



ARKANSAS MUNICIPAL GOVERNMENT 101 **Who Does What at City Hall**

2017 AML Winter Conference
Wednesday, January 11, 2017
(3.5 core certification credit hours)

AGENDA

3:00 p.m.	Welcome and Opening Remarks	Harry Brown, Mayor, Stephens President Arkansas Municipal League
3:00 p.m. – 3:30 p.m.	Tools to Help You Lead	Don Zimmerman, Executive Director Arkansas Municipal League
3:30 p.m. – 4:30 p.m.	Everyone Has a Role	Mark Hayes, Director of Legal Services Arkansas Municipal League
4:30 p.m. – 4:45 p.m.	BREAK	
4:45 p.m. – 5:15 p.m.	Everyone Has a Role - Continued	Mark Hayes, Director of Legal Services Arkansas Municipal League
5:15 p.m. – 6:00 p.m.	Municipal Finances: Staying in Compliance	Tim Jones, Audit Manager AR Division of Legislative Audit
6:00 p.m. – 6:30 p.m.	What's Your Role? City Managers & City Administrators	Ken Wasson, Director of Operations Arkansas Municipal League

Tools to Help You Lead

PRESENTED BY: DON ZIMMERMAN

EXECUTIVE DIRECTOR

ARKANSAS MUNICIPAL LEAGUE

City/Town Classes

Arkansas Constitution: Art. 12, Sec. 3

The General Assembly shall provide, by general laws, for the organization of cities (which may be classified) and incorporated towns; and restrict their power of taxation, assessment, borrowing money and contracting debts, so as to prevent the abuse of such power.

ACA § 14-37-101 et seq. provides for:

- Cities of the First Class
- Cities of the Second Class
- Incorporated Towns

Article 12, Section 4 States:

“ No Municipal Corporation shall be authorized to pass any laws contrary to the general laws of the state”

Home Rule Powers/Dillon's Rule

Arkansas municipalities are creatures of the state.

As creatures of the state, cities and towns only have powers granted to them by the Arkansas constitution and statutes passed by the Arkansas General Assembly.

Municipalities for many years operated under *Dillon's Rule*.

Legislature has granted statutory *Home Rule* to all Municipalities

- a. First Class Cities were granted *Home Rule* authority in 1971.
- b. In 2011 the General Assembly expanded that authority to Cities of the Second Class and Towns
- c. Codified as 14-43-601 et seq.

ACA 14-43-602 provides:

- a. A Municipality is authorized to perform any function and exercise full legislative power in any and all matters of whatsoever nature pertaining to its municipal affairs including, but not limited to, the power to tax.
- b. The rule of decision known as *Dillon's Rule* is inapplicable to the municipal affairs of municipalities.

Tort Liability/Immunity

ACA 21-9-301 et seq.

(a) It is declared to be the public policy of the State of Arkansas that all counties, municipal corporations, school districts, public charter schools, special improvement districts, and all other political subdivisions of the state and any of their boards, commissions, agencies, authorities, or other governing bodies shall be immune from liability and from suit for damages except to the extent that they may be covered by liability insurance.

(b) No tort action shall lie against any such political subdivision because of the acts of its agents and employees.

- ACA 21-9-302
- Authorization to settle tort claims

Each county, municipal corporation, school district, special improvement district, or any other political subdivision of the state is authorized to provide for hearing and settling tort claims against it.

ACA 21-9-303

- **21-9-303. Motor vehicle liability insurance required - Minimum amounts**

(a) All political subdivisions shall carry liability insurance on their motor vehicles or shall become self-insurers, individually or collectively, for their vehicles, or both, in the minimum amounts prescribed in the Motor Vehicle Safety Responsibility Act, 27-19-101 et seq.

Annexation Authority

Election Method – ACA 14-40-302 et seq.

Ordinance – ACA 14-40-501 et seq.

Petition – ACA 14-40-601 et seq.

Local Sales Tax Authority

ACA 26-75-201 et seq. General, Special or Bonds

ACA 26-75-301 et seq. General, Special or Bonds

ACA 14-164-301 et seq. Capital Improvement Bond

ACA 14-164-338 et seq. Pay as You go- Alternative to Bond Issue

ACA 26-73-113 et seq. Alternative for Operation or Maintenance

ACA 26-75-401 et seq. Two-Year Tax for Parks

ACA 14-174-101 et seq. Economic Development Tax

ACA 26-82-101 et seq. Local Sales and Use Tax Economic Development Project Funding

County Sales Tax Authority

ACA 26-74-201 et seq. General, Special or Bonds

ACA 26-74-301 et seq. General, Special or Bonds

ACA 26-81-101 et seq. Multi-County Airport and River Port - 1¢

ACA 26-73-111 et seq. Mass Transit – ¼ ¢

Risk Management Programs

- Municipal Health Benefit fund
- Municipal Vehicle Program
- Municipal Property Program
- Municipal League Workers' Compensation Trust
- Municipal Legal Defense Program

League Certification & Communication Programs

Certified Municipal Officials- Voluntary Training
Publications- List Serves, etc.

