservation and irrigation corporation for the county. Ala. Code §§ 9-10-30 through 9-10-47. A county water conservation and irrigation corporation formed under the act is governed by a board of directors composed of five persons appointed by the county commission. Directors serve for staggered terms of six years and are eligible to succeed themselves in office. Vacancies are filled by the county commission for the unexpired term. Ala. Code § 9-10-33. The corporation may issue revenue and revenue refunding bonds to finance the construction of water supply, conservation, or irrigation projects. Ala. Code § 9-10-34(12). The bonds are payable from the tolls, rentals, sales receipts, or other revenues derived by the corporation from the operation of the project. Ala. Code § 9-10-36.

Under supplementary legislation enacted in 1965, counties may participate in the establishment of a state water conservation and irrigation agency and contribute money to the work of the agency. Ala. Code §§ 9-10-1 through 9-10-14.

6. FOREST PROTECTION

Counties may provide forest protection through participation in a protection program created by the Alabama Legislature. This program was originally managed by the State Department of Conservation and Natural Resources, but today it is administered by the State Forestry Commission.¹⁴ Ala. Code §§ 9-13-180 through 9-13-187. The statute, enacted in 1955, provides

¹⁴The name of the agency referred to above has since been changed to the State Department of Conservation and Natural Resources. Ala. Code § 9-2-1 *et seq.*. Responsibility for the administration of the forestry laws has been transferred to the State Forestry Commission, created in 1969. Ala. Code §§ 9-3-1 through 9-3-19.

that the county governing body, after a public hearing has been held on the question, could assess the cost of the forest protection program against the owners of forest land in the county, subject to the stipulations that the assessment must not exceed five cents (\$.05) an acre, and that the amount of the assessment must not be greater than the benefit accruing to forest lands because of the availability of fire protection. Ala. Code §§ 9-13-182 and 9-13-183. All funds accruing to the county from such assessments must be deposited in the county treasury, to the credit of a special county fire protection fund that may be expended only in connection with the fire protection program within the county. Ala. Code §§ 9-13-182 and 9-13-185.

7. FIRE DISTRICTS

Amendments to the Alabama Constitution allow for the establishment and funding of fire districts in certain Alabama counties. *See, e.g.*, Ala. Const. Amend. 561 (Blount County); Ala. Const. Amend. 239, 314, and 369 (Jefferson County); Ala. Const. Amend. 551 and 711 (Montgomery County); Ala. Const. Amend. 649 and 765 (Pickens County). These districts generally receive funding from a property tax, service charge, or both. If unpaid, the assessments can give rise to “a lien upon such property, enforceable by the sale thereof.” Ala. Const. Amend. 369, (Jefferson County). In Ala. Act 1966-79, the Legislature empowered qualifying fire districts to levy and collect service charges, “in an amount sufficient to pay” the district’s expenses, from the owners of the property served by the fire system. The act also provided that the charge shall be secured by “a lien against said property in favor of the district, which lien shall be enforceable by sale thereof in the same manner in which the foreclosure of a municipal assessment for public improvements is authorized.”

Courts have interpreted this language to mean that fire districts must adhere to the foreclosure procedures laid out in Ala.

Code § 11-48-1 *et seq.*¹⁵ The question of whether fire districts' liens have "super-priority" or are subject to the same priority rules as other liens has not been answered expressly, but the Alabama Supreme Court has suggested that the latter is the case.¹⁶ The questions of whether and to what extent homeowners and mortgage lenders retain redemption rights after a fire district's foreclosure sale thus far remain unresolved by statute or appellate court ruling.

8. PARK AND RECREATION AUTHORITY

The governing body of any county in the state or the governing body of any municipality with a population of not more than 100,000 according to the most recent census may create a recreation board to conduct a recreation program for the county. Ala. Code §§ 11-86-1 through 11-86-6. A county recreation board consists of no fewer than five nor more than nine members appointed by the county commission from among residents of the county who have a recognized interest in recreational activities. Ala. Code § 11-86-2. The board members serve without compensation. Ala. Code § 11-86-3. The county recreation board may employ a county director of recreation. The director, subject to the approval of the board, may, in turn, employ such assistants as are necessary to carry into effect the recreation program determined by the board. The director and staff serve at the pleasure of the board and receive such salaries as may be fixed by the board. Ala. Code § 11-86-4.

