



# A SELECTED READING

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## Working with Municipal Boards

**A**s municipalities grow to serve the needs of their residents, it becomes difficult, if not impossible, for a municipal official to stay abreast of developments affecting all municipal departments and agencies. Some municipalities have created council committees which function as an arm of the council. Council committees, usually composed of members of the council, observe the work of the various municipal departments and report back to the council regarding implementation of needed changes. The formation of committees enables council members to split the workload and concentrate their efforts toward improving specific areas.

Often, though, a service becomes so complicated that the council no longer feels qualified to deal with it themselves. The solution is often the creation of a separate board.

### What is a Board?

*Black's Law Dictionary*, Eleventh Edition, defines a board as “[A] committee of persons organized under authority of law in order to exercise certain authorities, have oversight or control of certain matters, or discharge certain functions of a magisterial, representative, or fiduciary character.” In other words, a board functions in a representative capacity. The council may elect to delegate its power over a municipal function to a board which is created for a single purpose.

Municipalities in Alabama have the authority to create numerous types of boards. Some of the more common types include utility boards (water, sewer, electric and gas), library boards, industrial development boards, zoning boards and planning commissions. These boards exercise only the authority granted them by the legislature.

### Categories of Boards

It is important to remember that Alabama municipalities operate under the Dillon Rule, which provides that municipalities, being creations of the state legislature, can exercise only the powers the legislature chooses to delegate to them. So, in order to create a board and vest it with specific powers and duties, there must be legislative authority for the board. Under Alabama law, all municipal boards fall into one of three distinct categories, depending upon legislative authority and the means of creation. There are incorporated boards, unincorporated boards and advisory boards.

Alabama law specifically provides for the creation of incorporated boards and unincorporated boards. An incorporated board is a totally separate entity from the municipality. Once it is created, an incorporated board has plenary power to act within its sphere of power, unfettered by the municipal governing body. Board members cannot be removed by the council. Generally speaking, board members serving on separately incorporated boards can only be removed by impeachment. AGO 1997-276.

Incorporated boards generally cannot be dissolved by the municipality except as provided for by law. For example, with regard to a water works board organized pursuant to Section 11-50-310 of the Code of Alabama 1975, the city council of the municipality which authorized the incorporation of the board may offer to pay the debt of the corporation, which if accepted by the board, would result in either the dissolution of the corporation or the corporation's dissolution by a resolution of the board, but only if it does not have outstanding bonded debt. AGO 2002-104; see also *Water Works Bd. Town of Bear Creek v. Town of Bear Creek*, 70 So.3d 1186 (Ala. 2011).

Unincorporated boards are less autonomous. They still have the power to act without interference from the governing body and the positions of the board members are secure. They cannot be removed other than according to the statutes governing them. However, unless otherwise provided by law, the council has the power to dissolve an unincorporated board and assume its duties or create a new board to perform those functions. AGO 1985-264 (to Hon. Anthony Miele, March 18, 1985).

Municipal boards may only exercise powers authorized by law. Unincorporated boards and incorporated boards are both created pursuant to statutory authority. The powers of these boards are outlined in the statutes under which they are created.

Therefore, in order to determine who is eligible to serve on a board, whether they can be paid or what powers the board has, it is crucial to know the board's statutory authority.

The statutory authority for an incorporated board will be found in the board's articles of incorporation or in the ordinance the council adopted authorizing the incorporation of the board. The code sections which govern an unincorporated board will be found in the ordinance the council adopted creating the board. Often, the statutory authorization for a board can also be found in the board's bylaws or other controlling documents. Once the statutory authority for the board is determined, it is a simple matter of checking the Code of Alabama to learn the board's powers and duties.

What if the articles of incorporation and bylaws are silent regarding the statutory authority for the creation of the board? This probably means that the board falls into the third category mentioned above and it is an advisory board.

Nothing in Alabama law specifically allows municipalities to create advisory boards. A municipality wishing to create a board for which no statutory authority exists should exercise caution in granting powers to the board. Legislative powers, or those exercised by the council as a public agency, cannot be delegated. McQuillin, *Municipal Corporations*, 3rd Ed., Section 12.38. Where the legislature has granted exclusive authority to the council to act, the council cannot delegate that power to a board. However, advisory boards, while they cannot act for the council, provide several benefits.

