

Guidebook for Municipal Officials of City Manager/ City Administrator Cities

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Introduction

As local government becomes increasingly complex, it is imperative that local officials understand the duties and responsibilities of their positions. The failure to do so may lead to conflict with other city officials, stifle the effectiveness of your city government or lead to lawsuits.

The purpose of this booklet is to assist newly-elected mayors and board members in learning their statutory duties and responsibilities and to aid them in becoming effective city officials. This booklet also points out the differences in the functions of the mayor and board members under each municipal classification of municipalities.

Arkansas statutes are laws passed by the Arkansas General Assembly (the State Legislature) and are codified into the Arkansas Code Annotated of 1987 as amended. The Arkansas Municipal League has published a *Handbook for Arkansas Municipal Officials*, which contains most of the state laws affecting municipal government in Arkansas. This *Handbook* has the same numbering system as the Arkansas Code Annotated (A.C.A.). The Arkansas Municipal League also publishes a book, *General Acts Affecting Arkansas Municipalities*, after each regular session of the General Assembly.

The Arkansas Municipal League recommends that you, as a municipal official, ask your city attorney when legal questions arise. As always, the League staff remains available to assist you.

Disclaimer

The information contained in this book is not intended as legal advice for any specific case. Readers are responsible for consulting with legal counsel when questions arise concerning the application of the law to a particular set of facts. This book is intended solely for educational and informational purposes.

Chapter I

An Overview of Arkansas Municipal Government

Arkansas municipalities are creatures of the state. Prior to 2011, cities had only the powers granted to them by the Arkansas Constitution and statutes passed by the Arkansas General Assembly. This was Dillon's Rule and it stated:

“Municipal corporations possess and can exercise the following powers, and no others: (1) Those granted in express words (by the state legislature); (2) Those necessarily or fairly implied in or incident to the powers expressly granted; (3) Those essential to the accomplishment of the declared objects and purposes of the corporations; not simply convenient, but indispensable.”

(*Tompos v. City of Fayetteville*, 280 Ark. 435, 438, 658 S.W.2d 404, 406 (1983))

The Legislature expanded this rule to a certain extent for some cities. “Home Rule” statutes gave first-class cities and certain cities operating under a charter the power to exercise all powers relating to municipal affairs so long as they did not conflict with state law. In 1875, the Legislature enacted A.C.A. § 14-55-102, which gave broad authority to municipalities by granting cities and towns the power to pass ordinances. Although A.C.A. § 14-55-102 could be interpreted as repealing Dillon's Rule, the Arkansas Supreme Court continued to apply Dillon's Rule long after the enactment of that statute in 1875, upholding ordinances under that section if they were legitimately aimed at protecting public health and safety.

However, Act 1187 of 2011 repealed Dillon's Rule and extended certain powers granted to cities of the first class to all municipalities. A.C.A. § 14-43-602 states that the rule of decision known as Dillon's Rule is inapplicable to the municipal affairs of municipalities. It gives a municipality the authority 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.” A.C.A. § 14-43-601 defines “municipal affairs” as “all matters and affairs of government germane to, affecting, or concerning the municipality or its government except state affairs subject to the general laws of the State of Arkansas,” which are listed in A.C.A. § 14-43-601(a)(1). A municipality may legislate upon the state affairs described in subdivision (a)(1) of A.C.A. § 14-43-601 if not in conflict with state law.

Incorporation

An Arkansas community may incorporate by a written petition that describes the geographic area seeking to incorporate and identifying the persons authorized to act on behalf of the petitioners. The petition must be signed by at least 200 or a majority of the qualified electors, whichever is greater, and presented to the county court (county judge). The county court shall set a date for a hearing and, after the hearing, the court will either approve or reject the incorporation. If approved, the incorporation is filed with the Secretary of State and notice of election of officers for the newly-incorporated municipality is posted. New cities or towns cannot incorporate if they are within three (3) miles of the boundaries of another incorporated city or town unless the governing body of that city or town has “by written resolution affirmatively consented to said incorporation.” In addition, certain real estate developments are exempt from the three-mile limitation requirement. A.C.A. § 14-38-101. Note that Act 1055 of 2017 (effective Aug. 1, 2017) changed the former five-mile limit to three miles. Act 1055 also makes an exception to the consent requirement if the area seeking to be incorporated contains a population of five thousand (5,000) or more.

Arkansas law also allows for an election procedure as an alternative for the incorporation of new municipalities having a population of at least 4,000. A.C.A. § 14-38-115. Once a city or town has become incorporated, it may annex additional territory as described in *Municipal Annexation, Incorporation and Boundary Changes* (2017), published by the Arkansas Municipal League.

Classification

Arkansas municipalities are divided into three (3) classes based on population. A.C.A. § 14-37-101 et. seq.

Class of City	Population	Referred to As
First	2,500 or more	City of the First Class
Second	500-2,499	City of the Second Class
Incorporated	499 or fewer	Incorporated Town

Once a municipality reaches a population of 500, it is classified as a city of the second class, and once a municipality reaches 2,500, it is classified as a city of the first class. However, there are exceptions to these classification criteria. For example, if the board of a town of with a population under 500 wishes to become a city of the second class, it may do so by submitting an ordinance to the voters, and if voters approve, the town becomes a city of the second class. Further, any city with a population of 1,500 or more may, by enactment of an ordinance, become a city of the first class. A.C.A. § 14-37-101 et seq. Arkansas law also allows for cities with certain populations to reduce their classification. A.C.A. §§ 14-37-111 and 14-37-114.

City Manager Form of Government

The city manager form of government is a product of a progressive movement of the early twentieth century. This form of local government provides clear lines of authority and responsibility with the city manager as the chief executive officer who can be held strictly accountable for municipal operations. The city manager form of government combines the political leadership of elected board members with the managerial experience of an appointed manager.

In the city manager form of government, the board of directors employs a city manager who serves at the will of the board for an indefinite term and receives a salary determined by the board. A.C.A. 14-47-119. Only cities with a population of at least 2,500 may adopt the city manager form of government. A.C.A. §14-47-101.

In the city manager form of government, Arkansas law provides for seven (7) elected representatives known as directors. A.C.A. § 14-47-109. However, cities under the city manager form of government that form or reorganize under the City Manager Enabling Act of 1989 may choose, by ordinance, to increase or decrease the number of directors, provided that the board of directors, including the office of mayor, shall always be an uneven number and never less than five members. A.C.A. § 14-61-105.