The county commission may make appropriations from the

¹⁵ See generally *In re Brown*, 221 B.R. 849 (Bkrtcy. N.D. Ala. 1998); *Special Assets LLC v. U.S. Bank, N.A.*, 902 So. 2d 711 (Ala. 2004); *Minor Heights Fire Dist. v. Skinner*, 831 So. 2d 609 (Ala. Civ. App. 2002).

¹⁶ See *Parker v. Mt. Olive Fire & Rescue Dist.*, 420 So. 2d 31 (Ala. 1982) (the Court read the 1966 fire district act narrowly to avoid judicial creation of a provision that the Legislature did not intend).

Other Functions

county general funds for the support and maintenance of the board, a recreation program, and recreational lands, buildings, equipment, and facilities. Also, the commission may designate for use as parks, playgrounds, and recreation centers any land or buildings under the control of the county; acquire lands and buildings for recreational purposes; acquire lands and buildings for recreational purposes, including by the exercise of the eminent domain power; and improve and equip, or appropriate funds to the board for improving and equipping, the lands and buildings so acquired. Any county may join with other counties or municipalities in acquiring property for recreational purposes, operating and maintaining recreational facilities, and establishing and maintaining a joint recreation board. Ala. Code § 11-86-5.

Ala. Code § 11-18-22 authorizes the county commission to acquire by purchase, condemnation, donation, or otherwise land within the county in order to establish and maintain a public park or recreational area. Ala. Code § 24-1-63. Ala. Code § 11-18-22 provides for the acquisition of land in an adjoining county, and authorizes the appropriation of county funds for the establishment and maintenance of a park or recreational area on the land acquired for this activity. Ala. Code §§ 11-18-20 through 11-18-24.

The Legislature also has provided for the incorporation in counties of public corporations authorized to acquire, operate, develop, lease, and dispose of properties designed for use as public park and recreational facilities. Public park and recreation corporations are governed by a board of directors consisting of no fewer than three people selected by the county commission. Directors serve for overlapping six-year terms. Such a corporation may issue its bonds to carry out its program and pay the bonds from the receipts of its projects. When the bonds or other obligations have all been paid, the corporation may be dissolved, and in this event, ownership of the corporation's property is vested in the county. Ala. Code §§ 11-22-1 through 11-22-19.

9. HOUSING AUTHORITIES

If a county governing body determines, after a hearing on the question, that there is need within the county for a housing authority, the governing body of the county may appoint five housing commissioners, who, after incorporation of the authority, function as its operating head. Ala. Code §§ 24-1-60 through 64 and 24-1-66 through 84. Housing commissioners serve for staggered terms of five years. Ala. Code § 24-1-63. The legislation provides that the county governing body may remove a housing commissioner for inefficiency, neglect of duty, or misconduct in office, but only after notice and hearing.¹⁷ Ala. Code § 24-1-64. A county housing authority has territorial jurisdiction throughout the county, except for that portion of the county within the limits of an incorporated municipality.

The function of the county housing authority is to provide safe, sanitary, and uncongested dwelling accommodations for people of low income. To this end, the authority is empowered to investigate housing conditions and the means of improving such conditions; to determine where unsafe or unsanitary housing conditions exist; to make recommendations on the clearing and reconstruction of areas in which unsafe or unsanitary housing conditions exist; to acquire by eminent domain any real or personal property necessary to carry out the authority's purposes, Ala. Code §§ 24-1-66 through 68; and to acquire and operate low-cost housing projects. The authority either may undertake a housing project on its own initiative or take over a project owned by the county or any other government. The county housing authority is empowered to borrow money or accept grants from the federal government in aid

¹⁷The Alabama Supreme Court invalidated a similar provision in the statutes relating to municipal housing authorities. *See Roberts v. Fredrick*, 295 Ala. 281, 328 So. 2d 277 (Ala. 1976). According to this decision, the housing commissioner was an officer of the city and could therefore be removed only by impeachment for causes specified in the state Constitution, as provided in Sections 173 and 175 of that document.

Other Functions

of the construction of any housing project. Ala. Code § 24-1-66. The bonds and other obligations of a housing authority are solely the debts of the authority; they do not constitute obligations of the county. Ala. Code § 24-1-70. Normally, bonds must be sold at a public sale, but a housing authority may sell bonds to a government-sponsored enterprise at a private sale. Ala. Code §§ 24-1-32 and 24-1-72.