Like council committees, an advisory board enables the council to stay informed about the multiple activities of the city or town. The board can process information submitted by citizens to ensure that the council receives only pertinent data for decision making. Advisory boards are like subcommittees. They are responsible for seeing that the council is fully informed on matters within their authority.

Also, an advisory board can buffer the council's actions. Rather than the council acting alone, they are somewhat insulated by recommendations made by a board which was able to devote much of its time to the full study of an issue.

Because the Code is silent about advisory boards, the council can decide for itself who is eligible to serve. Membership requirements and an appointment procedure should be stated clearly in the ordinance creating the board. Many councils want a councilmember or the mayor to serve on all boards. As long as the board is advisory (and not created pursuant to statute), nothing prohibits elected officials from serving. Council members, however, may remain liable for the actions of advisory boards. Therefore, it is crucial that the council not exceed its authority to empower the board and board members fully understand the nature and limitations of their roles.

### **Why Create a Board?**

The simple answer to this question is that the municipal council may feel that the public is better served by the creation of an entity solely devoted to the performance of a single function. But the board may also have broader powers than the municipality itself, which allows them to do certain things the city is unable to do.

For example, municipalities are subject to Sections 68 and 94 of the Alabama Constitution, 1901. Section 68 states that no municipal employee may be paid for work which he or she has already performed. That is, retroactive raises are prohibited. Section 94 prohibits municipalities from giving anything of value to any private individual or group. Separately incorporated boards are not restricted by these sections of the constitution. In *Opinion of the Justices, No. 120*, 49 So.2d 175 (Ala. 1950), Gov. Jim Folsom requested an opinion on the authority of incorporated industrial development boards to spend funds to promote private industry. The court determined that these expenditures did not violate Section 94, holding that it is "clear that (the act authorizing the creation of industrial development boards) involves no expenditure of public money and the incurring of no liability that must or can be taken care of by taxation."

The court reaffirmed this holding in *Alabama Hospital Association v. Dillard*, 388 So.2d 903 (Ala. 1980). In this case, the Department of Examiners of Public Accounts had determined that several expenditures by hospital boards, including flowers for hospitalized employees and for special events, payment of awards for employees and Christmas bonuses, violated Sections 68 and 94 of the Alabama Constitution. The department contended that hospital boards, although separately incorporated, remain political subdivisions of the county or municipality which created them. The Alabama Supreme Court disagreed, ruling that "a public corporation is a separate entity from the state and from any local political subdivision, including a city or county within which it is organized." The only limitation on expenditures by these boards, according to the court, is that funds may only be spent to further legitimate powers of the board.

Bear in mind this does not authorize the council to use an incorporated board to accomplish things the municipality cannot do itself. For instance, funds the municipality gives to a board, generally speaking, remain subject to Sections 68 and 94. Additionally, a municipality gives up its right to control a function by creating a board. As the court pointed out in *Opinion of the Justices* cited above, the only connections between an industrial development board and the municipality which created it are: 1) approval of the formation of the corporation; 2) approval of amendments to the certificate of incorporation; 3)

appointment of board members; and 4) absorption of the board's property upon dissolution of the board. Other incorporated boards are similarly protected from interference by elected municipal officials.

While the extent of council participation in the activities of a separate board varies depending on the statutes, as a general rule the council is completely excluded from the board's decision-making process. This can become frustrating for municipal officials who want to see the board take some particular action.

In *Water Works Board of the City of Leeds v. Huffstutler*, 299 So.2d 268 (Ala. 1974), the City of Leeds sought to unilaterally increase the number of members serving on its water board from three to five, despite a contrary provision in the board's articles of incorporation. The statutes governing the board were silent regarding the means for amending the articles. The court rejected this attempt, holding that a legislative amendment which authorized the increase could only be implemented "if the directors of the water board and the governing body of the city agree that more effective representation of the community interest will result from such an increase." The court felt this was necessary to protect the independence of incorporated boards. *See also*, AGO 1996-174 and *Water Works of Wetumpka v. Wetumpka*, 773 So.2d 466 (Ala. 2000).