A city director chosen by the board to be mayor retains the right to vote as a director but does not have the power of veto, unless by a majority vote of the qualified electors of the city, the mayor is given the veto. If a mayor is given veto power, he or she shall have the power to vote only when necessary to pass a measure. A.C.A. § 14-61-114(d).

In the city manager form of government, all elections are non-partisan. Only a plurality is required for election to the offices of city director. All terms of office are four (4) years. A.C.A. § 14-47-109.

The Duties of the City Manager

A.C.A. § 14-47-120 provides that the city manager shall have the following powers and duties:

- (1)(A) To the extent that such authority is vested in him or her through an ordinance enacted by the board of directors, a city manager may supervise and control all administrative departments, agencies, offices, and employees.
- (B) In addition, in cities with a city manager form of government having a population of more than one hundred thousand (100,000) persons according to the most recent federal decennial census, the city manager also shall have the authority to supervise and control the city attorney and may remove and replace the city attorney at any time at the city manager's discretion if the city manager has been given the authority to remove and replace the city attorney pursuant to A.C.A. § 14-47-108(a)(2);
- (2) He or she shall represent the board in the enforcement of all obligations in favor of the city or its inhabitants which are imposed by law, or under the terms of any public utility franchise, upon any public utility;
- (3) He or she may inquire into the conduct of any municipal office, department, or agency which is subject to the control of the board, in which connection he or she shall be given unrestricted access to the records and files of any such office, department, or agency and may require written reports, statements, audits, and other information from the executive head of the office, department, or agency;
- (4)(A)(i) Except as provided in subdivision (4)(A)(ii) of this section, he or she shall nominate, subject to confirmation by the board, persons to fill all vacancies at any time occurring in any office, employment, board, authority, or commission to which the board's appointive power extends.
- (ii) If the mayor has appointment power pursuant to A.C.A. § 14-47-108(a)(2)(C), the nominations shall be made by the mayor.
- (B)(i) He or she may remove from office all officials and employees, including, without limiting the foregoing, members of any board, authority, or commission who under laws, whether applicable to cities under the mayor-council or management form of government, may be removed by the city's legislative body.
- (ii)(a) Removal by the city manager shall be approved by the board.
- (b) Where, under the statute applicable to any specific employment or office, the incumbent may be removed only upon the vote of a specified majority of the city's legislative body, the removal of the person by the city manager may be confirmed only upon the vote of the specified majority of the members.
- (C) The provisions of this subdivision (4) shall have no application to offices and employments controlled by any civil service or merit plan lawfully in effect in the city.
- (5)(A) To the extent that, and under such regulations as, the board may prescribe by ordinance, he or she may:
 - (i) Contract for and purchase, or issue purchase authorizations for, supplies, materials, and equipment for the various offices, departments, and agencies of the city government, and he or she may contract for, or authorize contracts for, services to be rendered to the city or for the construction of municipal improvements. However, in such connection, the board shall, by ordinance, establish a

maximum amount, and each contract, purchase, or authorization exceeding the amount so established shall be effected after competitive bidding as required in A.C.A. § 14-47-138;

- (ii) Approve for payment, out of funds previously appropriated for that purpose, or disapprove any bills, debts, or liabilities asserted as claims against the city. However, the board shall, by ordinance, establish in that connection a maximum amount, and the payment or disapproval of each bill, debt, or liability exceeding that amount shall require the confirmation of the board or of a committee of directors created by the board for this purpose;
- (iii) Sell or exchange any municipal supplies, materials, or equipment. The board shall, by ordinance, establish an amount, and no item or lot, to be disposed of as one (1) unit, of supplies, materials, or equipment shall be sold without competitive bidding unless the city manager shall certify in writing that, in his or her opinion, the fair market value of the item or lot is less than the amount established by ordinance as prescribed; and
- (iv) Transfer to any office, department, or agency or he or she may transfer from any office, department, or agency to another office, department, or agency any materials and equipment.
- (B) For the purpose of assisting the city manager in transactions arising under subdivisions (5) (A)(i)-(iii) of this section, the board may appoint one (1) or more committees to be selected from its membership. Or in the alternative, it may create one (1) or more offices or departments to be composed of personnel approved by the city manager. If, for these purposes, the board shall create any new office or department, the person appointed to fill the office or to head the department shall be responsible to the city manager and act under his or her direction;
- (6) He or she shall prepare the municipal budget annually and submit it to the board for its approval or disapproval and be responsible for its administration after adoption;
- (7) He or she shall prepare and submit to the board, within sixty (60) days after the end of each fiscal year, a complete report on the finances and administrative activities of the city during the fiscal year;
- (8) He or she shall keep the board advised of the financial condition and future needs of the city and make such recommendations as to him or her may seem desirable;
- (9) He or she shall sign all municipal warrants when authorized by the board to do so;
- (10) He or she shall have all powers, except those involving the exercise of sovereign authority, which, under statutes applicable to municipalities under the mayor-council form of government or under ordinances and resolutions of the city in effect at the time of its reorganization, may be vested in the mayor; and
- (11) He or she shall perform such additional duties and exercise such additional powers as may, by ordinance, be lawfully delegated to him or her by the board.

In addition, A.C.A. § 14-42-110(b) states:

City managers in cities having a city manager form of government shall have the power to appoint and remove all department heads. In cities with a city manager form of government and with civil service commissions, the civil service commission shall have the power to override the city manager's appointment or removal of the police or fire chief by a majority vote of the total membership of the commission.

The Duties of the Mayor in the City Manager Form of Government

The mayor of a city with a city manager form of government has the following duties set forth in A.C.A. § 14-47-116(b):

- Presides at all meetings of the board;
- Is recognized as the head of the city government for all ceremonial purposes and by the Governor for the purposes of military law;
- Signs, on behalf of the city, all written agreements, contracts, bonds, mortgages, pledges, indentures, conveyances, and other written instruments, the execution of which has been approved by the board; and
- May vote on all matters coming before the board but shall have no veto power, except as provided in The City Manager Enabling Act of 1989, A.C.A. § 14-61-101 et seq., which provides that in certain circumstances a mayor may obtain veto power by an ordinance referred to the electors and approved by a majority of the qualified electors voting on the issue. A.C.A. § 14-61-114.

