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**THE SENATE
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Legal Duties of Municipal Clerks

by State Senator Robert Thompson

1. Overview

- **Duties of municipal and deputy clerks include without limitation:**
 1. Preparing agendas;
 2. Taking minutes;
 3. Maintaining ordinance and resolution files;
 4. Maintaining historical records;
 5. Processing permits; and
 6. Providing the clearinghouse of information on local government.

2. Arkansas Statutes

- **Powers and duties are determined and modified** by General Assembly (statutory law - Arkansas Code) and by city governing body (local law - ordinances)

- **Arkansas Code § 14-43-313 – City clerks and attorneys generally**

The city clerks and the city attorneys in cities of the first class shall give the bond, perform the duties, and receive such salary as is prescribed by ordinance in each of these cities.

- **Arkansas Code § 14-43-316**

14-43-316. City clerk, treasurer, or clerk-treasurer in mayor-council cities of fewer than 50,000.

(a)(1) The qualified voters of cities of the first class having a population of fewer than fifty thousand (50,000) and having the mayor-council form of government shall elect on the first Tuesday following the first Monday in November, 1962, and every four (4) years thereafter:

(A)(i) One (1) city clerk; and

(ii) One (1) city treasurer, unless appointed pursuant to § 14-43-405; or

(B) A city clerk-treasurer.

(2) The city clerk and city treasurer, or the city clerk-treasurer, shall hold office for four (4) years and until a successor is elected and qualified.

(b) The city clerk and the city treasurer, or the city clerk-treasurer, shall take the oath of office with the other city officials that are elected in the general election in 1962 and in that manner every four (4) years thereafter.

(c) The city clerk and city treasurer, or city clerk-treasurer, shall give the bond and perform the duties as are prescribed by law and shall receive a salary as is prescribed by ordinance in each of these cities.

(d) Each incumbent in any city having this population shall continue to be the city clerk, city treasurer, or city clerk-treasurer and receive the salary and perform the duties until a successor is elected and qualified.

- **Arkansas Code 14-43-506**

14-43-506. Duties of city clerk.

(a) The city clerk in cities of the first class shall have the custody of all the laws and ordinances of the city and shall keep a regular and correct journal of the proceedings of the city council.

(b)(1) The city clerk, city clerk-treasurer, or city treasurer, as the case may be, shall be required to submit quarterly a full report and a detailed statement of the financial condition of the city. This report shall show receipts, disbursements, and balance on hand, together with all liabilities of the city.

(2) The report shall be submitted to the council in open session.

- **Arkansas Code § 14-43-303**

14-43-303. Officials in mayor-council cities of 50,000 or more.

(a)(1)(A) In the general election in the year 1960, and every four (4) years thereafter, cities of the first class that have a population of fifty thousand (50,000) persons or more, according to the latest decennial federal census or special federal census, and that also have the mayor-council form of government shall elect the following officials:

- (i) One (1) mayor;
- (ii) One (1) city clerk; and
- (iii) One (1) alderman from each ward of the city.

(B) All of these officials shall hold office for a term of four (4) years and until their successors are elected and qualified.

(2)(A) At the general election in the year 1960, the city shall also elect:

- (i) One (1) city attorney;
- (ii) One (1) city treasurer; and
- (iii) One (1) alderman from each ward of the city.

(B) All of these officials shall hold office for a term of two (2) years and until their successors are elected and qualified.

(3)(A) At the general election in the year 1962 and every four (4) years thereafter, the city shall elect:

- (i) One (1) city attorney;
- (ii) One (1) city treasurer; and

(iii) One (1) alderman from each ward of the city.

(B) All of these officials shall hold office for a term of four (4) years and until their successors are elected and qualified.

(b) In all primaries or general elections, the candidates for the office of alderman shall reside in their respective wards. However, all qualified electors residing in these cities and entitled to vote in the elections shall have the right to vote at their several voting precincts for each and every candidate so to be nominated or elected.

(c) All odd-year elections for municipal officials in the cities of the first class that have a population of fifty thousand (50,000) or more persons, according to the latest federal census, and that also have the mayor-council form of government are abolished.

(d) If a city first attains a population of fifty thousand (50,000) as shown in a decennial federal census or special federal census completed after January 1, 1997, and the mayor or other elected official of such city last elected before the census was elected to a four-year term and such term will expire two (2) years before the quadrennial general election year at which city officials are elected as provided in subsection (a) of this section, the terms of such officials shall be extended for a period of two (2) years in order that the terms will coincide with the next quadrennial general election year. At that quadrennial general election and at each quadrennial general election thereafter, the mayor and such other municipal officials shall be elected to terms of four (4) years as provided in this section. The provisions of this subsection shall not affect in any way the provisions of this section that provide for staggering the terms of office of aldermen so that one (1) alderman will be elected from each ward every two (2) years.

