



**Stacey Pickering State Auditor**

# MS Municipal Clerks Association Spring 2013

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March 21, 2013



# TERM OF OFFICE TRANSITION

# **BUDGET ISSUES**

## **LAST QUARTER OF TERM EXPENDITURE LIMIT OUTGOING BOARD:**

- **Section 21-35-27 limits expenditures and obligations to one fourth of the budget during April, May and June during an election year. This law excludes purchases which are subject to the purchase law (Section 31-7-13), emergency purchases and purchases which are seasonal in nature.**

# **BUDGET ISSUES**

## **FIRST QUARTER BUDGET REVISION LIMIT INCOMING BOARD:**

- **Section 21-35-25 limits a newly elected board's authority to revise the budget during its first three months in office. The incoming board is limited to only one revision of the budget. This one revision can only be made if a deficit is indicated; and no later than the first regular meeting in August.**

## **BUDGET ISSUES**

- **This means (unless absolutely necessary) the incoming board should wait until the first meeting in August to make its revision. Being their only revision, they are locked into these budget numbers for the balance of the fiscal year; unless there is a budget emergency as defined in Section 21-35-19.**



# **ETHICS AND NEPOTISM INCOMING BOARD:**

- **State ethics laws limit the authority of a municipality to contract with its officers, employees and their relatives. A review of municipal contracts and activities should be made to determine if incoming officers or employees relationships will require changes. Generally, a municipality may not contract with its officers, employees or relatives of the board or mayor. Relatives include a public servant's spouse, child, parent, sibling and spouses of these relatives.**

# **ETHICS AND NEPOTISM INCOMING BOARD:**

- **If a questionable situation is determined, the Miss. Ethics Commission should be contacted for direction on how to proceed. The Ethics Commission is authorized to enforce the ethics laws and to issue opinions regarding their interpretation. See Section 109 Ms. Constitution, Miss. Code 25-4-105 and <http://www.ethics.state.ms.us/ethics/ethics.nsf> legal reference.**



# **ETHICS AND NEPOTISM INCOMING BOARD:**

- **The state's nepotism law (Sec. 25-1-53) prohibits elected or appointed municipal officers from employing relatives related by blood or marriage within the third degree to certain positions. These are positions of officer, clerk, stenographer, deputy or assistant.**
- **Generally speaking, these are positions that have legal duties or authority to exercise legal authority. There is an exception for employees in positions prior to an appointing officer taking office.**

# **END OF TERM REVIEW OUTGOING OFFICIALS**

- **Municipal elected officials (mayor, board members, clerks, etc.) are elected or appointed for four year terms of office. The outgoing officials only have authority through June.**
- **Their actions are not binding upon the incoming officials. An "end of term review" of appointments, contracts and policies should be made to determine if any business is outstanding.**

# **END OF TERM REVIEW OUTGOING OFFICIALS**

- **STATUS OF CONTRACTS:**
- **Contracts do not have to expire on June 30. However, the incoming officials may cancel, change or acknowledge the existing agreements.**
- **This means you should clean up documentation of your actions; and complete any business you don't want left to the next board's discretion.**

# END OF TERM REVIEW OUTGOING OFFICIALS

- **STATUS OF OFFICERS AND OTHER APPOINTMENTS:**
- **Section 25-1-7 and 25-1-1 authorize an officer to continue in office until a successor is appointed (or elected). Section 25-1-37 makes the acts of an officer in possession of an office valid, even if he/she does not legally hold the office. Officers and employees continue with their duties as currently assigned; until the new board takes an official action to make a change.**

# **END OF TERM REVIEW OUTGOING OFFICIALS**

- **An incoming board should have a list of who does what, and the source of their authority. This means the list should provide the names, titles (duties), and minute book reference to the order granting the authority.**

# **INCOMING OFFICIAL'S ISSUES**

**A new set of elected official exist at the beginning of a term of office, even if the same people are reelected. This means each member must take a new oath of office and where required post a new bond.**