The Duties of the Board of Directors in the City Manager Form of Government

- The board shall constitute the supreme legislative and executive body of the city and, subject to A.C.A. § 14-47-120 (10), shall be vested with all powers and authority which, immediately prior to the effective date of the reorganization, were vested under then-existing laws, ordinances, and resolutions in the mayor and council of that city and in its board of public affairs. A.C.A. § 14-47-109(a)(2).
- The board has the responsibility to hire a city manager and to set his or her salary. However, in cities with a population of more than 100,000, the mayor may be authorized to employ the city manager by either an ordinance or an initiated measure. A.C.A. § 14-47-119.
- The board, on the vote of a majority of its elected membership, or the mayor, if authorized, may terminate the city manager's employment at any time, either with or without cause. A.C.A. § 14-47-119.
- The board shall meet on days to be chosen in advance by the board within the first and third weeks in each calendar month, except when any meeting date falls on a legal holiday, in which event the meeting shall be held on a substituted date fixed by adjournment at the preceding meeting. A.C.A. § 14-47-123(b).

Special meetings may be called at any time by the mayor or by directors representing a majority of the elected membership of the board. The board may, by ordinance, establish the procedure for calling and giving notice of special meetings. A.C.A. § 14-47-123(c)(1)-(2).

Any person who shall have been elected or appointed a director and shall neglect or refuse to qualify and serve as such shall be guilty of a misdemeanor and fined in any sum of not less than one hundred dollars (\$100) nor more than three hundred dollars (\$300). A.C.A. §14-47-111(a).

City Administrator Form of Government

In the city administrator form of government, there are seven (7) elected directors and a mayor elected in non-partisan elections. A.C.A. §§ 14-48-108 and 14-48-110. A city with the city administrator form of government is divided into four (4) wards "composed of contiguous territory and substantially equal population". A.C.A. § 14-48-107. The persons elected to fill these positions must reside in their respective wards. The other three positions and the position of mayor are elected at large. A.C.A. § 14-48-110. Any first class city or any city with a population of at least 2,500 may adopt the city administrator form of government. A.C.A. § 14-48-101.

Duties of the City Administrator

In a city administrator form of government, the board of directors employs a city administrator who serves at the pleasure of the board. A.C.A. § 14-48-116. The city administrator has the following powers and duties as set forth in A.C.A. § 14-48-117:

- (1) To the extent that such authority is vested in him or her through ordinance enacted by the board of directors, he or she may supervise and control all administrative departments, agencies, offices, and employees;
- (2) He or she shall represent the board in the enforcement of all obligations in favor of the city or its inhabitants which are imposed by law or under the terms of any public utility franchise upon any public utility;
- (3) He or she may inquire into the conduct of any municipal office, department, or agency which is subject to the control of the board. In this connection, he or she shall be given unrestricted access to the records and files of any office, department, or agency and may require written reports, statements, audits, and other information from the executive head of the office, department, or agency;
- (4) He or she shall nominate, subject to confirmation by the board, persons to fill all vacancies at any time occurring in any office, employment, board, authority, or commission to which the board's appointive power extends. He or she may remove from office all officials and employees including, but not limited to, members of any board, authority, or commission who, under existing or future laws, whether applicable to cities under the mayor council, manager, or commission form of government, may be removed by the city's legislative body. Removal by the city administrator shall be approved by the board. Where, under the statute applicable to any specific employment or office, the incumbent may be removed only upon the vote of a specified majority of the city's legislative body, the removal of the person by the city administrator may be confirmed only upon the vote of the specified majority of the board members. However, the provisions of this subdivision (4) shall have no application to offices and employments controlled by any civil service or merit plan lawfully in effect in the city;
- (5)(A) To the extent that, and under such regulations as, the board may by ordinance prescribe:
 - (i) He or she may contract for and purchase, or issue purchase authorizations for, supplies, materials, and equipment for the various offices, departments, and agencies of the city government, and he or she may contract for, or authorize contracts for, services to be rendered to the city or for the construction of municipal improvements. In this connection, the board shall by ordinance establish a maximum amount, and each contract, purchase, or authorization exceeding the amount so established shall be effected after competitive bidding as required in A.C.A. § 14-48-129;
 - (ii) He or she may approve for payment, out of funds previously appropriated for that purpose, or disapprove any bills, debts, or liabilities asserted as claims against the city. The board shall by ordinance establish, in that connection, a maximum amount, and the payment or disapproval of each bill, debt, or liability exceeding that amount shall require the confirmation of the board, or of a committee of directors created by the board for that purpose;
 - (iii) He or she may sell or exchange any municipal supplies, materials, or equipment. However, the board shall by ordinance establish a maximum value above which no item or lot designated to be disposed of as one (1) unit of supplies, materials, or equipment shall be sold or exchanged without competitive bidding unless the city administrator shall certify in writing that, in his opinion, the fair market value of the item or lot is less than the amount established by the ordinance as prescribed;
 - (iv) He or she may transfer to any office, department, or agency or he or she may transfer from any office, department, or agency to another office, department, or agency any materials and equipment.
- (B) For the purpose of assisting the city administrator in transactions arising under subdivisions (5) A)(i), (ii), and (iii) of this section, the board may appoint one (1) or more committees to be selected

from its membership. In the alternative, the board may create one (1) or more offices or departments to be composed of personnel approved by the city administrator. If, for such purposes, the board shall create any new office or department, the person appointed to fill the office or to head the department shall be responsible to the city administrator and act under his direction;

- (6) He or she shall prepare the municipal budget annually and submit it to the board for its approval or disapproval and be responsible for its administration after adoption;
- (7) He or she shall prepare and submit to the board, within sixty (60) days after the end of each fiscal year, a complete report on the finances and administrative activities of the city during the fiscal year;
- (8) He or she shall keep the board advised of the financial condition and future needs of the city and make such recommendations as to him or her may seem desirable;
- (9) He or she shall sign all municipal warrants when authorized by the board to do so;
- (10) He or she shall have all powers, except those involving the exercise of sovereign authority, which, under statutes applicable to municipalities under the mayor council form of government or under ordinances and resolutions of the city in effect at the time of its reorganization, may be vested in the mayor;
- (11) He or she shall perform such additional duties and exercise such additional powers as may by ordinance be lawfully delegated to him or her by the board;
- (12) He or she shall be the executive officer of the boards of improvement and shall, under the direction of those boards, supervise all work done by them.