Helpful Tools

1. Home Rule
2. Tort Immunity
3. Annexation Authority
4. Local Sales Tax Authority
5. Risk Management Programs
6. Training & Communications

Respect & Understanding = Good Police/ Community Relations

Civility By Example –

Basic politeness, consideration and courtesy

You are community role models for constituents and city employees.



EVERYONE HAS A ROLE

ROLES, RULES, RELAX

January 11, 2017
3:30pm to 4:30pm

Mark R. Hayes
Director of Legal Services
Arkansas Municipal League
mhayes@arml.org 501.978.6102



You Are...

- ...a provider of good government.
- ...a provider of police and fire protection.
- ...a provider of parks and recreation.
- ...a provider of water and sewer systems.
- ...a provider of streets.
- ...a provider of...community.

You Are...

- ...on the verge of being out of office before you blink if you don't take the oath!
- ACA 14-42-106
 - Must be done within ten days of January 1st!
 - Mayor may administer to alderman/council members.
 - Others can too: Secretary of State, justice, judge, county judge, county clerk, circuit clerk or JP.

The Three R's

- Roles
- Rules
- Relax

Roles

- Where do you fit?
- Why is your role significant?
- Rely on the other parts of the “machine.”



Rules

- Keep order.
- Simplify meetings and issues.
- Focus the debate.
- Basic law, including your ordinances!



Types of Municipal Government

- Three types
 - Mayor/Council
 - City Manager
 - City Administrator

Mayor Council...

- There is a:
 - Mayor
 - And a
 - Council
- Redundant, but it's the critical distinction
- Also there is either a
 - Clerk
 - Recorder
 - Clerk/Treasurer OR
 - Recorder/Treasurer

Quick Reference

- League Publications:
 - Guide for Municipal Officials/Mayoral Cities
 - Guide for Municipal Officials/Manager Cities
 - Municipal Law in Arkansas – Questions and Answers
 - City and Town

City Manager and Administrator Cities

- City Manager Cities:
 - Arkadelphia
 - Hope
 - Hot Springs
 - Little Rock
 - Texarkana
- City Administrator Cities
 - Barling
 - Ft. Smith
 - Siloam Springs
- 8 out of 500 Cities and Towns



City Manager Form of Government (Highlights)

- Only permitted in cities of the first or second class with populations over 2,500.
 - *See A.C.A. § 14-47-101 et seq.*

City Manager Form of Government (Highlights)

- Features
 - *See* A.C.A. § 14-47-109
 - Board of Directors; not Council-Members
 - Generally, 7 Board Members unless reorganized under the “enabling act.”
 - Directors choose a mayor from amongst themselves (no veto unless bestowed by vote of the people).

City Manager Form of Government (Highlights)

- Features
 - *See A.C.A. § 14-47-109*
 - The Board then hires a City Manager
 - The City Manager preps the budget, day to day operations, hiring/firing (unless contrary to state law), etc.

City Administrator Form of Government (Highlights)

- Any city of 2,500 or more.
 - *See A.C.A. § 14-48-101 et seq.*
- Board of Directors
 - *See A.C.A. § 14-48-110*
 - 7 generally-elected Directors
 - Directors can override the Mayor's veto with 5 votes
 - 1 generally-elected Mayor from all wards
 - Mayor is ceremonial head of city, presides over meetings, signs contracts and the like, and can veto except for personnel decisions



City Administrator Form of Government (Highlights)

- Board of Directors
 - *See* A.C.A. § 14-48-110
 - The Directors hire a City Administrator
 - Administrator supervises city employees, departments, agencies and offices

General Rules...Know Your Role

- Three branches of government:
 - Legislative
 - Judicial
 - Executive/ Administrative

Know Your Role...

- Legislative...
 - Some similar words: legislate, legislature, legislator.
- City Council or City Board
 - Some similar words: council-member, alderperson, board-member.
- Operate lawfully in a lawfully called meeting with a quorum.
 - Typically, a majority of the city council or board of directors. *See, e.g., A.C.A. §§ 14-43-501(a)(2)(A); 14-47-123(a)(1).*

Know Your Role...

- Judicial...
 - Some similar words:
 - Justice
 - Judiciary.
 - Judge
 - Judgment...
 - Not mayor, clerk, recorder, treasurer or councilmember/alderman.

Know Your Role...

- Executive/ Administrative...
- Mayor! (City Manager or City Administrator)
 - 24/7 job
 - Day-to-day operations as opposed to council members (board members) holding a lawfully called and attended meeting

Know Your Role

- Legislators/ Council-Members (Board): legislate by setting policy.
- **Policy** comes in all forms: ordinances, resolutions, motions etc.
 - Examples: budget, employee handbook, record maintenance/retention etc.

Know Your Role

- **Mayors (Managers/ Administrators):** run the day to day operations and implement policy.
- **Mayors (Managers/ Administrators):** supervise department heads and officers.
 - Examples: spending within the confines of the budget, counseling employees etc..

Role of the Mayor

- CEO of city or town (sort of legislative and sort of executive)
- Ex-Officio member of council
- Presides over council meetings
- Mayor can vote sometimes (Cover later)
- Mayor can make up the quorum (A.C.A. §§ 14-43-501; 14-44-107; & 14-45-101(b))

Role of the Mayor

- Mayor can call for a special meeting (yes, 3 council members can, too, and, yes, there must be an ordinance. A.C.A. § 14-43-502)
- Mayor signs ordinances along with Clerk/Recorder
- Mayor can veto (more on this later)

ROLES (rules): THE MAYOR SHALL SUBMIT...