Although the authority may lease or rent any of its housing accommodations and establish and revise its rental charges, it must fix its rates at the lowest possible point consistent with providing decent, safe, and sanitary dwelling accommodations for people of low income. It must rent its accommodations only to those who lack the financial ability to live in safe, sanitary dwellings, and it may charge only such rentals as are within the reach of such people. Furthermore, the authority may not accept as a tenant in any low-rent housing project any person whose annual income (aside from an exemption of \$100 for each minor member of the family) exceeds five times the annual rental of the quarters to be furnished.¹⁸ Ala. Code § 24-1-6.

If the governing bodies of two or more counties determine that there is need for a joint housing authority, they may form a regional authority. Upon the creation of a regional housing authority, any county housing authority then in existence within the region is abolished. However, no county may participate in a regional housing authority if a county housing authority in existence in the county has any bonds or notes outstanding, unless all the holders of the outstanding securities agree to the substitution of the regional authority for the county authority in all the outstanding securities and the commissioners of the county housing authority consent to the transfer of all the rights, contracts,

¹⁸The information presented in this section on public housing was drawn from Ala. Code §§ 24-1-60 through 24-1-84 and from Tennessee Valley Authority, County Government and Administration in the Tennessee Valley States (Washington, 1940), pp. 111-113.

obligations, and property of the county housing authority to the regional authority. Ala. Code §§ 24-1-100 through 24-1-117.

Other statutes authorize counties to assist and cooperate with housing authorities in a number of various ways. Ala. Code §§ 24-1-132 through 24-1-134 and 24-2-4.

10. AMBULANCE SERVICE

Any county may establish, maintain, and operate an ambulance service within the county. County commissions also may make rules and regulations for the control and management of the service. Ala. Code § 11-87-1. County commissions may appropriate funds to pay for the ambulance service or to contract with another for the service. Ala. Code §§ 11-87-2 and 11-87-3. The county also may charge a fee for the service. Ala. Code § 11-87-4.

11. DOG POUNDS

It is the duty of each county to provide a suitable county pound for animals. Once an animal is impounded, the owner, if known, must be notified. Ala. Code § 3-7A-7. All animals that have been impounded for lack of rabies inoculation that are not redeemed may be humanely destroyed and disposed. The county may collect for inoculation and boarding and also may sell any unredeemed animals. Ala. Code § 3-7A-8.

State law dictates that all animal shelters must require anyone acquiring a cat or dog from the pound to pay for the animal's sterilization before placement. Failure to comply with these provisions is punishable as a misdemeanor. Ala. Code § 3-9-1 *et seq.*

E. PERSONNEL

1. POLITICAL ACTIVITY OF COUNTY PERSONNEL

Alabama law now makes it possible for any county employee to participate actively in municipal and state politics to the same extent as any other Alabama citizen. Such activities include endorsing candidates, making campaign contributions, and joining parties or political organizations on the local, state, or national level. Furthermore, county employees may publicly support state and national issues of public welfare, circulate petitions calling for or in support of referendums, and contribute freely to those of their choosing. Ala. Code § 17-1-4. Alabama law makes it illegal for anyone to use official authority to influence the vote or political action of any employee. Ala. Code § 17-17-5.

Notwithstanding Ala. Code § 17-17-5, any employee of a county, whether in the classified or unclassified service, who qualifies to seek a political office with the governmental entity with which he or she is employed, shall be required to take an unpaid leave of absence from his or her employment, or use accrued overtime leave, or use accrued vacation time with the county from the date he or she qualifies to run for office until the date on which the election results are certified or the employee is no longer a candidate or there are no other candidates on the ballot. For purposes of this subsection, the term “employing authority” means the county commission for county employees. Any employee who violates this subsection shall forfeit his or her employment position. In no event shall this subsection apply to elected officials. Ala. Code § 17-1-4(b).

When off duty, out of uniform, and acting as a private citizen, no law enforcement officer, firefighter, or peace officer shall be prohibited from engaging in city, county, or state political activity or denied the right to refrain from engaging in political activity so long as there is compliance with this section. Ala. Code § 17-1-4(c).