# **INCOMING OFFICIAL'S ISSUES**

## **OFFICERS AND EMPLOYEES STATUS:**

- **APPOINTMENT OF OFFICERS:**
- **New officer appointments should be made at the beginning of each term of office, even if the same person is being reappointed.**
- **Officers are Statutory Positions with Official Duties.**
- **Most officer positions are required to be filled by state law.**



# **INCOMING OFFICIAL'S ISSUES**

## **OFFICERS AND EMPLOYEES STATUS:**

- Failure to appoint someone to a mandatory position could result in liability of the appointing authority for failure to perform its duties (Sec. 25-1-45). For example, if a city clerk is not appointed and money is lost during the period of vacancy, the board could be liable. Note: there is no provision for an "Acting" officer; an appointment is absolute, even if it is intended to be for a short period of time.**

# **INCOMING OFFICIAL'S ISSUES**

## **OFFICERS AND EMPLOYEES STATUS:**

- **Section 21-3-17 requires the mayor and clerk to sign all appointments and approve all bonds.**

## **List of Appointed Officers (Code Charter):**

- **City Clerk, Police Chief, etc.: Sec. 21-3-5**

### **Special Appointments:**

- **Municipal Judge: Sec. 21-23-3**
- **Prosecuting Attorney: Sec. 21-23-3**
- **Court Clerk: (is city clerk or may be police chief or other) Sec. 21-23-11**

# **INCOMING OFFICIAL'S ISSUES**

## **Special Appointments: Continued**

- **Fire Marshall: (may be mayor, police chief or board member) Sec. 21-25-1**
- **Street Commissioner Sec. 21-3-23 (may be board member): Sec. 21-3-5**
- **Chief Administrative Officer: Sec. 21-3-25**
- **Police Officers (by board): Sec. 21-21-3**
- **Police Officers (by mayor): Sec. 45-5-9**

# **INCOMING OFFICIAL'S ISSUES**

## **APPOINTMENTS OF EMPLOYEES TO LEGALLY ASSIGNED OR DELEGATED RESPONSIBILITIES:**

- **DEPARTMENT HEAD APPOINTMENTS:**
- **Most important of assigned duties is the appointment of Department Heads. This is to make clear who is responsible for each budgeted department, and who has liability if the department's budget is exceeded (budget liability law Sec. 21-35-17**

## **INCOMING OFFICIAL'S ISSUES**

- **Some department heads are determined by virtue of being an elected or appointed officer. For example, the chief of police and city clerk are the heads of their respective departments [see Budget Section I in the Municipal Audit and Accounting Guide (MAAG)].**

# **INCOMING OFFICIAL'S ISSUES**

## **OTHER ASSIGNED OR DELEGATED DUTIES:**

- **State laws allow assignment or delegation of certain duties. Assuming these duties without board authorization may create questions of legal authority and liability.**
- **Travel : Who may authorize travel and travel advances – Sec. 25-3-41 and MAAG**
- **Petty Cash: Who may have a petty cash fund and for what purpose – Sec. 7-7-60 and MAAG**

# INCOMING OFFICIAL'S ISSUES

- **Purchasing Law:** Who may authorize emergency purchases, contract changes, use state contracts, accept quote offers, approve specifications and advertising, etc. – Sec. 31-7-13 and "Purchase Law Summary" at <http://www.osa.ms.gov>
- **Contracting:** Who may enter contracts, how will claims be verified (purchase orders, etc.), etc. – Sec. 25-3-43
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# INCOMING OFFICIAL'S ISSUES

- **Leave: Who may authorize leave - Sec. 25-11-103 (h)**
- **Overtime: Who may authorize overtime – Sec. 21-3-5**

# **INCOMING OFFICIAL'S ISSUES**

## **REVIEW OF EMPLOYEES DUTIES:**

- While employees may not have statutory duties, their functions may be essential to the continuation of municipal services. A determination should be made that public safety, health and other functions of municipal government are not compromised. For example, outgoing elected officials (such as a mayor) may have been performing additional work (department head or task) the new official does not intend to continue.**