At least one court has held a separately incorporated utility board was acting merely as an agent of the municipality rather than as an autonomous body, thus making the board subject to restrictions that ordinarily would not apply. In *Wetumpka v. Central Elmore Water Authority*, 703 So.2d 907 (1997), the Alabama Supreme Court held that in this instance, a separately incorporated utility board was actually acting as an agent of the municipality, and therefore, was restricted by Section 11-88-19, Code of Alabama 1975, from duplicating the lines of an existing rural water authority. The court also held that 7 U.S.C. Section 1926(b) protected the rural water authority from encroachment by the municipal water board.

In addition, in *The Water Works & Sewer Bd. of Talladega v. Consolidated Publishing, Inc.* 892 So.2d 859 (2004), the Alabama Supreme Court held that because the separately incorporated water board had the qualities of an agency of the city of Talladega, its employees are public officers and servants of the city for purposes of the Open Records Act. This case has far reaching implications for both cities and separately incorporated boards. As a result, in 2006, the Alabama Legislature, at the request of the League, passed Act 2006-548, now codified as Section 11-40-24, Code of Alabama 1975, which specifically provides that employees of a separately incorporated public corporation are not employees of the municipality which authorized the creation of the public corporation.

### **Limitations on Board Power**

It is always important to remember that incorporated boards are created for specifically enumerated purposes. Although in many cases the powers of these boards are broad and these boards are frequently not subject to many of the constitutional restrictions applicable to cities and towns, the Attorney General has held that boards may expend funds only within their corporate powers and to further the purposes for which the board was created. *See, e.g.*, AGO 2001-238. Expenditures by separately incorporated municipal boards must be necessary, appropriate and consistent with the purpose for which the board was created. AGO 1998-018.

### **Open Meetings Law**

The Alabama Supreme Court, in 2002, issued a decision indicating that the Alabama Sunshine Law did not apply to a public corporation organized under Sections 11-50-310 of the Code of Alabama 1975. *See, Water Works & Sewer Bd. of Selma v. Randolph*, 833 So.2d 604 (2002). However, in 2005, the Alabama Legislature repealed the Sunshine Law and passed the Alabama Open Meetings Law which is codified at Section 36-25A-1, *et seq.* of the Code of Alabama 1975. The Open Meetings Law specifically applies to "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 ...". Section 36-25A-2, Code of Alabama 1975. All boards, whether incorporated or otherwise, are required to comply with the Open Meetings Law.

For more information on the Open Meetings Act, please see the article titled *The Open Meetings Act* on the League legal team's Selected Readings page, here: <https://almonline.org/SelectedReadingsfortheMunicipalOfficial.aspx>.

### **Conclusion**

Municipalities desiring to delegate the responsibility and duties of overseeing municipal functions to a board should first be sure of their statutory authority. This authority should be clearly spelled out in the ordinance which created the board.

If no statutory authority exists and the council does not want to seek legislative authority, the only type of board which can be created is an advisory board. In this case, the council must clearly spell out the board's powers and limitations in the creating ordinance. Also, the ordinance should specify who is eligible to be a member of the board and how members are appointed. Once appointed, board members must fully understand the nature of their position.