2. ASSISTANCE IN EMPLOYEE BENEFITS

Recognizing the existing and potential expenses associated with the extension of benefits to county employees, the Association of County Commissions of Alabama (ACCA) has taken steps to assist counties in managing these costs. In 1976, the ACCA established its Workmen's Compensation Self-Insurers Fund. This self-funded program offers workers' compensation insurance to counties that are ACCA members. All but six of the sixty-seven counties participate in the program.

3. CIVIL SERVICE SYSTEMS

In counties where formal civil service systems exist, personnel management functions are performed on a centralized basis in accordance with standardized policies and procedures set out in written rules and regulations. Personnel administration is based on the principle of merit. The system includes a personnel structure responsible for the performance of such functions as record keeping, recruitment, job classification, preparation and maintenance of a compensation plan, processing employee grievances, and the administration of employee training and safety programs. Relatively few Alabama counties have such complete personnel systems, but the evolving county employer-employee relationship is moving in the direction of formalization.¹⁹

¹⁹County employees were covered under unemployment compensation by P. L. 94-566, and Ala. Code § 25-4-131 (1975). The legislation relating to the political rights of public employees, mentioned in the text above is found in Ala. Code § 17-1-4.

4. LABOR RELATIONS IN LOCAL GOVERNMENT²⁰

a. Labor Relations Concepts

Collective bargaining refers to the bilateral process of negotiation between a union and the management of an organization over the terms of employment or the price of labor. Emerging from the negotiation process is a collective bargaining agreement, a "mutually agreed upon set of rules that have been jointly developed to guide employer-employee relationships for a fixed period of time." Within the collective bargaining agreement, a bargaining unit is defined that specifies those employees who will be covered by the agreement. A grievance procedure is a judicial appeals process designed to ensure that the law of an organization, as represented by the collective bargaining agreement, is administered and interpreted properly. Decisions reached through the grievance procedure generally become part of the "common law" of the organization.

When agreements cannot be reached between labor and management in collective bargaining, several alternatives exist for resolution of an impasse. Labor and management may present their disputes and disagreements to a neutral third party for resolution. Mediation involves in the negotiation process an outside third person who attempts to facilitate discussion and helps both parties to reach an agreement through the use of reason, persuasion, and explanation. Mediators cannot dictate contract

²⁰This section was initially based on L. Franklin Blitz and Alfred H. Yeager, Personnel Management in Alabama Counties (Bureau of Public Administration, The University of Alabama, 1978); and on Don E. Hendren, Personnel: The Delivery System for County Services (Office of Personnel Management Assistance, Association of County Commissions of Alabama, 1978).

Note that material appears in Labor Relations in Alabama Local Government by William I. Sauser, Jr., Edward V. Palmer, and Kenneth L. Evans (Auburn University 1981), pp. 2-20. All citations appearing therein have been omitted in this version.

terms and generally lack the power to force an agreement. Fact-finding is a quasi-judicial process also involving the efforts of a neutral third party. It is an extension of the collective bargaining process and is designed to result in a decision or award based upon the fact-finder's recommendations. Binding arbitration is a process in which a neutral third party writes the contract between the parties based on their unresolved issues. Although the arbitration process may take different forms, collective bargaining ceases when arbitration is introduced. Mediation, arbitration, and fact-finding procedures also can be used to resolve a grievance related to the interpretation or administration of the collective bargaining agreement.

One of the oldest forms of impasse resolution is the strike. A strike is a temporary stoppage of work or an organized withdrawal from work by a group of employees from one or more organizations to express a grievance or to enforce demands affecting the terms of employment and/or the price of labor. Although many states have ruled that strikes among public sector employees are illegal, mere legislation of this fact does not prevent their occurrence.

In the absence of collective bargaining procedures in the public sector, some public agencies utilize meet-and-confer discussions or de facto bargaining. Meet-and-confer discussions are a process of negotiation between labor and management in which either party is free to withdraw at anytime and in which agreements, if any are reached, cannot be enforced. De facto bargaining essentially refers to collective bargaining in the absence of state legislation or city ordinance. Agreement reached through this process cannot be legally enforced.

A dominant characteristic of public personnel management is the merit or civil service system, which is found in the majority of federal, state, and local governments. It is important to differentiate the merit system from the merit principle. The merit principle involves the dual objectives of equity and efficiency. It was conceived to promote efficiency within government and to

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exclude political patronage from the process of employment and tenure. In contrast, the merit system evolved from the merit principle and is a broad label for the numerous varied components of public personnel administration systems.