The Duties of the Mayor in the City Administrator Form of Government

A.C.A. § 14-48-111 provides that the mayor:

- Is recognized as the head of the city government for all ceremonial purposes.
- Presides at regular and special board meetings, but does not have a vote on any matters that come before the board.
- Has the authority to sign on behalf of the city all written agreements, contracts, bonds, mortgages, pledges, indentures, conveyances, and other written instruments that have been approved by the board of directors.
- Has the power to veto all decisions made by the board except personnel decisions. The mayor's veto may be overridden by the affirmative vote of five (5) or more board members.
- May receive a salary that is determined by the board of directors.
- Must take the oath of office as required by the Arkansas Constitution.

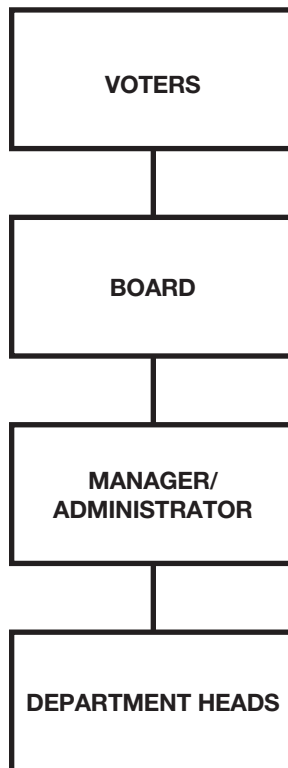
The Duties of the Board of Directors in the City Administrator Form of Government

- The board of directors of the city shall constitute the legislative and executive body of the city, subject to the powers of the mayor in A.C.A. § 14-48-111, and shall be vested with all powers and authority which, immediately prior to the effective date of the reorganization, were vested under then-existing laws, ordinances, and resolutions in the governing body of the city and in its board of public affairs subject to the powers of the city administrator in A.C.A. § 14-48-117. A.C.A. § 14-48-110.
- The board has the responsibility to hire a city administrator and to set the salary. A.C.A. § 14-48-116.

- The board, on the vote of a majority of its elected membership, may terminate the city administrator's employment at any time, either for or without cause. However, the city administrator's employment may not be terminated between the dates of January 1 and March 1 of the year following any general election in which members of the board are elected. A.C.A. § 14-48-116(d).
- The governing body of a municipality shall, by general ordinance, direct the number of subordinate police officers to be appointed. A.C.A. § 14-52-201.
- The board shall meet twice during each calendar month, and, until otherwise provided by ordinance, the meetings shall be held on the first and third Monday evenings of each calendar month, unless that day is a legal holiday, in which case the meeting shall be held on the following evening. Special meetings may be called by a majority of the membership of the board. A.C.A. § 14-48-120(b)-(c)(1).

Any director who fails to attend five (5) consecutive regular meetings of the board, or who fails to attend fifty percent (50%) of the regular meetings of the board held during a calendar year while he is a qualified member of the board, shall be deemed to have resigned. A.C.A. § 14-48-120(k).

City Manager/Administrator Diagram



Chapter II

Board Rules of Procedure and Different Types of Meetings

Procedural Rules

Each Arkansas city is unique. Your city and the residents you represent are no exception. The board rules of procedure should be agreed to and officially adopted by the majority of board members. Rules of procedure are guides to the generally accepted way that things get done. Topics that are usually covered in procedural rules include:

- Meetings: the usual date, time and place for regularly scheduled meetings; and setting the procedure for calling a special meeting by ordinance.
- Order of Business: the usual format to be followed, including who's responsible for preparing the agenda according to that format, and special provisions for agenda items such as developing a consent agenda.
- General Meeting Procedures: time limits for debate, if any, and who may speak at what point.
- Public Hearings: procedure and time limits.
- New Business: a process for allowing new items to be added to the agenda.
- Exceptions: specific provisions for when and how the rules can be suspended.
- Parliamentary Process: rules of debate governing motions, the order of issues to be discussed, and other elements that control discussion at meetings. The *Procedural Rules for Municipal Officials* (2014) booklet is commonly used by many Arkansas cities. Copies of *Procedural Rules* are available by calling the Arkansas Municipal League at 501-374-3484. You may also download it online from <http://www.arml.org/services/publications/publications-for-free>.

Rules of procedure and public debate are designed to facilitate the transaction of public business in an orderly way. At first it may not seem orderly to you. It is not unusual for newly elected board members to take up to six (6) months before they feel comfortable with the procedures. Do not be afraid to ask questions if you are not sure about the consequences of your vote. For example, you may want to ask, "If I vote 'no' on the amendment, what happens to the main motion?" That is a reasonable request for information.

Different Types of Meetings

Newly elected officials should quickly learn that there are four (4) kinds of meetings.

- Regular Board Meetings: These meetings handle general and routine business, and it is during these meetings that ordinances are enacted.
- Special Meetings: Business that cannot be postponed, or issues that affect a limited number of citizens, are dealt with at a specially scheduled meeting. These meetings usually have a more limited agenda than regular meetings but, like regular meetings, they are open to the public. It is important that the time and place of meetings of this sort are announced to the media and to the general public as required by the Freedom of Information Act. Media that have requested notice must be given at least two hours advance notification. A.C.A. § 25-19-106(b).
- Public Hearings: Hearings are a forum for residents to express opinions and for board members to explain their positions to the public. Hearings are most effective when they target only one item per hearing, for example, budget or zoning.
- Work Session: An informal meeting generally called for the purpose of conducting an in-depth study on a limited number of topics. Work session meetings encourage exploration of subjects in more detail than is possible in regular meetings because of the time constraints and the pressure of other business that occur in regular board session. These sessions must be open to the public.

Each of these types of meetings offers a way to achieve certain goals. A correct choice of meeting type will enable your city government to do its job effectively.

Proper Ways to Pass Ordinances and Resolutions

A city or town board can take official action in two ways: it can pass a resolution and/or an ordinance. Both actions play important roles in their own ways and they share certain similarities. However, there are distinctions between the two and it is important to know the differences.

Resolutions

A resolution is an expression of the will of the board. Resolutions are used to state the board's opinion on various matters—for example, supporting or opposing legislation pending at the State Capitol. Resolutions usually affect items of a temporary or administrative nature, such as entering into contracts, approving large purchases or entering into agreements with other governmental units. A resolution is the official expression of the board and may be adopted by the board at one reading, as long as it is not general or permanent in nature. (See A.C.A. § 14-55-202).

Ordinances

An ordinance is a local law that usually regulates persons or property and usually relates to a matter of a general or permanent nature. An ordinance is more formal and authoritative than a resolution. Therefore, we recommend your city attorney approve the structure and content of all proposed city ordinances. An ordinance should not conflict with federal or state law. It should also be in harmony with applicable court decisions. There are six (6) rules to remember about passing an ordinance.