History. Acts 1959, No. 176, §§ 1, 2; A.S.A. 1947, §§ 19-1002.2, 19-1002.3; Acts 1997, No. 707, §§ 2, 3; 2003, No. 1185, § 25.

- **Arkansas Code § 14-43-405**

14-43-405. Treasurer — Clerk-treasurer in mayor-council cities.

(a)(1) Each city of the first class having the mayor-council form of government may provide, by ordinance, for the election or appointment of its city treasurer.

(2) The city council may designate, by ordinance or resolution, the city clerk as clerk-treasurer, allowing one (1) person to assume the duties of both clerk and treasurer.

(b) The term of office for these positions, combined or separate, is four (4) years.

History. Acts 1965, No. 484, § 4; A.S.A. 1947, § 19-1015.2; Acts 2001, No. 364, § 2.

- **Arkansas Code § 14-44-114**

14-44-114. Recorder-treasurer offices combined.

(a) The city council of any city of the second class in the State of Arkansas, if the council deems it to be in the best interests of the city, and upon passage of an ordinance by a majority vote of the council, may combine the offices of city recorder and city treasurer, thereby authorizing one (1) person to hold this position.

(b) When combined, the office shall be known as “recorder-treasurer” for the

city.

History. Acts 1949, No. 42, § 1; A.S.A. 1947, § 19-1103.1.

Arkansas Code § 14-45-107

14-45-107. Presiding officer of council — Clerk.

(a) The mayor or, in case of his absence, the recorder-treasurer shall preside at all meetings of the town council. The recorder-treasurer shall also be, and act as, clerk of the town. He shall attend all meetings of the council and make a fair, accurate, and correct record of all the proceedings, laws, rules, and ordinances made and passed by the council. The records shall, at all times, be open for the inspection of the electors of the town.

(b) In the absence of the mayor and recorder-treasurer from any meeting of the council, the council shall have power to appoint any two (2) of their number to perform the duties of mayor and recorder-treasurer for the time being.

History. Acts 1875, No. 1, §§ 42, 43, p. 1; C. & M. Dig., §§ 7672, 7674; Acts 1937, No. 259, § 3; Pope's Dig., §§ 9794, 9796; A.S.A. 1947, §§ 19-1203, 19-1206.

Arkansas Code § 14-42-119

14-42-119. Removal of certain elected municipal officials. [Effective October 2, 2011.]

(a) A person who holds an elected office in a municipality for a term of four (4) years in a mayor-council form of government is subject to removal from the office by the electors qualified to vote for a successor of the incumbent.

(b) The procedure for the removal of a person holding the office is as follows:

(1)(A) When a petition requesting the removal of an officer under this section, signed by a number of qualified electors equal to twenty-five percent (25%), is filed with the county clerk, the county clerk shall determine the sufficiency of the petition within ten (10) days from the date of the filing.

(B) A petition shall be filed by 12:00 noon not more than one hundred five (105) days nor less than ninety-one (91) days before the next general election following the election at which the officer was elected;

(2) If the petition is deemed sufficient, the county clerk shall certify it to the county board of election commissioners;

(3) At the election, the question shall be submitted to the qualified electors in substantially the following form:

“FOR the removal of (name of officer)
from the office of (name of office) []
AGAINST the removal of (name of officer)
from the office of (name of office) []”; and

(4)(A)(i) If a majority of the qualified electors voting on the question at the election vote for the removal of the officer, a vacancy shall exist in the office.

(ii) The officer shall vacate the office immediately upon

certification of the election.

(B) If a majority of the qualified electors voting on the question at the election vote against the removal of the officer, the officer shall continue to serve during the term for which he or she was elected.

History. Acts 2009, No. 362, § 1; 2011, No. 1028, § 1; 2011, No. 1185, § 17.

3. **Attorney General Opinions**

- **Attorney General Opinion 2000-244: Maintenance of records**

- Clerk is statutorily obligated to provide public access to official documents during business hours
- Arkansas Code requires all records and written materials in the possession of local government be available for inspection and copying by any person during normal business hours
- Freedom of Information Act requires "reasonable access"
- Records may not be maintained at the clerk's home in lieu of the clerk's office
- As an elected city official, a clerk may be removed for noncompliance if a court determines the clerk is guilty of nonfeasance

- **Attorney General Opinion 95-164: Relinquishment of office following conviction**