# **INCOMING OFFICIAL'S ISSUES**

## **STATUS OF POLICIES AND PROCEDURES:**

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

# **INCOMING OFFICIAL'S ISSUES**

## **RECOMMENDED POLICIES AND PROCEDURES TO REVIEW:**

- **(1) Board Meeting Procedures**

**How are motions made, how are votes taken, may the public speak, what detail is recorded in the minutes, who approves the minutes per Sec. 21-15-33, etc.**

# **INCOMING OFFICIAL'S ISSUES**

- **(2) Purchasing and Contracting Procedures**

**Who may contract/purchase, how is the contract (purchase order, etc.) documented, who may declare emergency purchases, etc.**

- **(3) Employee Personnel Policy**

**How leave is earned and used, what holidays are paid and who works on holidays, how hourly pay is documented, how are employees hired and fired, etc.**

# **INCOMING OFFICIAL'S ISSUES**

- **(4) Claim Verification Procedure**

**Does the city owe this claim? Who contracted the bill? Were the services received? Were purchase laws followed? Is the payment within the budget, etc.**

- **(5) Budget Procedure**

**Do procedures follow state law, who prepares, do departments know what information to provide, who works out a timing schedule for publications and hearing, etc.**

# INCOMING OFFICIAL'S ISSUES

- **(6) Disaster Procedures**

**Has the MEMA plan been adopted, who does what, are there contact points, where are resources available, are FEMA assistance requirements understood, what state laws have to be followed, etc.**

**See "Emergency Accountability Plan for Local Governments" under downloads at the State Auditor's web site: [www.osa.ms.gov](http://www.osa.ms.gov)**



# INCOMING OFFICIAL'S ISSUES

- **(7) No Policy?????**

**If the legislative branch (the board) fails to adopt procedural policies, the executive branch (mayor, other officers) should develop these policies (in writing). Policies of authority must be board authorized.**

- **(8) Form and Understanding of Policies**

**All policies should be in writing, distributed to those affected, and those affected should sign an acknowledgment of receipt and understanding.**

# **TRANSFER OF RESPONSIBILITY**

- **PERSONAL PROPERTY - CONDUCT AN INVENTORY:**

**An inventory of municipal property should be made at the end of the term of office. Should property be missing or misrepresented in the records, this inventory will document when the problem happened (which term); and allow the current board an opportunity to officially address the problem. [May hire CPA to advise and observe].**

# **TRANSFER OF RESPONSIBILITY**

- **CASH - CONDUCT CASH COUNTS AND RECEIPT CUT OFFS:**

**All cash should be accounted for by official cash count at the end of the term of office. The last receipt issued should be documented for verification. As with other property, this is a verification that the cash was or was not there at the end of the term [May hire CPA to advise and observe].**

# **CLEAN UP THE LOOSE ENDS – OUT GOING OFFICIALS**

**You cannot fix a problem after you leave office, so do it now.**

- **Prepare documents that were over looked. Authorizations, appointments, etc. found by the "end of term review" to not be properly documented.**
- **"Nunc Pro Tunc" is a legal term that means "now for then". This term is used in Attorney General's opinions describing the authority of a board to clarify prior actions.**

# **STATUS REPORT – OUT GOING OFFICIALS**

- **It is highly recommended that the out going officers prepare a "status report" for the incoming officers. This report should provide necessary information for a smooth transition. The report should document understandings regarding the issues suggested in this material, and address any other outstanding activities of the municipality.**

# OFFICE QUALIFICATION – INCOMING OFFICIALS

- **Incoming officials must take the oath of office prior to the date he/she is to take office. Sec. 268, Ms. Constitution provides the oath of office, and Section 11-1-1 list who may administer an oath of office (includes a mayor).**
- **Some incoming officers must also post official bonds. Section 25-1-15 presents the language of official bonds; and requires they be for the whole term of office.**

# OFFICE QUALIFICATION – INCOMING OFFICIALS

- Section 25-1-19 requires bonds be approved by the governing authority and filed in the office of the municipal clerk.
- The following list provides bond requirements for most municipalities:
  - Board or Council Members (Sec. 21-17-5 - Lesser of \$ 100,000 or 5 % of Tax Collections