- Ark. Code Ann. § 14-58-201. Annual submission.
 - On or before December 1 of each year, the mayor of *all cities and incorporated towns* having the mayor-council form of government *shall submit* to the governing body of the city or town, for its approval or disapproval, a proposed *budget* for operation of the city or town from January 1 to December 31 of the forthcoming year.

ROLES (rules): GOVERNING BODY SHALL PASS...(council, board...)

- Ark. Code Ann. § 14-58-202. Adoption.
 - . . . [T]he governing body of the municipality shall, on or before February 1 of each year, adopt a budget for operation of the city or town.

RULES: YOU SHALL SPEND; BUT ONLY WHAT'S IN THE BUDGET

- Ark. Code Ann. § 14-58-203.
Appropriations and changes.
 - (a) The approval by the municipal governing body of the budget under this subchapter shall, for the purposes of the budget from time to time amount to an appropriation of funds which are lawfully applicable to the items therein contained.

RULES: BUDGET MAY'S VERSUS BUDGET SHALLS...

- Ark. Code Ann. § 14-58-203.
Appropriations and changes.
 - (b) The governing body may alter or revise the budget and unpledged funds appropriated by the governing body for any purpose may be subsequently, by action of the governing body, appropriated to another purpose, subject to the following exceptions:

BE CAREFUL

- EXCEPTIONS

- (1) Funds resulting from taxes levied under statutes or ordinances for specific purposes may not be diverted to another purpose;
 - (ILLEGAL EXACTIONS)
- (2) Appropriated funds may not be diverted to another purpose where any creditor of the municipality would be prejudiced thereby.
 - (CONTRACT LAWSUITS)

RULES: THE SHALLS CONTINUE

- 14-43-313. City clerks and attorneys generally.
 - “The city clerks and the city attorneys in cities of the first class shall . . . receive such salary as is prescribed by ordinance in each of these cities.”

RULES: THE SHALLS CONTINUE

- 14-43-316. City clerk, treasurer, or clerk-treasurer in mayor-council cities of fewer than 50,000. Only allowed in cities of the first class (*see* A.C.A. § 14-43-316(a))
 - (c) The city clerk and city treasurer, or city clerk-treasurer shall . . . receive a salary as is prescribed by ordinance in each of these cities.
- Cities of the second class and incorporated towns...lucky you!

Roles (Rules): More ...

- Mayor: report, report, report:
 - Within the first 90 days of the year, to the council the municipal affairs of the city; recommending such measures as may be advisable. *See* ACA §§ 14-43-504, 14-58-302.
 - I suggest monthly financial reports. (14-59-115 Treasurer is required to do a monthly report)
 - What do you do? Monthly, weekly...
 - The better informed the council is, the better the budget.

Roles (Rules): More ...

- Mayor, don't forget the shalls: submit and spend)
 - Submit the budget, approve the budget, and spend within the budget! A.C.A. §§ 14-58-201; 14-58-202; 14-58-203

Roles (Rules): Council

- **COUNCIL:**
 - PASS THE BUDGET! SHALL!!
 - What to Do:
 - Be well informed: read the financial statements *early and often*.
 - Ask the mayor for specific department needs.
 - Look at your long term plans and needs.
 - Meet and study *long before* the date of passage.



Roles: Legislative...Council/Board Duties

- **SET POLICY**
 - Management/ Control money, property and policy
 - Finances
 - Property (real/ personal)
 - Set Policy (written and by practice)

Roles: Legislative...Council/Board

Duties

- **FOLLOW PROCEDURE**

- Set procedures for purchases up to twenty-thousand (\$20,000) (or over \$20,000 for 2nd Class cities and Inc. Towns, *see* A.C.A. § 14-58-303(b)(1)(A)-(B)).
- Set time/place for meetings and rules (**January meeting**)
- Know the FOIA, public meetings etc.
- Set salaries for everyone: Mayor, Council, Employees, etc. (Ark. Const. amend. 56, § 4; A.C.A. § 14-43-409).
- Salary may be increased during your term, but may not be reduced unless requested by official (A.C.A. § 14-42-113)

Roles (Rules): Vacancies...and it's only January


- **Hold over –**
 - Ark. Const. Art. 19, § 5: All officers *shall* continue in office after the expiration of their official terms, *until their successors are elected and qualified.*
 - January 1 . . . who was there on December 31st?!
- **Mayor's vacancy –**
 - Cities of the 1st class (A.C.A. § 14-43-401)
 - Less than 1 year - Council appoints the Mayor's successor
 - More than 1 year – Special Election to fill the vacancy
 - Cities of the 2nd class (A.C.A. § 14-44-106)
 - Council: appoint or special election.
 - Incorporated towns (A.C.A. § 14-45-103)
 - Council: appoint or call for special election

Roles (Rules): Vacancies...and it's only January

- **Council Member/Alderman vacancies –**
 - Cities of the 1st class (A.C.A. § 14-43-411)
 - Under 20K? City council appoints (quorum of whole council shall remain in order to fill the vacancy) (mayor cannot veto).
 - 20K or more and more than 1 year? Appoint or Special Election
 - 20k or more and less than 1 year? City council appoints
 - Cities of the 2nd class (A.C.A. § 14-44-104)
 - Council appoints – no veto
- Incorporated Towns, (A.C.A. § 14-45-103)
 - Council appoints

THE ROLE OF...