## **Opinions and Court Decisions Affecting Boards**

- Municipalities may appropriate funds to certain recreation boards. AGO to Hon. Cecil White, April 30, 1965.
- Cities and towns may contribute to state and county planning boards. 70 Quarterly Report of the Attorney General 18.
- Where there is no county library, cities may appropriate to city library boards in the county. AGO to Hon. Patrick Tate, October 21, 1975.
- For adequate consideration, a municipality may transfer real property to an industrial development board and the board may develop the property for any purpose related to industrial development. AGO 1979-225 (to Hon. Clarence Rhea, June 11, 1979). Note: If the consideration for the transfer is nominal, the League recommends that each municipality obtain an opinion addressing each situation.
- A public library board created pursuant to Sections 11-90-1 through 11-90-4, Code of Alabama 1975, can be dissolved by the governing body which created it. However, as long as the board exists, members who are appointed for a term cannot be removed except for cause until the expiration of their term. AGO 1985-264 (to Hon. Anthony Miele, March 18, 1985).
- A municipality may donate property or funds to its medical clinic board. AGO to Hon. William Gullahorn, Jr., February 21, 1975. Note: Care should be taken to ensure that constitutional provisions governing expenditures are not violated.
- The office of practicing licensed psychologist falls within the definition of a medical clinic in Section 11-58-1(a), of the Code. AGO 1983-420 (to Hon. Richard Roberts, August 2, 1983).
- A medical clinic board may not issue bonds to finance the construction of an addition to a privately-owned nursing home. AGO 1983-394 (to Hon. Roy F. Bragg, July 18, 1983).
- A municipality may establish a museum board and may donate funds to the board. The board cannot donate funds to a private museum but may contract with a private museum for valuable consideration. AGO 1983-118 (to Hon. J.D. Falkner, December 22, 1982).
- Incorporated boards are not subject to the control of the municipal governing body in exercising statutorily designated powers and in performing statutorily designated duties. AGO 1981-537 (to Hon. Leonard Allen, Jr. August 25, 1981).
- A governing body has no power to call a meeting of the board of directors of a separately incorporated board. AGO 1991-130.
- A municipality may remove funds given to an advisory committee and re-designate those funds to be spent on industrial development. AGO 1990-334.
- An unincorporated library board created pursuant to Section 11-90-1, et seq., Code of Alabama 1975, has the authority to spend funds appropriated to it. Employees of the board are subject to municipal personnel policies. AGO 1991-307.
- A municipal council may not delegate its authority to appoint recreational board members to individual council members. AGO 1991-402.
- A municipal council may not increase the number of members serving on boards organized under Section 11-50-310, Code of Alabama 1975, without approval of the board. AGO 1995-324.
- An incorporated municipal gas board organized pursuant to Sections 11-50-310 through 11-50-324 of the Code may give property to the municipality which authorized its creation, if the municipal council consents by ordinance. AGO 1998-058.
- A councilmember may sell gasoline to a separately incorporated board. He or she may sell to the municipality only pursuant to Section 11-43-12.1, Code of Alabama 1975. AGO 1997-015.
- Unless a specific vote requirement is set out by state legislation, a three-to-two vote with one abstention, is sufficient to elect a person to serve on a utility board. AGO 1997-059.
- A mayor may serve as superintendent of utilities even if the public corporation holds a franchise with the municipality. The mayor may not vote on matters affecting the board. The mayor may not serve as both superintendent and a board member. AGO 1997-076.
- Where municipal funds are transferred to a publicly incorporated parks and recreation board, Section 11-43-12 of the Code of Alabama prohibits a municipal law enforcement officer from contracting with the Board to provide security work. AGO 2000-191.

