



# MISSISSIPPI STATE UNIVERSITY™ EXTENSION

## Center for Government & Community Development

# Transition Guide for Incoming Municipal Officials in Mississippi

### Incoming Official's Issues

A new body of elected officials is constituted at the start of each term, **even if the same people are reelected**. This means each member must take a new oath of office and where required post a new bond.

### Office Qualifications – Incoming Officials

- Incoming officials must take the oath of office on or **before** the date they are to assume office. Section 268 of the Mississippi Constitution outlines the required oath. When a new individual is elected to the position, **it is especially important that the oath be administered before the official term begins**, to ensure a smooth transition and avoid any lapse in authority. MCA § 11-1-1 lists who may administer an oath of office.
  - *All officers elected or appointed to any office in this State, except judges and members of the Legislature, shall, before entering upon the discharge of the duties thereof, take and subscribe the following oath: "I, \_\_\_\_\_, do solemnly swear (or affirm) that I will faithfully support the Constitution of the United States and the Constitution of the State of Mississippi, and obey the laws thereof; that I am not disqualified from holding the office of \_\_\_\_\_; that I will faithfully discharge the duties of the office upon which I am about to enter. So help me God."*
- Elected officials take office on July 1st.
- Post official bonds. MCA § 25-1-15 presents the language of the officials' bonds and requires they be for the whole term of office.
- MCA § 25-1-19 requires bonds to be approved by the governing authority and filed in the office of the municipal clerk.
- Bond requirements for most municipalities:
  - Board or Council Members – Lesser of \$100,000 or five percent (5%) of tax collections, (MCA § 21-17-5)
  - **Officers and employees handling money – based on form of government**
    - Code Charter - \$50,000 (MCA § 21-3-5)
    - Mayor Council - \$50,000 (MCA § 21-8-23)
    - Council Manager - \$50,000 (MCA § 21-9-21)
    - Municipal Clerk, City Manager, Chief Financial Officer, Administrator - \$50,000 (MCA § 21-15-38)
    - Deputy Clerk - \$50,000 (MCA § 21-15-23)
    - Chief of Police - \$50,000 (MCA § 21-21-1)
    - Deputy Police - \$50,000 (MCA § 45-5-9, if hired under this law; No bond if hired under MCA § 21-21-3)
    - Mayor –recommend to be bonded the same as board members

### **Travel/Training for Incoming Officials**

- MCA § 21-17-5(4) allows for the outgoing board to authorize training for incoming elected officials. This training may occur prior to taking office.
- MCA § 25-3-41 requires that travel to the municipal conference must be officially authorized before reimbursable travel expenses are incurred.

### **Incoming Board's Responsibilities**

- Incoming officials are responsible for the faithful performance of their duties effective when they take office. Potential liability also occurs at this point. (MCA § 25-1-45)
- The incoming board should review policies and contracts in effect when they take office. This review is to ensure that operations are legal, and the conditions are right for the continued operation of the municipality.
- The review should result in actions to acknowledge the continuation of each policy or contract, make changes to their terms, or terminate the contract.
- The review also includes inter-local agreements, continue or stop actions authorized by local and private bills, follow through with grant and loan initiatives, and to pursue, change, or terminate other contracts.
- Every effort should be made to identify all interests and positions of the municipality for evaluation.
- Continued practice of business as usual may result in liability.

### **Appointment of Officers:**

- MCA § 25-1-7 and 25-1-1 authorize an officer to continue in office until a successor is appointed or elected. MCA § 25-1-37 makes the acts of an officer in possession of an office valid, even if he/she doesn't legally hold the office. Officers and employees will continue with their duties as currently assigned until the new board takes an official action to make a change.
- A non-reappointed officer may serve in an interim or holdover capacity no longer than 90 days after the beginning of the new term of office. MCA § 21-15-41
- New officer appointments should be made at the beginning of each term of office, even if the same person is being reappointed.
- Officers are Statutory Positions with Official Duties and are required to be filled by state law.
- Failure to appoint someone to a mandatory position could result in liability of the appointing authority for failure to perform its duties, MCA § 25-1-45.
- There is no provision in the law for an "Acting" officer; an appointment is absolute, even if it is intended to be for a short period of time.
- MCA § 21-3-17 requires the mayor and clerk to sign all appointments and approve all bonds.
  - Code Charter Appointments: MCA § 21-3-3
    - City Clerk
    - Police Chief
    - Municipal Judge
    - Prosecuting Attorney

- Special Appointments:
  - Court Clerk if not the city clerk – MCA § 21-23-11
  - Fire Marshall – MCA §21-25-1
  - Street Commissioner – MCA §21-3-23 (May be board member – MCA § 21-3-5)
  - Chief Administrative Officer – MCA § 21-3-25
  - Police Officers (by board) – MCA § 21-21-3
- Department Heads need to be appointed to make clear who is responsible for each budgeted department and who has liability if the department's budget is exceeded – MCA § 21-35-17

### **Assignment of Duties:**

State laws allow assignment or delegation of certain duties. Assuming these duties without board authorization may create questions of legal authority and liability.

- Travel: Who may authorize travel and travel advances – MCA § 25-3-41
- Petty Cash: Who may have a petty cash fund and for what purpose – MCA § 7-7-60
- Purchasing Law: Who may authorize emergency purchases, contract changes, use state contracts, accept quote offers, approve specifications and advertising, etc. – MCA § 31-7-13
- Contracting: Who may enter contracts, how will claims be verified, etc. MCA § 25-1-43
- Leave: Who may authorize leave – MCA § 21-3-5
- Overtime: Who may authorize overtime – MCA § 21-3-5

### **Review of Policies and Procedures:**

A review of all municipal policies and procedures should be made. With the start of the new term of office, the incoming officials become responsible for the activities (or failure to act) of the municipality. Determination should be made regarding what has to be done, how things are done, and that they are done legally.

- Board Meeting Procedures (Procedural Ordinance) How are motions made, how are votes taken, may the public speak, what detail is recorded in the minutes, who approves the minutes per MCA § 21-15-33, etc.
- Purchasing and Contracting Procedures  
Who may contract/purchase, how it the contract (purchase order, etc.) documented, who may declare emergency purchases, etc.
- Employee Personnel Policy  
How leave is earned and used, what holidays are paid and who works on holidays, how hourly pay is documented, how are employees hired and terminated, etc.
- Claim Verification Procedure  
Does the city owe the claim? Who contracted the bill? Were the services received? Were purchase laws followed? Is the payment within the budget, etc.?
- Budget Procedure  
Do procedures follow state laws, who prepares, do departments know what information to provide, who works out a timing schedule for publications and hearings, etc.

- **Disaster Procedures**  
Has the MEMA plan been adopted, who does what, are there contact points, where are resources available, are FEMA assistance requirements understood, what state laws have to be followed, etc. (see Emergency Accountability Plan for Local Governments Chapter)
- **Form and Understanding of Policies**  
Policies of authority must be board authorized. All policies should be in writing, distributed to those affected, and those affected should sign and acknowledgement of receipt and understanding.

### **Transfer of Responsibility**

- **Personal Property – Conduct an Inventory**  
An inventory of municipal property should be made at the end of the term of office. Should property be missing or misrepresented in the records, this inventory will document when the problem happened (which term), and allow the current board an opportunity to officially address the problem. May hire a CPA to advise and observe.
- **Cash – Conduct cash counts and receipt cut-offs**  
All cash should be accounted for by official cash count at the end of the term of office. The last receipt issued should be documented for verification. This is a verification that the cash was or was not there at the end of the term. May hire a CPA to advise and observe.

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