- CLERK,
- RECORDER,
- TREASURER,
- CLERK-TREASURER,
- RECORDER-TREASURER

- 
- SUPPORT, RECORD-KEEPING AND CHECKS AND BALANCES!
 - The clerk, recorder...HANDBOOK
 - The AML Handbook.
 - Guidebooks (all types of municipal government)
 - Accounting Handbook
 - Sample Ordinances
 - Much, much more
 - All available through the AML
 - See www.arml.org and click on publications

Roles: Who Appoints...Who Removes...

- Who's Who?
 - Department Heads vs. Non-Department Heads
 - Non-Department Heads are those who aren't department heads
- State Law dictates who appoints and removes department heads.
 - No State Law for non-department heads.
 - Non-department heads are a matter of *local policy* — it's up to you!

Department Heads?! Appoint...Remove?! Local Policy?!

- **Department Heads:**

- What It Means:

- Appoint = Hire
 - Remove = Fire

- A.C.A. § 14-42-110

- Department heads are *appointed and removed by the mayor*
 - But... the council can over-ride with a two thirds vote
 - But... the council CANNOT appoint and remove department heads

More Appoint and More Removal Stuff

- **Non-Department Heads**
 - Non-department heads are a matter of local policy
 - What does your policy say?
 - What? No policy?!
 - What's your practice? And let's carefully take a look...
 - Recommendations versus decisions...
 - Who's actually hiring and firing?!

Appoint and Remove... Some More

- **Non-Department Head, continued**
 - Non-department policy or practice...be careful
 - Council, legislative policy maker and legislative immunity
 - Mayor, elected to run the day to day operations

Roles: Final Word on Appoint and Remove

- **Mayors may appoint:**
 - Building Officials (A.C.A. § 14-56-202)
 - Library Board (A.C.A. § 13-2-502)
 - Director of Public Safety (A.C.A. § 14-42-422)
 - Health Officers (A.C.A. § 14-262-102)
 - Airport Commission (w/ council approval) (A.C.A. § 14-359-101 *et seq.*)
 - Parks/ Recreation Commission (w/ council approval) (A.C.A. § 14-269-302)
 - Marshall (A.C.A. § 14-44-111)

Role of the Department Head

- Some duties or roles are the same for all department heads.
- Some, however, change depending upon the department in question.
- Some change from city to city.
 - Hint/Suggestion: read your ordinances, policies, handbooks, notes, memos, gum wrappers etc..
 - You just might learn what your role is and ISN'T.

All Department Heads

- City budget/ department budget.
- Bidding and purchasing laws.
- Employee handbook and related policies and ordinances.
- “At Will Employment Doctrine”
- Working knowledge of labor laws (FLSA, FMLA, ADAAA, etc.).
- Specific laws, rules and regulations related to their department.
- Day to day operations.
- Managerial skills and education.

Police Chief

- A.C.A. §§ 14-52-101 through 102.
 - Covers how the department was created, general powers, holiday pay, vacation, sick leave, fees etc.
- Commission on Law Enforcement Standards and Training:
<http://www.clest.org/oles/Pages/default.aspx>.
 - Various certification requirements and standards.
 - *See also* A.C.A. § 12-9-101 and following, commission powers, duties etc.
- A.C.A. § 12-2-209: Training Cost Reimbursement.
- A.C.A. §§ 12-9-301 through 308: Auxiliary Officers.
- A.C.A. §§ 12-9-601 through 603: Officer employment, appointment, or separation.

Police Chief, Continued

- A.C.A. §§ 12-10-301 through 324: The Arkansas Public Safety Communications Act of 1985.
- A.C.A. § 12-12-103: Pawn Shop Reporting.
- A.C.A. §§ 12-12-901 through 922: Sexual Offender Registration Act of 1997.
- A.C.A. §§ 12-12-1401 through 1405: Racial Profiling Act of 2003.
 - Note that the League has a publication and policy and that many of the training and reporting requirements are yearly.
- A.C.A. §§ 12-13-101 through 116: The Fire Prevention Act.
- General working knowledge of policing and arrest practices, policies, customs, weapons, etc.

Fire Chief

- A.C.A. §§ 14-53-101 through 112.
 - Covers how the department was created,
 - General powers,
 - Hours,
 - Holiday pay,
 - Vacation,
 - Sick leave, etc.
- A.C.A. §§ 12-13-101 through 116: The Fire Prevention Act.
- General working knowledge of fire fighting practices, policies, customs, equipment, etc.



Water Superintendant

- Certification requirements.
- Working knowledge of state and federal health and safety regulations and laws.
- Working knowledge of storm water laws and regulations.
- Working knowledge of state and federal pollution and ecology laws, policies and regulatory entities.