- Arkansas Constitution states that 'no person hereafter convicted of embezzlement of public money, bribery, forgery, or other infamous crime shall be eligible to the General Assembly or capable of holding any office of trust or profit in this state.'
- This provision has been applied to municipal offices
- However, a distinction is drawn based on how the court imposes judgment on the municipal official: the judgment must not only be subject to reversal, but it must also have been carried into effect by actual imposition of sentence for the constitutional provision to apply

- **Attorney General Opinion 2011-064: Impermissible duties established by ordinance**

- City established ordinance that required a city clerk to do certain things that conflicted with state law and was an impermissible exercise of local authority
- Ordinance expanded the obligations imposed on the mayor and city clerk: the legislature clearly set out what the mayor's procedural duties were so the city council could not burden the mayor and city clerk beyond what the statute required

- **Attorney General Opinion 2005-295: FOIA**

- A determination must be made concerning what communications are subject to the Arkansas Freedom of Information Act
- Mayor required city clerk to contact all the city council members to tell them of

- acceptance of a bid for a paving project
- The applicable competitive bidding statute did not require the mayor to notify the city council nor to receive their approval -- because the mayor in this case was the lone decision maker, the individual telephone calls do not implicate the FOIA
- However, if the telephone calls had not been purely informational and instead been calls that were offered with the intention of inviting a response that would amount to an exchange intended to result in the taking of a public action, then the FOIA could be implicated

- **Attorney General Opinion 2011-036: Elected official salaries**

- The city council must set salaries in a manner and amount that does not give rise to legal problems; must fix the salaries but not necessarily a specific dollar amount; and can set the salaries according to a range or a sliding scale
- The city council cannot establish the pay scale or pay range in a way that abuses its discretion; that is arbitrary; that creates a range or scale that is so broad that the salary is for practical purposes not fixed; or that is so low that it effectively abolishes the office

- **Attorney General Opinion 2010-016: Membership on local PRB boards**

- It is permissible for a city clerk to be a voting member of a local firemen's or policemen's pension and relief fund board

- **Attorney General Opinion 2007-067: Retirement benefits**

- No double dipping

- **Attorney General Opinion 2010-107: Increase or decrease of salary during office**

- Fact-specific inquiry

- **Attorney General Opinion 2001-066: Ordinance procedural requirements**

- ◆ Court applies a strict compliance standard to the procedural requirements for the passage of city ordinances
- ◆ An ordinance that was not signed by the mayor and the city clerk is invalid

- **Attorney General Opinion 95-015: Dual service**

- ◆ An elected city clerk may perform the duties of municipal court clerk when the duties of municipal court clerk do not require a full time employee
- ◆ Payment of separate salaries is a fact-specific question

2011 Acts Affecting City Clerks

Act 110 of 2011 -- The act provides that if the mayor is unable to perform the duties of office or cannot be located, the city clerk or other elected official of the city if designated by the mayor may perform all functions of a mayor during the disability or absence of the mayor.

Act 210 of 2011 -- The act provides that an improvement district in a city or incorporated town established for the purpose of making improvements for municipal purposes may include its annual financial report to the city clerk covering the financial affairs of the district for the preceding year with an annual financial report required to be filed with the county clerk under Arkansas Code § 14-86-2102 (requiring an improvement district or protection district that uses or intends to use the county collector for collection of assessments to disclose certain information). The act also changes the date on which municipal boards of improvement shall file with the city clerk their settlement showing all collections and money received and paid out – the date is changed from September to on or before March 1. This settlement may also be included with the report required by § 14-86-2102.

Act 556 of 2011 -- The act deletes language that allowed the board of trustees of a local police and fire pension and relief fund to authorize the city clerk to prepare an annual financial report. The annual financial report will now be prepared at the direction of the board of trustees and in accordance with reporting procedures established by the Arkansas Fire and Police Pension Review Board.

Act 619 of 2011 -- The act allows the city council to replace one of the three board members assigned to designate depositories and supervise the depositing of municipal funds (the mayor, city clerk or recorder or clerk-treasurer or reporter-treasurer, and a city council member selected by the city council) with the city finance officer or other official.

Act 1028 of 2011 -- The act provides that a petition to remove a person holding a 4-year elected office in a municipality shall be filed with the county clerk rather than the city clerk. The county clerk shall determine the sufficiency of the petition within 10 days from the date of filing.

Act 1185 of 2011 -- The act amends the deadlines applicable to certain elections, including certain elections where filing is with the city clerk. Specifically, petitions supporting the candidacy of a candidate for director shall be filed with the city clerk or recorder not more than 102 days nor fewer than 81 days before the election by noon and the candidate shall be certified by the city clerk or recorder not less than 75 days before the election unless the petition is insufficient.