1. Ordinances must be reasonable.
2. They must not be oppressive.
3. They must not be discriminating or partial.
4. They must not unduly restrain lawful trade.
5. They must not violate civil rights.
6. They must not be ambiguous.

The passage of an ordinance typically involves three (3) steps. The first step is the introduction of the proposed ordinance at a board meeting. The second step is to allow for the city clerk's, recorder's or attorney's reading of the ordinance; this is followed by allowing the person(s) proposing the ordinance the opportunity to explain its provisions. Third, the board debates the ordinance and either defeats, postpones, refers it to a committee for study or approves it. It is then signed by the mayor and attested to by the city clerk. A.C.A. § 14-55-201 et seq. Remember that all ordinances of a general or permanent nature must be read fully and distinctly on three different days (usually three different meetings), unless two-thirds of the members of the board shall suspend the rule. A.C.A. § 14-55-202. However, "[i]n a city with a population of less than fifteen thousand (15,000) persons in the most recent federal decennial census, if the ordinance under consideration has been submitted to and approved by the electors of the municipality and is being amended, repealed, or otherwise altered by the municipal council, then the ordinance shall be fully and distinctly read on three (3) different days not less than twenty-eight (28) days apart." Act 1052 of 2017 (effective Aug. 1, 2017).

Please note, however, that an emergency clause requires a separate and distinct vote of the board and is valid only if there is a two-thirds vote of approval by the board. Ark. Const. Art. 5 § 1.

Without the adoption of the emergency clause, municipal ordinances generally become effective 30 to 90 days after their passage, depending on the city ordinance establishing the deadline to file a referendum on an ordinance. A.C.A. § 14-55-203. All ordinances of a general or permanent nature and all those imposing any fine, penalty or forfeiture must be published in a newspaper of general circulation in those municipalities where a newspaper is published. However, the law provides that in municipalities where no newspaper is published, written or printed notice posted in five (5) of the most public places (designated by ordinance or minutes) shall be sufficient publication of any law or ordinance. A.C.A. § 14-55-206.

Additional and more detailed information about resolutions and ordinances may be obtained from the *Handbook*, Title 14, Chapter 55, Subchapters 1-7, and from the League publication *Municipal Law in Arkansas: Questions and Answers* (2015).

Personnel

Personnel issues continue to have a growing significance in municipal government. Newly elected officials would be wise to go slow in their direct involvement into personnel matters. Human resource law affecting municipal government is heavily litigated and rapidly changing. Many lawsuits defended by the Municipal Legal Defense Program involve the discipline or discharge of city employees. The advice of your city attorney should always be solicited when dealing with personnel matters. (See the League's *Sample Personnel Handbook for Arkansas Cities and Towns* and *Understanding Municipal Personnel Law and Suggestions for Avoiding Lawsuits*.)

Personnel Administration

Many Arkansas cities have neither a large enough workforce nor the financial resources to justify having a full-time personnel director. The common procedure is to assign personnel operations to one person—the mayor, city recorder, or city clerk, who wears several other hats as well. Nevertheless, this manual recommends that your city employ an individual or train a current employee to be thoroughly familiar with all aspects of personnel administration.

Regardless of the organizational structure a city uses, two (2) common-sense principles apply:

1. The board must decide the scope of personnel activities that will be conducted as part of the city's ongoing operations. Then all personnel-related tasks must be assigned to specific persons within the city organization. These assignments should be reviewed and distributed or made readily available to all employees.
2. All of the city's personnel policies and procedures should be clearly spelled out in writing in easily understood language and distributed or made readily available to all employees.

Establishing Personnel Policies

All policy matters are decided by the board, which enacts ordinances setting up the personnel system and establishing recruitment standards, pay scales, conditions of employment, retirement qualifications and other items. The board also approves the rules by which personnel ordinances are implemented and the procedures for handling administrative matters. Additionally, the board's budgetary powers give it continuing control over the number of employees and the general scope of their duties.

The city's personnel policies and practices must conform to federal and state laws. Also, all policies and procedures must be practicable, which means they need to be carefully considered prior to their adoption. Any policy or procedure that fails to accomplish its intended purpose in a simple, direct fashion will multiply, rather than reduce, the city's operating problems.

Assistance in drafting the city's personnel policies and procedural rules should be obtained from an attorney or other specialist skilled in employee relations and from the person to whom the board has assigned the responsibility for implementing the policies.

Upon completion of the drafting process, the proposed policies and rules are presented to the city board for consideration, possible amendments and final approval in an ordinance(s). Upon enactment, the policies and rules become binding on both the city and its employees.

The Employee Handbook

All personnel-related ordinances and regulations should be compiled into a single document, an employee handbook, for distribution to members of the board and the entire municipal workforce. Each employee should be required to sign a form acknowledging that he or she received the handbook. City employees should follow the handbook and the board-approved rules and regulations of their individual departments. Administrative rules need not be made a part of the handbook.

In addition to a personnel policy handbook, all municipalities should have written job descriptions for all employees. A written description provides evidence of the essential functions and responsibilities of each job. This becomes critical if a city employee claims that the city violated the Americans with Disabilities Act. Job descriptions should be reviewed and updated periodically to ensure that all duties and responsibilities of the position are reflected in the job description. (For assistance in drafting an employee handbook see *Model Personnel File Folder, Sample Personnel Handbook for Arkansas Cities and Towns and Understanding Municipal Personnel Law and Suggestions for Avoiding Lawsuits.*)

Unions or Professional Associations

Upon receipt of a written request signed by a full-time municipal employee who is represented by a union or professional association, the municipality shall withhold membership dues of the union or professional association from the salary of the employee. The municipality shall transmit all dues that are withheld under this section to the union or professional association representing the employee within five (5) days of the end of the pay period. This withholding shall be discontinued only upon receipt of a written notice of cancellation signed by the employee. A.C.A. § 14-58-103.

Chapter V

Budgeting and Finances

The residents of your city are entitled to an accounting from their municipal officials. The professional management of city finances demands high standards of personal responsibility. As a newly-elected city official it is extremely important that you understand the basics of city financial matters. One noted political analyst suggests two criteria that constituents traditionally use to evaluate the effectiveness of their local government: What does it provide for them and what does it cost? The document that should answer these questions is your annual budget.

City Budgets

Your city's annual operating budget should be the principal policy management tool for governing. It should be the mechanism to:

1. Evaluate city services.
2. Measure and compare needs.
3. Set priorities and balance community public service demands against the tax revenues required to furnish them.