- Section 11-51-90, Code of Alabama 1975, allows, but does not require, a city to impose a license tax on a utility corporation. A municipal utilities board is not exempt from the business license imposed by another municipality upon gas and water distributions in that municipality unless specifically exempt in the ordinance levying the license. The municipality must have a validly enacted ordinance imposing a license tax, and it must be applied uniformly. AGO 2002-200. Note: Statutes creating certain boards exempt them from paying any license fees.
- Because Section 4-3-45 of the Code of Alabama 1975, is silent with respect to residency requirements, a city council authorizing the establishment of an airport authority may, by ordinance, set residency requirements for the board of directors of the authority. AGO 2005-143.
- The title to the assets of a town water works board, which was a public corporation, vested in the town upon retirement of the board's water revenue bonds, with the board thereupon dissolved by operation of law. A water-purchase agreement between the board, as purchaser, and a regional water, sewer, and fire protection district, as seller, was not tantamount to bonded indebtedness of the board, as would preclude title to the board's assets from vesting in the town, and dissolution of the board. *Water Works Bd. of Town of Bear Creek v. Town of Bear Creek*, 70 So.3d 1186 (Ala.2011).
- A public park and recreation board cannot sell or close a recreational facility for which it does not hold legal title. Although the Council may have the authority to reassign property that it owns, a municipality may not compel an independent public park and recreation board to operate its facilities at or during certain hours or certain times. Section 11-60-8 of the Code of Alabama authorizes a park and recreation board to maintain and/or manage the programs or projects of the board. AGO 2012-035.
- A public park and recreation board, created pursuant to sections 11-60-1 through 11-60-20 of the Code of Alabama, is a public corporation, and as such, the Board may only be removed by impeachment. The provisions of section 11-43-160 of the Code of Alabama do not apply to members of an incorporated public park and recreation board. AGO 2012-035
- The supervision and maintenance of personnel files is the responsibility of the executive officer or superintendent of the Board of Education. The school board may establish policies governing the contents of personnel files. The mechanism for storing and disposing of personnel files is an administrative issue that would best be handled by policies and procedures implemented by the Board of Education. Retention practices should be consistent with the procedures established by the Local Government Records Commission. AGO 2012-019.
- The city council's resolution authorizing a fee increase for the members of the municipal waterworks and sewer board pursuant to Section 11-50-313(a) of the Code of Alabama took effect for all members on proper passage. Prior to the municipal officer who is also a member of the board receiving a fee increase, the board must pass a resolution approving the increase for that member, which may not be retroactive. AGO 2017-018.
- The Legislature has not authorized the city to adopt an ordinance requiring the appointment of city board of education members from districts corresponding to the city's council districts. A city council authorized by Alabama law to appoint members of a city school board would not be bound by the policies adopted by the board that purport to set requirements for being appointed to and serving on the board to the extent those policies conflict with an act of Legislature. AGO 2017-019.
- The city and city pension board were separate entities, and thus judgement against the city for pension benefits not paid by the board was improper. *City of Birmingham v. Thomas*, 220 So.3d (Ala.Civ.App.2016).
- Nothing in the current law prohibits a municipality from establishing its own emergency communication district ("ECD"), even though a countywide ECD is already in existence. The Statewide 911 Board ("Board") is not required to provide funding to a newly created ECD. The Board may, however, at its discretion, provide a hardship operational grant to a newly created ECD. Further, a newly created ECD may receive funds from other entities pursuant to section 11-98-6(b) of the Code of Alabama. AGO 2017-038.
- The State Superintendent of Education or the State Superintendent's chief administrative officer have exclusive authority to implement an educational intervention of a city or county board of education under Section 16-6E-4 of the Code of Alabama. AGO 2017-041.
- The Commercial Development Authority (CDA) may take actions and expend funds related to the acquiring, owning, and/or leasing of projects to induce new commercial enterprises to locate in the city and to expand existing facilities. The CDA may make improvements to property acquired as projects. The CDA may sell or donate such property to businesses or structure leases with beneficial terms related to a project. The CDA may not award financial grants to businesses. The city may make improvements to its property unrelated to a project through the net earnings of the CDA remaining after

the payment of all expenses. The CDA may provide financial assistance to its board members attending conferences, seminars, and workshops related to the promotion of commerce and trade. The CDA may hire employees. While it may not hire them to work for other agencies, it may enter into an employee-sharing agreement with another agency so long as each compensates the employee in proportion to the work performed for that agency. The CDA may share its conference room if used for business related to the purposes in section 11-54-170. AGO 2018-051.

- City water board was an independent public corporation and was not required to comply with city resolutions directing the board to fluoridate the city's water supply. *Water Works Bd. of City of Arab v. City of Arab*, 231 So.3d 265 (Ala. 2016).
- An industrial development board is not authorized to provide financial assistance through loans or grants to a nonprofit corporation that will create an entrepreneurial collaborative business service center for shared workspace because the business does not meet the definition of a project. AGO 2018-026.