Public Works (Streets/Sanitation) Director

- Working knowledge of local, state and federal law on weed lots, clean up, condemnation, etc..
- Working knowledge of local court system including but not limited to city citation authority.
- Code enforcement officers.
- Animal control.
- Working knowledge of bidding and purchasing laws.

What is a quorum?

- For City Council governments
 - Cities of the First & Second Class – majority of the whole number of alderman is a quorum. ACA §§ 14-43-501; 14-44-107. (mayor can be counted)
 - Incorporated Towns – majority of the whole number of alderman is a quorum. ACA § 14-45-101.
- For City Administrator/Manager cities
 - A majority of the elected membership of the board is a quorum for the transaction of business. ACA § 14-47-123.

Regular council meetings

- Held at regular intervals
 - Bi-weekly
 - Monthly
 - Quarterly (not suggested)
- Provide a time and a place for the meeting.
- All meetings must be open to the public. *See, e.g., A.C.A. § 14-43-502(b)(1)(B).*

Special council meetings

- The mayor, or any three (3) council members of a town may call for a special meeting. *See, e.g., A.C.A. § 14-43-502(b)(1)(B).*
- Special meetings may only be called as provided by ordinance. *See, e.g., id. (work sessions...a special word)*
- MUST be open to the public. *See, e.g., A.C.A. § 14-43-502(b)(2)(A) and 25-19-106*

Passing an ordinance

- A word or two on emergency ordinances . .
- **Separate vote on emergency clause is required.**
 - Must be an emergency.
 - Clause must articulate the emergency.
 - (mayors can't vote on emergency clause AG OP 96-155)

Passing an ordinance

- Each ordinance is limited to ONLY one subject. A.C.A. § 14-55-201.
- Reading Requirement
 - Ordinances must be read on three (3) different days. A.C.A. § 14-55-202.
 - Two-thirds of the council membership may suspend the reading requirement. *Id.*
 - If the reading requirement is suspended, read the ordinance once, then proceed to vote on the ordinance at the same meeting.

Passing an ordinance (cont'd.)

- Majority vote enacts an ordinance. A.C.A. § 14-55-203(b).
- Mayor calls the vote, but does not participate in the voting process unless vote is needed to pass.
- The yea's and nay's are recorded. A.C.A. § 14-55-203(a).
- Applies to any resolutions or orders for the appropriation of the city's money. A.C.A. § 14-55-204.
- Once enacted, all ordinances shall be recorded in a book kept for that purpose. A.C.A. § 14-55-205.

Passing an ordinance (cont'd.)

- Notice Requirement (A.C.A. § 14-55-206)
 - All ordinances of a general or permanent nature imposing any:
 - Fines, Penalties, OR Forfeitures
 - Must be published in some newspaper of general circulation in the municipality.
 - If no newspaper, post the ordinance in five (5) of the most public places in the city.
 - Failure to provide notice: “Life never breathed into the ordinance”
 - Citizen can say “I didn’t know!” . . . and the court will agree.

Passing an ordinance (cont'd.)

- Notice Requirement (cont'd.)
 - Ordinances establishing rules and regulations for:
 - Zoning
 - Construction of buildings
 - Plumbing
 - Electrical wiring, AND
 - These Regulations/ Rules are published as a code in book form

Passing an ordinance (cont'd.)

- Ordinance may reference the title of the code without further publication or posting.
- However, three (3) copies shall be filed for use and examination by the public in the city clerk's office.
- Failure to provide notice is a sufficient defense to any suit or prosecution for violating the rules and regulations.

Passing an ordinance (cont'd.)

- Effective Date

- Ninety-one (91) days after passage by the governing body of the city or town. *See* A.C.A. § 14-55-203(c)(1)(A).
- Unless by ordinance set between 30-90, *id.*
- Ordinances that are NOT of a general or permanent nature are effective on the date of passage, unless otherwise specified by the ordinance. *See* A.C.A. § 14-55-203(c)(2).

Passing an ordinance (cont'd.)

- Effective Date (cont'd.)
 - **Referendum deadline:** 60 days! See Act 1688 of 2015 (ACA 14-47-124 and 14-55-304)
 - Un-sure about how this may get tested/used.
 - Current ruling from a Circuit Judge in Garland County: Unconstitutional
 - A majority vote repeals the ordinance.

Passing an ordinance (cont'd.)

- Emergency Clauses (Ark. Const. art. 5, § 1).
 - Council wants an ordinance *of a general or permanent nature* to take effect immediately.
 - What is required?
 - Must be necessary for the preservation of the public peace, health, and safety.
 - In the ordinance, state WHY the emergency clause is necessary for the public's peace, health, and safety.
 - You MUST state facts that give rise to the emergency.
 - Two-thirds of the *roll call vote* of the ordinance is required to pass.
 - Mayor may not vote on the emergency clause.

The mayor's vote

- A mayor may vote, when the mayor's vote is necessary for passage. ACA §§ 14-43-501; 14-44-107; 14-45-105.
- Tie sounds like the only time necessary to vote, but it isn't.
 - 6 member council example.
 - 4 show for the meeting, but only three vote yes. You get the idea.