Therefore, it is important that governing officials participate in the policies and decisions that go into building your municipal budget.

Arkansas Law and Budgeting

- Approval of the budget by the board of directors constitutes an appropriation of funds for the budgeted items, which legally authorizes expenditure of those funds. The budget may be amended during the year and unpledged funds may be appropriated. However, funds from taxes levied for a specific purpose may not be used for any other purpose. In addition, appropriated funds may not be diverted in a manner that would prejudice the city's creditors. A.C.A. §§ 14-47-125, 14-48-122.
- The fiscal year of each city and town shall begin January 1 and end at midnight, December 31 of each year. A.C.A. § 14-71-102.
- All cities and towns must have the financial affairs of the city or town audited annually by a certified public accountant or by the division of the Legislative Audit of the State of Arkansas. A.C.A. § 14-58-101.
- Deficit spending is generally prohibited. Cities are not allowed to spend more money than they accrue during a year. Ark. Const. Art. 12 Sec. 4. Exceptions to this rule are made for capital improvement and revenue bonds (Ark. Const. amend. 62 and 65); energy efficiency bonds (Ark. Const. amend 89) and for short term (up to five years) financing for certain purchases. Ark. Const. amend. 78 sec. 2.

Major Revenue Sources Available

Revenue sources may differ from city to city. However, listed below are the major revenue sources available to Arkansas cities:

- City and County Local Sales Taxes—Cities and towns share most countywide sales taxes on a population basis for operating purposes. City voters may authorize city sales taxes and county voters may authorize county sales taxes.
- Ad Valorem General Fund Property Tax—Set by the governing body, may not exceed five (5) mills. Ark. Const. Art. 12, § 4; A.C.A. § 26-25-102. Cities share one-half of the three (3) mills of county road tax collected on property within the city. A.C.A. § 26-79-104.
- General/Street Fund Turnbacks—This is appropriated from the State Municipal Aid Fund and distributed to cities based on population according to the most recent decennial census.
- Administration of Justice Funds—A cost of living adjustment based on the lesser of the average percentage increase in the Consumer Price Index for All Urban Consumers for the two years immediately preceding or the percentage rate of increase in collections of the State Administration of Justice Fund for the two preceding years is applied to district court generated administration of justice funds. A.C.A. §§ 16-10-307 and 308.
- Franchise Taxes—public utility retailers pay a franchise tax to cities for use of public rights of way and streets for the delivery of their services. A.C.A. § 14-200-101.
- Solid Waste/Sanitation Fees—Cities may charge a fee for the pick up and disposal of residential, commercial and industrial solid waste. A.C.A. § 8-6-211.
- Fines—Municipal ordinances may be enforced by the imposition of fines, forfeitures and penalties on violators of city ordinances. A.C.A. §§ 14-55-501 through 504.
- Permit and Inspection Fees—Cities have the authority to require building permits and safety inspections, and to charge accordingly.
- Parks Department Revenue—The city may charge fees for participants of city recreation programs and for concession revenues at the city pool, parks and community center.
- Occupational Taxes/Privilege License—The city may charge and collect revenue for the privilege of doing business or carrying on any trade profession or vocation within the city limits, unless the business has a license from another city in the state and does not maintain a place of business in more than one city. A.C.A. § 26-77-102.

Note: Fees must be reasonably related to the city or town's cost of providing the service.

Other Income (Miscellaneous Revenues)

- Sale of equipment or real property
- Animal licenses
- Hotel and Motel/hamburger taxes. A.C.A. §§ 26-75-601 through 618.
- Vehicle licenses
- Interest earned from special accounts

Purchasing and Bidding

To the extent that the board of directors may prescribe by ordinance, the city manager/administrator has the power and responsibility to make purchases of all city supplies, equipment and materials necessary to conduct the business of the city and may authorize contracts. A.C.A. §§ 14-47-120, 14-48-117.

Before making any purchase of or contract for any supplies, materials, or equipment, and before obligating the city under any contract for the performance of services or for the construction of municipal improvements, where the anticipated cost to the city of the transaction exceeds the maximum amount established by the board of directors under the authority of A.C.A. § 14-47-120 or 14-48-117, opportunity for competitive bidding shall be given under such rules and regulations as the board may, by ordinance, prescribe, and the contract shall be consummated only on a bid approved by the city manager and by the board. A.C.A. §§ 14-47-138, 14-48-129. Act 170 of 2017 amended section 14-47-138 to specify that bids may be taken in writing or by means of electronic media.

The board, by ordinance, may waive the requirement of competitive bidding in exceptional situations where this procedure is not feasible, but lacking such exceptional situations, the board may not except any particular contract, purchase, or sale from the requirement of competitive bidding. A.C.A. §§ 14-47-138, 14-48-129.

However, cities must take bids for any public improvements, which include the major repair or alteration or the erection of buildings or other structures or other permanent improvements, exceeding \$35,000 in costs. The law is found at A.C.A. § 22-9-203, which also contains the procedure for taking bids for contracts for public improvements that exceed \$35,000. The \$35,000 limit was raised from \$20,000 by Act 725 of 2017 (effective Aug.1, 2017).

Please note that A.C.A. § 22-9-301 does not contain a provision for the waiving of bids.

The awarding of bids can often be controversial. The bidding process is usually highly competitive. Pressure can be exerted on all municipal officials. One of the best ways to avoid controversy is to carefully prepare your bid specifications. Careful bid specification will also increase your chances of getting what you want and staying within your budget. If you want specific options, accessories or particulars, clearly state them in the bid specification. Under no circumstances should the bids be opened prior to—or reviewed or discussed until after—the official bid opening.

Professional Services

Competitive bids are not allowed when cities seek certain professional services. Professional services are defined as contracts for legal, financial advisory, architectural, engineering services, construction management, and land surveying. A.C.A. § 19-11-802. Cities that need professional services should advertise for RFP (Request for Proposal) or RFQ (Request for Qualifications). The RFP/RFQ should be evaluated considering the qualifications and reputation of each professional firm. Many cities will ask a professional service representative to make an oral presentation to the entire city council prior to its making a selection.

Next, the city shall select three qualified firms and then select the most qualified. A.C.A. § 19-11-804. Once a qualified professional firm has been selected, then the city may negotiate a contract for the desired professional service. If a mutually-agreeable contract cannot be negotiated with the first, most qualified firm, then the city may attempt to negotiate an agreement with the second and then the third firms on the list. A.C.A. § 19-11-805.