# OFFICE QUALIFICATION – INCOMING OFFICIALS

- Officers and Employees Handling Money - see statutes governing the form of government (i.e., \$ 50,000 for Section 21-3-5 for Code Charter, Sec. 21-8-23 for Mayor Council, Sec. 21-9-21 for Council Manager and Charter for Special Charter)
- Municipal Clerk, City manager, Administrator, Chief Financial Officer ( \$ 50,000 - Section 21-15-38 )
- Deputy clerk ( \$ 50,000 - Section 21-15-23 )

# OFFICE QUALIFICATION – INCOMING OFFICIALS

- Chief of police ( \$ 50,000 - Section 21-21-1 )
- Deputy police ( \$ 50,000 Section 45-5-9, if hired under this law; No bond if hired under Section 21-21-3 )
- Mayor – No Bond Requirement

# OFFICE QUALIFICATION – INCOMING OFFICIALS

- The new board should be aware that their oath and bond commits them to faithfully perform their duties subject liability upon their bond. They should be prepared to show they made a "Faithful Performance" effort to learn their duties.

## **TRAINING – INCOMING OFFICIALS**

- **The incoming board and officers (mayor, city clerk, police chief, fire chief, etc.) should be aware of their training opportunities and obligations. For example, Judicial College Training is required for court personnel and the municipality is prohibited from paying a court clerk whose training certification is not filed on the board's minutes (Sec. 21-23-12). Training is also required for law enforcement officers (Sec. 45-6-11).**

# TRAINING – INCOMING OFFICIALS

- Mississippi Municipal League – offers training at conferences and conducts a Certified Municipal Officer program.
- Center for Government and Community Development, MSU – provides a Certified City Clerk program, and occasional designed training (new officials, etc.).
- Miss. Association of Governmental Purchasing and Property Agents – offers training for purchasing and property officers.

# TRAINING – INCOMING OFFICIALS

- Miss. Judicial College, University of Miss. – Trains court personnel.
- Miss. Dept. of Insurance – Trains fire fighters.
- Board on Law Enforcement Officer Standards and Training – establishes required training for law enforcement officers.
- Other State Agencies – State Treasurer, Secretary of State, Dept. of Natural Resources, Health Dept., State Auditor, Attorney General, etc. – offer training as required by law of need.

# TRAINING – INCOMING OFFICIALS

- Other sources of Training - (CPA firms, municipal organizations, federal government, etc.) also offer training beneficial to municipal personnel.
- The State Auditor's Office – may sponsor training programs and participates in programs sponsored by other.



# **TRAVEL AND EXPENSE AUTHORIZATION – INCOMING OFFICIALS**

- **The out going board may authorize training for incoming elected officials [Sec. 21-17-5 (4)]. This training may occur prior to taking office. Generally, the Miss. Municipal League holds its convention in early July of an election year for the benefit of the new officials.**
- **The new board should know its travel to the convention must be officially authorized before travel reimbursable travel expenses are incurred (Sec. 25-3-41).**

# **INCOMING BOARD'S RESPONSIBILITIES**

- **Incoming officials are responsible for the faithful performance of their duties (Sec. 268 oath of office), effective when they take office. Potential liability also occurs at this point (Sec. 25-1-45).**
- **This means the incoming board should review policies and contracts in effect when they take office. This review is to assure that operations are legal, and the conditions are right for the continued operation of the municipality.**

# **INCOMING BOARD'S RESPONSIBILITIES**

- **The review should result in actions to (1) acknowledge the continuation of each policy or contract, (2) make changes to their terms, or (3) terminate the contract.**
- **The review also includes inter local agreements (such as with the county to collect taxes / redemptions), continue or stop actions authorized by local and private bills, follow through with grant and loan initiatives, and pursue/change/terminate other contracts.**

# **INCOMING BOARD'S RESPONSIBILITIES**

- **Every effort should be made to identify all interest and positions of the municipality for evaluation.**
- **Continued practice of business as usual may result in liability.**



# Questions