Union security describes provisions serving "to protect the employee and the union from encroachment by management, nonunion employees, and/or raids by competing unions." Most states provide some form of union security, although union security procedures vary from state to state. The most common form of union security is the dues check-off or deduction, in which the employer deducts fees and membership dues from the pay of union employees who have provided their written consent. The collected money then is given to the union. Other forms of union security include the union shop, the agency shop, and the closed shop. The union shop involves a union-management agreement requiring a worker to join the union within a specified time period to retain employment. The agency shop deducts dues and assessment from all employees, union and nonunion, in the bargaining unit to cover expenses of the bargaining agent in the negotiations process. Of all the forms of union security, the closed shop is the strongest. It involves an agreement between an employer and a union to hire only union members; thus, one must be a member of the union to be hired. Today, closed shop arrangements are illegal in both the public and private sectors. A number of states, including Alabama, *See Ala. Code* §§ 25-7-30 through 25-7-36, have enacted right-to-work laws that prohibit some types of union security. All legal union security arrangements represent negotiable issues between union and management during collective bargaining.

b. Labor Laws Applicable to Alabama

Alabama is among the minority of states that have virtually no collective bargaining law of general coverage for public employees. The Solomon Act once governed public sector labor relations in Alabama. The act provided that "any public employee who joins or participates in a labor union or labor organization

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shall forfeit all rights afforded him under the State Merit System, employment rights, re-employment rights, and all other rights, benefits, or privileges which he enjoys as a result of his public employment." The act excluded coverage of teachers, employees of the State Docks Board, and county and city employees. The act was ruled unconstitutional in 1972 by a state trial court as "void and repugnant" to the First Amendment and to the Due Process and Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.²¹ The prohibition of public employee membership in unions was ruled "fatally overbroad," because no legitimate public interest was shown to be protected. Also, the exemptions to the act (e.g., State Docks Board employees, etc.) provided no rational explanation for this discrimination, which clearly violated the Fourteenth Amendment.

The only group of Alabama public employees that has been granted a statutory right to join a labor organization and present proposals has been firefighters. Ala. Code § 11-43-143. This right to join a union is limited, however, in that firefighters cannot strike, assert the right to strike, or join an employee organization that asserts the right to strike. According to a court decision in 1973, the restriction against participation in a strike is valid since the state has a legitimate interest in preventing the actual occurrence of public employee strikes.²² The restrictions against merely asserting the right to strike, or joining an organization that asserts the right to strike, probably would not withstand a challenge on First Amendment grounds.

Teachers also are granted some statutory rights. For example, deductions for such things as insurance may be made when employees or groups of employees request that a board of education do so. Ala. Code § 16-22-6.

²¹Alabama Labor Council, AFL-CIO v. Frazier 1972 WL 16649 (Cir. Ct. Madison County 1972).

²²Police Officer's Guild v. Washington, 369 F.Supp. 543 (D.D.C. 1973).

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Alabama's "right to work" law states that the right to work is an inherent right of every person and that right includes the privilege of joining a labor organization, or refraining from doing so. Sections in this law also prohibit an employer from requiring an employee either to be a union member or to pay union dues. Both union shops and agency shops are illegal in Alabama. Ala. Code §§ 25-7-32 through 25-7-34.

Due to Alabama's lack of statutes covering collective bargaining rights of government employees, many public officials are unaware of what is and is not legal. In the following sections, a number of public sector labor relations issues are discussed in light of the legal framework that has developed over recent years from Alabama Attorney General opinions and various court rulings. Public officials considering legal actions regarding labor relations issues should note that these discussions are not meant to substitute for the advice of a competent labor attorney.

i. Right to Join Unions

Public employees have the same First Amendment rights to join and support labor organizations as do all other American citizens. When the Solomon Act was ruled unconstitutional, the Alabama Attorney General did not appeal the decision. He subsequently expressed agreement with the decision in several letter opinions to various public officials. An Alabama Attorney General has stated that "public employees have a constitutional right to join a union or not join a union or to participate freely in union activities."²³

As a result of an Alabama Supreme Court decision in 1964, public officials cannot enter into an enforceable binding collective bargaining contract with public employees.²⁴ Public officials can

²³Opinions of the Attorney General of Alabama, January 12, 1978, p.14.