Chapter VI

The Freedom of Information Act

All municipal officials should become familiar with the Arkansas Freedom of Information Act (FOIA), A.C.A. §§ 25-19-101 through 25-19-107. Municipal officials who negligently violate FOIA may be found guilty of a Class C misdemeanor. In addition, citizens may sue for violations of the Act and, if successful, recover their attorneys' fees.

The primary categories of attention for municipal officials should be:

- Public Records
- Open Meetings
- Executive Sessions

Public Records

"Public Records" are documents that are actually kept or are required by law to be kept and maintained and which record the performance, or lack thereof, of official functions. A.C.A. 25-19-103. These would include the minutes from city council, planning and zoning, civil service, water and sewer, parks and recreation and any other meetings of a committee or commission established by ordinance or appointed by the mayor or city council. In addition, any public record, unless exempted by law, is subject to FOIA. Any citizen of the State of Arkansas may "inspect, copy, or receive copies of public records." A.C.A. § 25-19-105. Citizens do not have to state a reason or purpose in order to inspect city records, the law says.

However, a request to inspect the records should be directed to the "custodian of the records" (usually the city clerk, though this will depend on the type of record requested). The request does not have to be in writing, although this manual encourages city officials to ask (but not require) that anyone requesting to see or copy city records to make the request in writing because it provides a record if litigation occurs. If copies of public records are requested and if it is the policy of the city to charge a fee for copies, then the city may charge the actual costs of reproduction, but may not charge for the time of existing employees.

Open Meetings

All meetings of municipal governing bodies are required to be open to the public. A.C.A. § 25-19-106. Because meetings "shall be public" any person may attend. A quorum of the governing body need not be present for the meeting to be subject to the FOIA. For regular city council or other regular city meetings (water and sewer, planning and zoning, parks and recreation, and others), notice must be furnished to anyone who requests that information. For emergency or special called meetings, at least two hours' notice must be given to the news media located in the county and any news media located elsewhere which have requested to be notified before emergency or special meetings.

Executive Session

The only time the city council may meet and exclude the media and the public is in executive session. Executive sessions are permitted only for the purpose of considering employment, appointment, promotion, demotion, disciplinary action or resignation of any public officer or employee. In addition, an executive session is authorized for the discussion of public water system security measures in accordance with A.C.A. §§ 25-19-105(b)(18) and 25-19-106(c)(6)(B).

Actions discussed in executive session become legal only after the governing body ratifies the action with a public vote in open session. Meetings for the purpose of executive session still must be announced publicly. For example, "We are going into executive session to discuss the discipline of an employee." You do not have to state the employee's name publicly, however.

Unless the city attorney's employment, appointment, promotion, demotion, resignation or disciplinary action is under consideration, he or she may not meet in executive session with the city board. See Ark. Op. Att'y Gen. No. 2004-238 (Sept. 20, 2004); Ark. Op. Att'y Gen. No. 83-132 (July 11, 1983). Likewise the city clerk, city recorder or town recorder should not be in executive session. Ark. Op. Atty. Gen. No. 83-67.

This has been a very brief discussion of a very complicated law. For further information, please refer to the *Arkansas Freedom of Information Handbook* (15th Edition), which is available from the League at (501) 374-3484 or online at arkansasag.gov/media-center/foia.

Chapter VII

Functions of the Arkansas Municipal League

Purpose

The Arkansas Municipal League, established in 1934, is an agency of the municipalities of Arkansas. The League has a voluntary membership and was created to assist cities with information, services, and representation in the public affairs of our state and nation.

Organization

The Executive Committee is the governing body of the Municipal League. It is composed of 30 members—six officers elected at the annual League Convention and 24 additional members appointed by the president. Chosen by the Executive Committee, the executive director is responsible for administering the League's policies and programs. The executive director selects his or her staff, and together they work to provide Arkansas municipalities the best in League services.

League Activities

- Annual Conventions—Each year the League sponsors a Convention for officials from across the state. These officials gather to discuss mutual problems, discover new techniques, and learn of new developments in local government. Outstanding speakers address officials on subjects of municipal concern. Many legislative issues are discussed at the Convention, and the municipal policy statement for the forthcoming year is adopted at the annual business meeting. Of course, no successful Convention is all work. The Convention delegates enjoy the special activities provided for them.
- Other League Meetings—As the need arises, the League conducts training meetings. These special meetings assist municipal officials with current issues affecting them.

League Services

- Ordinance and Code Services—The ordinance and code services have become an important function of the League. Officials can request sample ordinances relative to almost any subject of municipal concern. The League also provides codification of city ordinances. Codification arranges your city ordinances into a subject-matter format.
- Inquiry Service—All League staff members are available for assisting local officials with problems confronting their municipalities. Frequent questions concerning procedures for new officials and various League programs are answered by telephone, referrals, memorandums, and surveys. Officials seeking information may also visit League headquarters to consult directly with staff members. League staff members also attend council meetings throughout the state, on request, as time permits.
- Planning Services—Group seminars and individual consultation are available to League members on various municipal planning projects.
- Cable Television Franchise Management Service—This service offers a cable television franchise management through Local Government Services or LGS. The goals of the program are to ensure that local governments have access to the expertise required to negotiate for the benefits and services needed in our communities on reasonable terms and conditions.
- Grants Service—A grant locator service is provided for municipalities to simplify the process of locating and obtaining grants. The League has partnered with The Grant Book Company to provide this service for its members through Grant Search Central, the website for The Grant Book Company. Grant Search Central provides up-to-date information about the availability and requirements for literally hundreds of types of government and non-profit grants. The League has partnered with Legacy Consulting to provide members with assessment and evaluation services, the development of

a community blueprint and assistance in grant procurement methods. Specific training in garnering needed funds for individual projects, as well as various tools monitoring and evaluating the grant process are available as well.