## Contracts

- Construction of buildings by medical clinic boards is not subject to the competitive bid law. AGO 1980-095 (to Hon. John Adams, November 21, 1979).
- The competitive bid law applies to all purchases by utility boards, unless the purchase is for equipment, supplies or materials needed, used and consumed in the normal and routine operation of the system. AGO 1981-424 (to Hon. Hoyt Vaughn, June 16, 1981).
- Corporations organized pursuant to Section 11-60-1, et seq., Code of Alabama 1975, (recreation boards), are not subject to the competitive bid law. AGO 1985-054 (to Hon. Norman Gale, Jr., November 1, 1984).
- A medical clinic board may contract to make a grant or loan to a medical student in return for an obligation by the student to practice in the municipality upon graduation. It is essential that the contract be worded to ensure that the municipality will be assured of receiving adequate consideration in the form of a binding promise for future services. AGO to Hon. Gene Hughes, July 13, 1977.
- Pursuant to section 41-16-60 of the Code of Alabama, a member of a city or county board of education may contract with the board of education for personal property or personal services if: (1) the contemplated contract was in existence before a person was elected or appointed to the board, or (2) the individual does not participate in the deliberation or vote on the proposed contract. Section 41-16-60 is not applicable to contracts subject to the Public Works Law. Members of city and county boards of education may be subject to the Ethics Law and should submit these questions directly to the Ethics Commission. AGO 2012-017 and AGO 2012-018
- A water authority and sewer authority may enter into an agreement whereby the water authority manages the accounts of the sewer and discontinues water service for parties with delinquent sewer accounts. Because the authority to discontinue service is based on statutory authority set out in section 11-88-7 of the Code of Alabama, neither the water authority nor the sewer authority is required to have independent written agreements with customers prior to being able to disconnect service. AGO 2014-023.
- A city board of education, as an agency of the State, was absolutely immune from a suit on a contractor's claims for breach of contract and quantum meruit related to the construction of school facility. *Ex parte Phenix City Bd. of Educ.* 109 So.3d 631 (Ala.2012).
- The municipal water works board may not divide the installation of new water meters into multiple contracts for payments of less than \$50,000 to evade the Public Works Law. If the Board can demonstrate, based on several specified factors, that it is not evading the Public Works Law by spreading out its meter purchases over several years as funds become available, then it will not violate Section 39-2-2(a), Code of Alabama 1975. AGO 2017-010.
- Statute providing for a cap on damages recoverable against government entities is not applicable to individual capacity claims. *Wright v. Cleburne County Hosp. Board, Inc.*, 255 So.3d 186 (Ala. 2017).
- Proper venue for declaratory judgment action against city water and sewer board was the county in which the board's principal place of business was located. *Ex parte Bd. of Water and Sewer Com'rs of City of Mobile*, 272 So.3d 635 (Ala. 2018).