²⁴Int'l Union of Operating Eng'rs v. Water Works Bd., 276 Ala. 462, 163 So. 2d 619 (Ala. 1964).

legally refuse to bargain with unions, although employees or their authorized representatives can appear before city officials to make proposals concerning wages and working conditions.²⁵ Further, city officials are expected to hear proposals of their employees "in good faith." Also, the Court noted that although a binding contract would not be permissible, the employee representative and the city official could enter into a written memorandum concerning proposals related to wages and working conditions. However, neither side can be compelled to enter into such an agreement.

ii. Exclusive Recognition

As a result of Section 9(a) of the National Labor Relations Act, private industrial employers must deal exclusively with the union that represents a valid majority of its employees. This rule was established so employers would not have to recognize or bargain with other unions or employee representatives. A federal district court has ruled that exclusivity does not apply to public sector employees. This decision was made in 1971 when a local chapter of the American Federation of Teachers sought a declaratory judgment action in federal district court against the Jefferson County Board of Education.²⁶ The plaintiff alleged that members of its union were not afforded the same on-the-job privileges to participate in union functions that were granted to members of the Alabama and National Educational Associations. The Court ruled that the defendant had no right to deal exclusively with any organization representing its employees and the board was ordered to reformulate its policies so that each employee representative would be given equal treatment. The Court also noted that Jefferson County Board of Education could, if it so chose, proscribe all such on-the-job union activities as long as this was done in a uniform fashion.

From these decisions, it appears that a public employer

²⁵Nichols v. Bolding, 291 Ala. 50, 277 So. 2d 868 (Ala. 1973).

²⁶AFL-CIO v. Jefferson County Bd. of Educ., 1972 WL 863 (N.D. Ala. 1972.).

cannot be compelled to meet and confer with a union. After some degree of recognition or privilege has been granted to a particular union, however, then equal treatment must be extended to any other employee organization. This would be true even if the organization represented a small minority of the workforce.

iii. Public Employee Strikes

In Alabama, public employees do not have the right to engage in strikes or other activities involving withholding of employment services.²⁷ An off-duty public employee or any other citizen, however, has a legal right to protest unfair wages, benefits, and working conditions of government employees. In contrast, public employees violate of the law when they concertedly refuse to work, engage in work slowdowns or on-the-job sit-downs, or try to compel other employees to do likewise. It has been held that public employees have no constitutional right to strike and may be terminated without an infringement of their First Amendment rights of association and free speech, or without a denial of equal protection under the law.²⁸

**F. THE ASSOCIATION OF
COUNTY COMMISSIONS OF ALABAMA**

The Association of County Commissions of Alabama was created in 1929 to provide an educational, legal, legislative, and political resource for Alabama's sixty-seven counties. The association headquarters building is at 100 North Jackson Street in Montgomery.

Each year, the association represents the interest of county government before the Alabama Legislature, seeking to ensure that Alabama laws are written in a manner that is the most favorable to

²⁷Atkins v. City of Charlotte, 296 F.Supp. 1068 (W.D.N.C. 1969).

²⁸United Fed'n of Postal Clerks v. Blount, 325 F.Supp. 879 (D.D.C. 1971).

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county governments statewide. Each year, the counties also vote to establish the association's legislative program that includes bills that will improve the operation of county government and policy statements outlining the association's position on legislative items.

The association also offers legal advice and assistance through its office in Montgomery. In addition, the association often employs outside legal counsel in cases that will have a dramatic impact on counties throughout the state.

To provide the best benefits to taxpayers and county employees, many of the counties participate in the association's self-funded insurance programs. Workers' compensation insurance and liability insurance are provided through these efficient, county-run insurance programs.

Each year, the association sponsors conventions, conferences, and workshops to keep commissioners and their staff informed on current issues and to provide an opportunity to share ideas and successes with colleagues from throughout the state. The association's annual convention is held each year in August, and its Legislative Conference, where the year's legislative agenda is determined, is usually held in December.

Affiliate organizations are sponsored by the association for county administrators, engineers, county revenue officers and license inspectors, emergency management directors, directors of local 9-1-1 districts, and attorneys. These six organizations have become vital parts of the association's efforts on behalf of counties and promote professionalism and performance on the part of the county administrative, engineering, emergency, revenue and legal representatives. The organizations elect their own officers from within their ranks and hold annual conferences to remain informed on issues important to their job performance.