The mayor's vote

- The Mayor may not vote on the following:
 - Emergency **clauses**
 - To amend or repeal an initiative measure enacted by a vote of the people.
 - Whenever the statute calls for a vote of those “elected to” the council.

Understanding the veto

- What does veto mean?
 - According to Mr. Webster:
 - “A power of one department or branch of a government to forbid or prohibit finally or provisionally the carrying out of projects attempted by another department.”

Understanding the veto, cont'd.

- Mayor can veto an ordinance, resolution, order, motion.
- Mayor must veto within **5 days, in writing**, and presented at the next council meeting. ACA §§ 14-43-504; 14-44-107; 14-45-105.

Understanding the veto, cont'd.

- Statutes do not set forth a procedure to document, so, for example:
 - Veto “on the record” at council meeting (recorded in minutes); OR
 - File a written copy with the clerk or recorder with a date stamp.

Procedural Rules...

- A.C.A. 14-43-501
- First meeting in January; ORGANIZE!
- AML Procedural Rules
- Regular Meeting Dates and Times
- Agenda Setting
- Quorum
- Voting

The End!

- Thanks for your attendance...
 - And good questions.
 - We're honored to represent you!
-
- Mark R. Hayes
 - mhayes@arml.org
 - 501-978-6102



ARKANSAS MUNICIPAL GOVERNMENT 101 Who Does What at City Hall

2017 AML Winter Conference
Thursday, January 12, 2017
(1.5 core certification credit hours)

AGENDA

2:00 p.m. – 3:00 p.m.	The DOs and DON'Ts of Conducting Your Council Meeting	Mark Hayes, Director of Legal Services Arkansas Municipal League
3:00 p.m. – 3:30 p.m.	A Time to Heal	Ken Wasson, Director of Operations Arkansas Municipal League
3:30 p.m.	Q&A and Concluding Remarks	

Conducting Your Council Meeting – Do's and Don'ts. Commissions and Committees – The great unknown.

January 12, 2017
3:30pm to 4:30pm

Mark R. Hayes
Director of Legal Services
Arkansas Municipal League
mhayes@arml.org 501-978-6102

January Rules Meeting

✗ A.C.A. § 14-43-501

- + All cities and towns
- + At the first meeting in January . . .
- + SHALL ORGANIZE!

✗ Requires:

- + Determine rules of proceedings
- + Keep a journal...must be open for inspection
- + **Without limitation** institute: rules for agenda setting, filing resolutions, citizen commentary, meeting dates, attendance, committees, reports...

January Rules Meeting

- ✖ Consider AML Procedural Rules
- ✖ Don't be afraid to add to your rules as issues arise.
- ✖ Look at them every year as the statute requires.
- ✖ Put in ordinance form.
- ✖ Remember what an ordinance is...LAW!
- ✖ By doing so you *lessen debate over form* and *encourage debate over substance*.

OUTLINE - COUNCIL MEETINGS

- ✖ Setting the Agenda
 - + Procedural Rules
- ✖ Order of meeting
 - + Minutes, committee reports, old/new business, adjourn, etc..
- ✖ Motions
- ✖ Public Comments

Remember to Have an Agenda

- ✖ Agenda

- + How is it set?
- + By whom?
- + When is it set?

- ✖ Time certain before the meeting?

- + During the meeting?

PROCEDURAL RULES FOR COUNCIL MEETINGS

✖ Order of the Meeting

- + Call to order
- + Roll call
- + Reading of the minutes (previous meeting)
- + Reports of boards or standing committees
- + Reports of special committees
- + Unfinished (Old) business
- + New business
- + Announcements
- + Citizen Commentary
- + Adjournment

PROCEDURAL RULES: CALL TO ORDER

- ✗ Let's make this easy
 - + Who's there . . . And who isn't?
 - + Mayor = Count heads
 - + If there IS a quorum . . .
 - ✗ Call the meeting to Order, declare a quorum present and start the business agenda.
 - + If there ISN'T a quorum . . .
 - ✗ Go home.

ROLL CALL

✗ So.....

- + Take the roll and,
- + Keep a record of the same
- + Rules should require that the clerk or the recorder call the roll.

✗ Simple

PROCEDURAL RULES: READING OF THE MINUTES

- ✖ This involves . . .
 - ✖ Ready . . .
 - + Reading the minutes of the previous meeting.
 - + Mayor: “Clerk (or Recorder), please read the minutes unless there’s a motion to dispense with same.”
 - ✖ Postpone reading/ passage the minutes to another meeting
- Minutes can be amended!!

PROCEDURAL RULES: READING OF THE MINUTES

- ✗ Minutes can be mailed early
 - + If so, a verbal reading of the minutes is not required.
- ✗ Use your time well
- ✗ Minutes aren't transcripts!
- ✗ And they can be amended!

TRANSCRIPT MEANS...

✕ According to Webster...

+*a*: a written, printed, or typed copy;
especially: usually a typed copy of
dictated or recorded material

+*b*: an official or legal and often
published copy <a court reporter's
transcript>; *especially*: an official copy
of a student's educational record

MINUTES MEAN...

✕ Webster again...