## Board Members

- A councilmember may not receive compensation for serving on a utility board. AGO to Mrs. Sara Green, February 2, 1973. Note: This is allowed on certain boards but depends on the statutes.
- The superintendent of an incorporated utility board may be employed by the municipality as a street superintendent. AGO to Hon. N.L. Plunkett, January 30, 1978.
- Employees of separately incorporated utility boards may serve as council members unless other factors are present. AGO 1988-445.
- A councilmember may not serve as projects director of the municipality's medical clinic board. AGO to Hon. Kevin Lanier, June 16, 1977.
- Members of separately incorporated utility boards may be removed from office by impeachment. AGO to Hon. R.S. Limbaugh, November 2, 1972.
- The terms of municipal officers serving on utility boards created pursuant to Section 11-50-310, et seq., Code of Alabama 1975, expire at the end of their terms as elected officials. AGO to Hon. Fred Gray, September 28, 1972.
- Members of utility boards are not officers of the municipality, so no specified number of votes is required to elect board members. AGO to Hon. Elwood Rutledge, January 9, 1973.
- Utility board members may not receive health and dental insurance benefits if the benefits increase their compensation beyond the maximum set by statute. AGO 1981-168 (to Hon. Eustus Johnson, January 6, 1981).
- The appointment of a board member to a municipal board for a shorter term than that prescribed by statute does not void an otherwise valid appointment; instead, the appointment is simply construed to be for the statutorily prescribed length of time. The fact that a city council member died between the time the council made an appointment to a gas board and the time the council should have made the appointment did not render the appointment invalid where the council member died prior to the expiration of his term. Though the vacancy in the office of the council member existed by reason of his death, it had no effect on the term of office so, in effect, prospective appointments were made and took effect before the expiration of the appointing powers' terms. *Gilbert v. Wells*, 473 So.2d 1042 (Ala. 1985).
- By agreement, a gas board established pursuant to Section 11-50-310, et seq., Code of Alabama 1975, and the municipal governing body, may number places on the board to facilitate orderly appointment of board members. AGO 1989-257.
- A person appointed to a water works board created pursuant to Section 11-50-313, Code of Alabama 1975, serves the full term of the appointment even if that person later becomes a member of the city council. AGO 1992-252.
- Nothing prohibits an employee of an incorporated utility board from running for the municipal council. However, if elected he or she will have to refrain from voting on matters in which the board has an interest. AGO 1996-077.
- An employee with the municipal board in this opinion may run for city council and serve if elected, provided that he does not vote on matters affecting his position with the board and that other provisions of the Ethics Law are met. The employee must serve as councilmember on his own time. AO NO. 1996-23.
- An unincorporated library board organized under Sections 11-90-1 through 11-90-4, Code of Alabama 1975, may employ its own personnel. Where the municipality has been functioning as the employer, present employees are subject to the current conditions of employment. AGO 1996-110.
- A municipal governing body may not increase the size of a utility board organized pursuant to Section 11-50-310, et seq., Code of Alabama 1975, without the permission of the utility board. The board may only be dissolved as provided in Section 11-50-316(b). AGO 1996-174.
- A separate utility board incorporated under Sections 11-50-310, et seq., Code of Alabama 1975, is not exempt from a municipal license fee imposed on water works companies. AGO 1996-209.
- Where the articles of incorporation of a board incorporated pursuant to Section 11-50-313, Code of Alabama 1975, do not permit elected officials to serve as board members, municipal officials may serve only if the articles are amended. AGO 1996-267.
- Appointed members of municipal boards and commissions are not required to file a statement of economic interests with the Ethics Commission unless they earn \$50,000 or more annually from their public position. AO NO. 1996-35.

- A director of a water authority organized pursuant to Section 11-88-1, et seq., of the Code may only be removed by impeachment. AGO 1997-276.
- A public board may not provide in its bylaws for the removal of officers in a manner that conflicts with the Code of Alabama 1975. AGO 1999-009.
- A person appointed to fill a vacancy created by the resignation of a councilmember from a board organized pursuant to Section 11-50-310, et seq., of the Code, serves the remainder of the councilmember's term on the board. AGO 1999-149.
- A municipal employee is not prohibited from serving on the board of directors of a water supply district created pursuant to Section 11-89-1, et seq., of the Code of Alabama 1975. AGO 2001-095.
- A teacher employed by a city's board of education may not, while subject to the authority of the board, serve as a member of that city's board of education. AGO 2000-189.
- The city council may appoint a nonresident or a non-registered voter to a utilities board incorporated under Section 11-50-230 of the Code of Alabama 1975. Section 11-50-234 of the Code of Alabama does not mandate that board members be residents or electors of the city in which they serve. The utilities board may amend its bylaws without approval or consent of the city council so long as the amendments are not inconsistent with the board's certificate of incorporation or state law. AGO 2001-085
- Section 11-50-313 of the Code of Alabama provides that any officer of the municipality appointed to a utilities board organized under Section 11-50-310, et seq., of the Code may receive a fee for his or her services under Sections 11-50-313 or 11-50-15, but not both. Therefore, the board may opt to provide director's fees set in Section 11-50-15. AGO 2001-128. A board organized under Section 11-5-313, may not use the provisions of Section 11-50-230 to provide an expense allowance but may reimburse directors for actual expenses incurred in and about the performance of their duties pursuant to this article because directors are not entitled to a reasonable meeting allowance. If a board member is also on the city council, they may only be reimbursed for actual expenses. AGO 2001-128.
- The Water Works & Sewer Board of the Town of New Brockton, a public corporation under Act 1951-175 (codified at section 11-50-310 et seq., of the code of Alabama), cannot appoint its own members. The Board may, however, amend its articles of incorporation to restrict or prohibit officers of the Town of New Brockton from serving on the Board. AGO 2024-018.

