Act 1225 of 2011 -- The act provides that all improvement districts in any city or incorporated town established for the purpose of providing electric utility services for municipal purposes shall file an annual financial report with the city clerk or recorder of

the city or town on or before June 1 of each year covering the financial affairs of the districts for the preceding year.

2009 Acts Affecting City Clerks

Act 25 of 2009 -- The act provides that a municipality is not required to file 3 copies of its ordinances for zoning, construction of buildings, and the installation of plumbing and electric wiring with the city clerk if there is an electronic copy of the code available for examination by the public. The act also allows three copies of a municipalities' technical codes to be filed either electronically or by hard copy in the office of the city clerk.

Act 294 of 2009 -- The act allows for a referendum election on the issue of whether to authorize the sale of alcoholic beverages for off-premises consumption on Sundays between the hours of 10:00 a.m. and 12:00 midnight. The election shall be called upon the filing with the city clerk of a petition signed by 15% of the qualified electors who cast a vote in the city for the office of Governor in the last general election.

Act 362 of 2009 -- The act provides a system for removing certain elected municipal officials in cities with a mayor-council form of government. To trigger an election of the issue of removal, a petition signed by 25% of the qualified electors shall be filed with the city clerk and the clerk shall determine the sufficiency of the petition. (This act was revised by Act 1028 of 2011 to require filing with the county clerk.)

Act 503 of 2009 -- The act provides that once the city clerk issues a notice for a specific violation of an order directing an owner to eliminate an unsightly and unsanitary condition on the owner's property, an additional notice for a subsequent violation of that specific violation within the same calendar year shall not be required before the issuance of a citation.

Act 1454 of 2009 -- The act amends the procedure for the removal of a director in a city manager form of government. Petitions shall be filed with the city clerk within 90 days after the collection of signatures begins and the city clerk shall mail a certified letter, return receipt requested, and a copy of the petition to the subject of the recall. The act clarifies that the city clerk will ascertain whether the petition was signed by the requisite number of qualified electors.

2007 Acts Affecting City Clerks

Act 14 of 2007 -- The act provides that the county court shall immediately provide a filed petition or order to reduce an addition or division to acreage to the city clerk of the city or incorporated town in which the property is located.

Act 71 of 2007 -- The act clarifies that the city clerk, city clerk-treasurer, or city treasurer, as the case may be, shall be required to submit, quarterly, a full report and a detailed statement of the financial condition of the city. This report shall show receipts, disbursements, and balance on hand, together with all liabilities of the city.

Act 158 of 2007 -- The act provides that upon the death of any city clerk or clerk-treasurer who retired under any state statute or any city clerk or clerk-treasurer who dies in office after becoming eligible to retire under any state statute, the legally recognized spouse of the city clerk or clerk-treasurer married to the city clerk or clerk-treasurer ten years or longer may receive, at the option of the governing body of the city, one-half ($\frac{1}{2}$) of the retirement benefit the retired city clerk or clerk-treasurer was receiving or one-half ($\frac{1}{2}$) of the retirement benefit the city clerk or clerk-treasurer who died in office was entitled to receive. Upon remarriage of the spouse, the benefits shall cease.

Act 197 of 2007 -- The act removed the requirement of filing an executive order or proclamation declaring a disaster emergency with the city clerk -- such an order or proclamation shall only be filed with the Secretary of State.

Act 293 of 2007 -- The act provides that a city clerk or clerk-treasurer who retired with not less than 10 years of service upon reaching sixty years of age or with twenty years of service regardless of age may receive a cost-of-living increase on January 1 of each year in an amount up to 3% if approved by the governing body of the city.

Act 603 of 2007 -- The act provides that a municipality or county is not required to publish a trust indenture or other agreement if a copy of the indenture or other agreement is filed in the office of the city or county clerk or recorder and the ordinance authorizing the indenture or other agreement states that fact.

Act 663 of 2007 -- The act requires the city clerk to send a copy of an ordinance abolishing a department of a pilot state district court to the Administrative Office of the Courts.

Act 689 of 2007 -- The act allows a municipality organized and operating under the city manager form of government to authorize the mayor of the municipality to have increased authority, including the power to veto ordinances and hire and remove the city manager and city attorney, if approved by the qualified electors of the municipality at an election called by the board of directors by referendum or by the qualified electors of the municipality by initiative. A petition signed by qualified electors shall be filed with the city clerk and he or she shall note the date and time filed and deliver the petitions to the mayor if they contain the signatures of 15% of the number of ballots cast for mayor in the last election or, if mayor is not an elected position, for the director position receiving the highest number of votes. The city clerk shall verify the signatures within 10 days of filing.

Act 1049 of 2007 -- The act amended the dates for certain candidate filings and petition filings with the city clerk.