+*a*: a brief note (as of summary or recommendation)

+*b*: the official record of the proceedings of a meeting

PROCEDURAL RULES: REPORTS OF COMMITTEES

- ✖ Again, let's not overly complicate things.
- ✖ If you have committees, set a process for them to report.
 - + Committee reports are, effectively, for informational purposes, AND
 - + To make recommendations to the council as a whole. (More on this later.)

PROCEDURAL RULES: REPORTS OF COMMITTEES

- ✕ Chair of committee should report
 - +Order: (1) Chairmen of the standing committees, then (2) the chairmen of special committees
- ✕ Your own rules should define the committee, the chair, etc.

PROCEDURAL RULES: REPORTS OF COMMISSIONS

- ✖ While autonomous, you might consider getting a regular report.
- ✖ The chair of the commission could report or the director of the program governed by the commission.
- ✖ Historically, commissions often go out of sight, out of mind for city government.

PROCEDURAL RULES: NEW BUSINESS

- ✖ This is the meat of your meeting.
 - + It is critical that your elected officials all have the ability to get new business items on the agenda.
- ✖ Again, what are your local rules?
 - + This is where the January rule-setting meeting is critical.
- ✖ Mayor, ask if anyone has any new business.

PROCEDURAL RULES: ANNOUNCEMENTS

- ✖ Again, simple, simple, simple.
- ✖ When business is concluded . . .
 - + Mayor, ask for any announcements.
- ✖ It is okay to set an order by which folks will be asked, or to ask generally.
- ✖ Whatever works for you.

PROCEDURAL RULES: ADJOURNMENT

- ✖ When business appears complete, a member (council or board) may move to adjourn.
- ✖ Mayor, you may ask for such a motion if one hasn't yet been made.
 - + Vote taken, and if it passes, the meeting is adjourned.
- ✖ Mayor, you should state that the meeting is adjourned.

PROCEDURAL RULES: MOTIONS AND THE LIKE

- ✗ A quick word or two:
 - + Mayors run the meeting
 - + Mayors must call on those on the council wishing to speak, and must recognize motions even if the mayor isn't in favor of same.
- ✗ Decorum is required by all
- ✗ Again, debating substance is true democracy; debating form is a waste of time.

PROCEDURAL RULES: MOTIONS AND THE LIKE

✖ Steps in Handling a Motion

- + Member addresses the mayor
- + Mayor recognizes the member
- + Member states his or her motion
- + Another member seconds the motion
- + Mayor re-states the motion (confirmation)
- + If debatable, members may discuss the motion
- + Clerk or recorder takes the vote
- + Mayor announces the result

✖ The Basics:

- + Motion → Second → Discussion → Vote

PROCEDURAL RULES: MOTIONS AND THE LIKE

- ✕ More rules to remember . . .
 - + Any member of the council may propose a motion
 - + As soon as the member is recognized by the mayor, the member is entitled to the council's undivided attention.
 - + Discussion or debate not usually permissible until a motion has been re-stated by the mayor.
 - + If the motion is not seconded, it is defeated.
 - + Debate is restricted to the motion under consideration

PUBLIC COMMENTS: EGG TIMER

- ✗ Have Rules for Public Speech
- ✗ General Ideas
 - + To allow or not to allow, that is the question.
 - + And how long one gets to chat, etc.
- ✗ Topics
 - + Time, place, and manner — NO CONTENT RESTRICTIONS! *See* U.S. Const. Amend. I.
- ✗ USE AN EGG TIMER!

PUBLIC COMMENTS

- ✖ Public Comments can be put at the beginning of a meeting, in the middle, or at the end.
- ✖ Can be directed to agenda and/or non-agenda items.
- ✖ Have a structure . . . And a set of rules

PUBLIC COMMENTS

- ✘ For example:

- + Issues *not* on the agenda *may be* addressed.

- ✘ While items on the agenda will be allowed for public comment when being discussed by the Council.

- + Have a time limit on the length of any individual citizen's comment.

- ✘ May be revoked in instances of inappropriate language or subject matter

PUBLIC COMMENTS

- + Have the citizen state his or her name, address, and a concise statement of his or her position or concern.
- + Remarks should be addressed to the Mayor or the Council as a whole, and not to any individual members of the Council.
- + Only the Mayor, the Council and the person with the floor should speak during this time.
- + Speak only when recognized!

PUBLIC COMMENTS

✖ Agenda Items

- + Complete a speaker's card listing the specific agenda item to be discussed
- + Give the card to the City Clerk prior to the time when the item is called.
- + Enforce maximum time limits (typically 5 minutes)
- + Mayor calls for speakers after the item is called and before Council discussion on the item.

PUBLIC COMMENTS (CONT'D.)

✖ Non-Agenda Items

- + Use the Public Comment portion of the meeting (typically at the end of Old Business and before adjournment)
- + Speakers must fill out a comment card, and indicate they are planning to speak about a non-agenda item.
- + Give the comment card to the City Clerk prior to adjournment.
- + Enforce time limits (typically 5 minutes)

COMMISSIONS AND COMMITTEES: THE GREAT UNKNOWN

- The major difference is as follows:
 - **Commissions** are creatures of state law that cities or towns create under the confines of that state law (AKA: a statute).
 - **Committees** are created locally and are not found in state law.