The association's magazine, *The County Commissioner*, is published six times a year and provides county officials information on current issues important to the operation of county

Other Functions

government. Additionally, the association publishes a directory of county officials and other publications, such as the Comparative Data on Alabama Counties and overviews of county road and bridge needs.

The activities of the association are governed by its officers and board of directors. The officers -- president, first vice president, and second vice president -- are elected each year by vote of the counties. The members of the Board of Directors are elected by vote of the counties within each of the ten Association Districts. The elections are held during the business session at each annual convention.

**G. ALABAMA LOCAL GOVERNMENT
TRAINING INSTITUTE**

The Alabama Legislature established the Alabama Local Government Training Institute in 1994 (Ala. Code § 11-3-40 through 11-3-46) to provide training to new county commissioners. The training--on issues such as personnel management, budgeting, road and bridge management, ethics, planning, and media relations--is managed by the Center for Governmental Services at Auburn University. Commissioners entering office have two years from the date their terms begin to complete fifty hours (five courses) of training. The courses are offered throughout the state and are repeated to offer commissioners ample opportunity to complete their responsibilities.

The Board also provides oversight for the County Government Educational Institute, which offers educational and certification programs to county employees. This program, which is coordinate on a daily basis by the Association of County Commissions of Alabama, offers two-day training programs that provide the essential county employees with the skills needed to succeed in today's ever changing environment.

Those completing the educational programs are awarded certifications during the Annual Convention of the Association of

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County Commissions of Alabama.

The Board of Directors of the Alabama Local Government Training Institute presents an annual report to the Alabama Legislature outlining those who have completed--and those who have failed to complete--the required training. The program also offers a second level of advanced training for those commissioners who want to continue their education.

This mandatory educational program is one of only two in the nation, making Alabama a national leader in educational opportunities for county commissioners.²⁹

²⁹Additional information about the Center for Governmental Services or the Alabama Local Government Training Institute, including course schedules, can be found at www.auburn.edu/cgs.

CHAPTER VII

APPENDIX A

**CODE OF ETHICAL CONDUCT FOR
ALABAMA COUNTY COMMISSIONERS**

Preamble

The stability of democracy depends upon the continuing consent of the governed. This, in turn, depends upon the trust the populace holds for its government. County commissioners must be ever aware of their obligation to conform their behavior to standards of ethical conduct that warrant the trust of their constituents.

The fundamental ethical principles, as developed in this Code should be considered as a guide and not a substitute for the law or a county commissioner's best judgment. Ultimately, each county commissioner must find within his/her own conscience, the touchstone on which to base his/her conduct.

Canon 1

**A County Commissioner Should Uphold the Integrity
and Independence of His/Her Office**

A county commissioner should demonstrate the highest standards of personal integrity, truthfulness, honesty and fortitude in all his/her public activities in order to inspire public confidence and trust in county government. A county commissioner should participate in establishing, maintaining, and enforcing, and should himself/herself observe, high standards of conduct so that the integrity and independence of his/her office may be preserved. The

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provisions of this Code should be construed and applied to further these objectives.

Canon 2

A County Commissioner Should Avoid Impropriety and the Appearance of Impropriety in All His/Her Activities

- A. A county commissioner should respect and comply with the law and should conduct himself/herself at all times in a manner that promotes public confidence in the integrity and impartiality of his/her office.
- B. A county commissioner should not allow his/her family, social, or other relationships to influence his/her conduct or judgment. A county commissioner should not lend the prestige of his/her office to advance the private interests of others; nor should a county commissioner convey or permit others to convey the impression that they are in a special position to influence him/her.

Canon 3

A County Commissioner Should Perform the Duties of His/Her Office Impartially and Diligently

A county commissioner should, while in the performance of the duties of his/her office as prescribed by law, give precedence to such duties over all his/her other activities. In the performance of those duties, the following standards should apply:

- A. Deliberate and Adjudicative Responsibilities.
 - (1) A county commissioner should be faithful to the general and local laws pertaining to his/her office and strive for professional competence in them.

Appendix

He/She should be unswayed by partisan interests, public clamor, or fear of criticism.

- (2) A county commissioner should demand and contribute to the maintenance of order and decorum in proceedings before the county commission.
- (3) A county commissioner should be honest, patient, dignified and courteous to those with whom he/she deals in his/her official capacity, and should require similar conduct of his/her staff and others subject to his/her direction and control.
- (4) A county commissioner should accord to every person who is legally interested in a proceeding before the commission full right to be heard according to law.
- (5) A county commissioner should dispose promptly of the business of the county for which he/she is responsible.