- IT Services—The League’s “IT in a Box” provides cities with state-of-the-art information technology tools supported by experienced, highly skilled IT professionals. From backing up data to modernizing your website, we know it’s tough for cities to invest in the right technology and hire the best professional expertise to guide them along. But those investments need to happen. Otherwise, your city operations are at risk. With IT in a Box, members receive a modern, user-friendly city website, data backup, and offsite storage to protect your information from a disaster; document protection and easy document retrieval for open records requests; a modern, business-grade email system; 24/7 helpdesk; vendor management; and full management of your servers, desktops, and mobile devices.
- Loss Control/Emergency Response Program—The Loss Control/Emergency Response Program provides members with individual loss control assistance and assistance in establishing an emergency preparedness plan. The Loss Control portion of the program offers safety inspections and on-site consultation for Workers’ Compensation, Vehicle program, and Property Program participants. In addition, the Loss Control program offers safety-training in various categories such as: personal protective equipment, trench safety, confined space safety, bloodborne pathogens, safety awareness, back safety, and lockout/tagout programs. These programs are taught on location in your municipality. The emergency response portion of the program provides cities with information on how to be prepared for emergencies such as bomb threats, cyber-terrorism, tornadoes, and chemical and biological threats. The League also offers a Loss Control Video Library to our members.
- Voluntary Certification Program for Municipal Officials—To increase municipal officials’ basic knowledge of local governance, the League has developed an annual curriculum of core courses and continuing education courses. The core courses, offered at League headquarters, cover municipal basics, such as budget preparation and personnel matters. Continuing education topics vary and are offered at the annual Convention and at the annual Winter Conference. City and town officials who complete 21 hours of classes in a calendar year (15 hours of core courses and six hours of continuing education) achieve the designation of Certified Municipal Official. To maintain certification, officials must complete six hours of continuing education in subsequent calendar years. Municipal officials eligible for the Voluntary Certification Program include mayors, city managers, city administrators, city directors, councilmembers, city clerks, recorders, and treasurers. For those city officials who have completed the 21 hours of core curriculum, officials must annually obtain 6 hours of continuing education to maintain certification status.

Publications

During each session of the Arkansas General Assembly, members of the League staff analyze the proposed measures that affect the state’s municipalities. The *Legislative Bulletin* is updated daily on www.arml.org and enables the municipal officials to advise their representatives of the impact of various proposals.

City & Town is the official publication of the Arkansas Municipal League. It is published 12 times a year and contains information of interest to municipal officials.

The *Handbook for Arkansas Municipal Officials* is published every other year after the regular session of the General Assembly. It includes laws that affect Arkansas municipalities and has become an important source of information on which municipal officials have come to depend.

Annual publications of the League include the *Directory of Municipal Officials* and the *Salary Survey*. The *Directory* contains a list of League member cities, their officials, city addresses, telephone and fax numbers, emails and websites. City classification and the county in which the city is located are also included.

The following Publications are available from the League:	
<i>Achieving Respect and Understanding in the Arkansas Municipal Workplace</i>	FREE
<i>ADA Compliance</i>	FREE
<i>#AMLMoves/The League's Wellness Program</i>	FREE
<i>Become a Certified Municipal Official</i>	FREE
<i>Communicating with Your Legislator - Jan. 2017</i>	FREE
<i>Directory for Arkansas Municipal Officials</i>	\$30.00
<i>Drug-Free Workplace for Non-CDL Employees</i>	FREE
<i>Emergency Preparedness</i>	FREE
<i>Family Medical Leave Act</i>	FREE
<i>The Fair Labor Standards Act, "21 Things You Should Know"</i>	FREE
<i>Firefighters Supplemental Income Protection and Death Benefit Program Brochure</i>	FREE
<i>Fire Protection Services Program</i>	FREE
<i>Freedom of Information Act</i>	FREE
<i>Getting Started and Staying in Compliance, A Checklist</i>	FREE
<i>Guide for Municipal Officials/Mayoral Cities</i>	FREE
<i>Guide for Municipal Officials/Manager Cities</i>	FREE
<i>Handbook for Arkansas Municipal Officials (members)</i>	\$100.00
<i>Legal Tools: To Help Keep Your City Clean</i>	FREE
<i>Local Sales Tax Elections</i>	FREE
<i>Local Sales Tax Collection Information, A City & Town article by Paul Young, 2012</i>	FREE
<i>Municipal Accounting Handbook</i>	FREE
<i>Municipal Law in Arkansas: Questions & Answers</i>	FREE
<i>Municipal Annexation, Incorporation, & Boundary Changes</i>	FREE
<i>Opening the Forum: The First Amendment and City Council Meetings, A City & Town article by Thomas Carpenter, 1997</i>	FREE
<i>Personnel Law & Avoiding Lawsuits</i>	FREE
<i>Policies and Goals</i>	FREE
<i>Procedural Rules for Municipal Officials</i>	FREE
<i>Sales Tax Survey</i>	FREE
<i>Sample Code of Conduct for Arkansas Municipal Officials</i>	FREE
<i>Sample Policies Bias Based Policing</i>	FREE
<i>Sample Personnel Handbook</i>	FREE
<i>State Aid Construction Projects for Cities - Procedures for Development</i>	FREE
<i>Tech Code Adoption & Implementation</i>	FREE
<i>Tort Immunity</i>	FREE
<i>Urban Planning Manual</i>	FREE
<i>Water/Wastewater Survey</i>	FREE
Many of these publications may be downloaded from the League's website, www.arml.org on the "Publications" page.	

Group Benefits Programs

The Arkansas Municipal League provides the officials and employees of Arkansas cities and towns with group programs such as the Municipal Health Benefit Fund and the Municipal Officials Accidental Death and Dismemberment Plan. The Municipal Vehicle Program provides low-cost vehicle coverage to member cities and towns.

The Municipal League Workers' Compensation Trust protects municipal workers in more than 480 cities and towns. The League's Volunteer Firefighter Accident Income Protection Plan is a popular League Program available to cities and towns participating in the Workers' Compensation Trust. The Municipal Property Program was established in 1985.

The Municipal Legal Defense Program is another service for League members. A steering committee governs the plan with the executive director and his staff administering the program. Participating municipalities contribute annually amounts based primarily on their population. Through this program, municipalities, municipal officials, and employees are provided protection against lawsuits involving their assets. Cities and towns in this program can also participate in the League's drug testing programs. Cities and towns in the Legal Defense Program may request written and oral legal opinions on municipal law.

The Municipal League Cash/Pension Management Trust is an optional program whereby Arkansas municipalities can place excess cash funds or pension investments in a safe and competitive account that provides excellent liquidity. Participant municipalities join together to invest moneys not currently needed to enhance their investment opportunities and increase investment earnings. In most cases invested funds will be available for withdrawal within 24 hours.

Conclusion

The Arkansas Municipal League serves member cities and towns and addresses their current and future needs. The League has been and will continue to be at the forefront of municipal progress and problem solving as long as Arkansas's municipal officials remain active and maintain it as a viable organization. When the League staff can be of service, please call.



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