COMMISSIONS AND COMMITTEES: THE GREAT UNKNOWN

- Thus:
 - what *statute did you use* to create your commission, AND
 - what *do you have in writing* that establishes your committee(s).

COMMISSIONS

- ✕ How are they created?
 - + By your city, using a state statute.

COMMISSIONS

✖ Examples:

- + Airport commission (A.C.A. § 14-359-104)
- + Parks/ Recreation commission (A.C.A. § 14-269-104)
- + Water commission (A.C.A. § 14-199-402)
- + Wastewater commission (A.C.A. § 14-230-103)
- + Civil Service commission (A.C.A. § 14-51-201 *et seq.*)

CREATING A COMMISSION, EX. 1

- Municipal Airport Commission
 - Enact by majority vote of the council;
 - Creating a commission;
 - Of 7 citizens;
 - Who are qualified electors in the state.

CREATING A COMMISSION, EX. 1

- ✖ Additional Requirements
 - 1 must be fully experienced in aviation
 - Means: Holding a pilot's license
 - BUT: City may waive, if no pilot is willing or able to serve.
 - Only 1 may have a financial interest in an aeronautical enterprise while serving.

CREATING A COMMISSION, EXAMPLE 2

- Parks & Recreation Commission
 - Can consist of 3, 6, or 9 members
 - 1/3 must serve for a term of 1 year
 - Another 1/3 must serve for a term of 2 years
 - The last 1/3 must serve for a term of 3 years
 - BUT, replacement members serve 3 year terms

CREATING A COMMISSION, EXAMPLE 2

- Initial appointees are named by the council
 - BUT, successor members are selected *by the remaining members of the commission*.
 - Members only need to be a qualified elector
 - They do not have to be a resident of the municipality
 - They cannot be paid for their service.

CREATING A COMMISSION, EXAMPLE 3

- **Civil Service Commission**
 - By ordinance, “name five (5) upright and intelligent citizens of [your city].”
 - Terms of Office:
 - 1 until first Monday in April of 2nd year
 - 1 until first Monday in April of 4th year
 - 1 until first Monday in April of 6th year
 - 1 until first Monday in April of 8th year
 - AND, 1 until first Monday in April of 10th year
 - Can add two more, *see* ACA § 14-51-201

CREATING A COMMISSION, EXAMPLE 3

- Requirements
 - Must be citizens of Arkansas
 - Residents of the city for more than 3 years
 - Qualified electors of the city at all times during service
 - Cannot hold, or be a candidate for, political office

COMMISSIONS

- **STEPS FOR UNDERSTANDING YOUR COMMISSION:**
 - Always start with the relevant state statute.
 - Then read the ordinance.
 - Then read the commission minutes.
 - Then discuss with chair or other relevant folks.

COMMITTEES (AND DEPARTMENTS)

- Cities of the First Class (ACA § 14-58-301)
 - City council may appoint 1 or more committees, to be composed from its membership
 - May also create 1 or more departments, fixing compensation and manner of employment
 - BUT, watch out: ultimately departments & compensation are only within the mayor and/or the council's authority and NOT a committee's.

COMMITTEES (AND DEPARTMENTS)

- City Administrator Cities (ACA § 14-48-117(5)(B))
 - Board may appoint 1 or more committees to be selected from its membership
 - Can also create any new office or department
 - Appointed person to the new office or department reports to city administrator.
 - AGAIN, watch out: Some departments can only be created by the Board.
 - NOT a committee.

COMMITTEES (AND DEPARTMENTS)

- City Manager Cities (ACA § 14-47-131(a)(1))
 - Board may create:
 - Departments
 - Offices
 - Employment positions
 - Boards
 - Authorities
 - Commissions
 - Agencies
 - NOTE: committee's are NOT mentioned.

COMMITTEES

- Remember, these are created locally.
 - Find the writings that created them.
 - If there aren't any, draft some!

COMMITTEES

- Several AG's opinions that you should read:
 - 95-195: Creation of committees is a legislative function
 - 95-248: In a city manager form of government, service of a board member on a committee is generally disfavored; they cannot serve on a committee that exercises ministerial or administrative powers (which almost all committees do).

COMMITTEES

- Several AG's opinions that you should read:
 - 2004-198: Committee cannot be used to hire Chief of Police, or to determine the Chief's salary — those responsibilities are left to the mayor and the city council, respectively.
 - 2009-138: Mayor may veto council's creation of a commission by ordinance.

COMMITTEES

- Committees are advisory only.
 - Cannot vest them with powers contra to state law (i.e.: council sets budget, can't vest that power in a committee).
 - Also, in all likelihood your committees have been subject to the home rule issue previously discussed.

COMMITTEES

- Must keep legislative exclusivity(Council/ Board v. Committee's) and not go outside that scope, regardless of home rule.
 - Again, it's critical that the council/board have established the make up and duties of the committee system.

COMMITTEES

- ✖ To summarize, they are...
- ✖ Bodies created to:
- ✖ Study
- ✖ And make recommendations to the legislative body

THE END!

- ✕ Thanks for your attendance...
 - ✕ And good questions.
 - ✕ We're honored to represent you!
-
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