B. Administrative Responsibilities.

- (1) A county commissioner should diligently discharge his/her administrative responsibilities, maintain professional competence in the administration of his/her duties, and facilitate the diligent discharge of the administrative responsibilities of his/her fellow commissioners and other county officials.
- (2) A county commissioner should conserve the resources of the county in his/her charge. A county commissioner should employ county equipment, property, funds and personnel only in legally

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permissible pursuits and in a manner that exemplifies excellent stewardship.

- (3) A county commissioner should require his/her staff and county employees subject to his/her direction and control to observe the standards of fidelity and diligence that apply to him/her.
- (4) A county commissioner should take or initiate appropriate disciplinary measures against a county employee for improper conduct of which the commissioner may become aware.
- (5) A county commissioner should not employ or recommend the appointment of unnecessary employees. A county commissioner should exercise his/her power of employment only on the basis of merit, avoid favoritism and refrain from illegal discrimination and nepotism. A county commissioner should not recommend or approve compensation of employees beyond the fair value of services rendered.

C. Abstention from voting.

- (1) A county commissioner should abstain from voting on any matter coming before the commission when his/her impartiality might reasonably be questioned.
- (2) To this end a county commissioner should inform himself/herself about his/her personal and fiduciary financial interests, and make a reasonable effort to inform himself/herself about the personal financial interests of his/her spouse and minor children residing in his/her household.

Canon 4

A County Commissioner Should Regulate His/Her Extra-Governmental Activities to Minimize the Risk of Conflict with His/Her Official Duties

A. Financial Activities.

- (1) A county commissioner should inform himself/herself concerning the ethics laws of this state and particularly those relating to proscribed gifts and loans and should scrupulously comply with the provisions of such laws.
- (2) A county commissioner should refrain from financial and business dealings that tend to reflect adversely on his/her impartiality, interfere with the proper performance of his/her official duties, or exploit his/her county position.
- (3) A county commissioner should manage his/her personal financial interests to minimize the number of cases in which he/she must abstain from voting on matters coming before the commission.
- (4) Information acquired by a county commissioner in his/her official capacity should not be used or disclosed by him/her in financial dealings or for any other purpose not related to his/her official duties.

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Canon 5

A County Commissioner Should Refrain From Political
Activity Inappropriate to His/Her Office
Campaign Conduct

- (1) A candidate for the office of county commissioner, including an incumbent:
 - (a) should inform himself/herself concerning the laws of this state with regard to campaigns and relevant disclosure requirements and should scrupulously comply with the provisions of such laws;
 - (b) should maintain the dignity appropriate to the office, and should encourage members of his/her family to adhere to the same standards of political conduct that apply to him/her;
 - (c) should not make pledges or promises of conduct in office that he/she will not or cannot perform or would be illegal if it were performed;
 - (d) should not misrepresent his/her identity, qualifications, present position, or other fact; and
 - (e) should avoid pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office.
- (2) A candidate for the office of county commissioner, including an incumbent, that is filled by public election between competing candidates should not permit the use of campaign contributions for the private benefit of himself/herself or members of his/her family.

APPENDIX B

**RESOLUTION ADOPTING THE CODE OF ETHICAL
CONDUCT FOR ALABAMA COUNTY COMMISSIONERS**

WHEREAS, the membership of the Association of County Commissions of Alabama approved the text of the Code of Ethical Conduct for Alabama County Commissioners at its 61st Annual Convention on August 17, 1989 in Mobile, Alabama; and

WHEREAS, this Code is the first of its kind voluntarily adopted by elected officials in this state; and

WHEREAS, the _____ County Commission recognizes that self-imposed high standards of behavior by elected officials are both appropriate and needed if such officials are to enjoy the trust and confidence of the electorate; now therefore

BE IT RESOLVED BY THE _____ COUNTY COMMISSIONS That we do hereby adopt the Code of Ethical Conduct for Alabama County Commissioners as promulgated by the Association of County Commissions of Alabama.

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IN WITNESS WHEREOF, the _____
County Commission has caused this Resolution to be executed in
its name and on its behalf by its Chairman and has caused the
county's seal to be impressed hereon, all on this ____ day of
_____, 19__.

Chairman

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

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