The Council and Public Participation

The Council Meeting – Public Participation

In AGO 1998-134, the Attorney General addressed the question of whether members of the public have a right to speak at meetings held pursuant to the Sunshine Law. The Attorney General stated that "A public body has the right to determine whether public comments will be allowed, except in those cases where the law requires a public hearing. While the law does not mention public participation at meetings of a public body, it is good public policy to allow citizens and taxpayers to express their views."

The Sunshine Law was repealed when the legislature passed the Alabama Open Meetings Act ("OMA"). Nothing in the new OMA contradicts this Opinion, though, so it probably remains valid. Additionally, cases from other jurisdictions support this view. See, e.g., *Kindt v. Santa Monica Rent Control Board*, 67 F.3d 266 (9th Cir. 1995).

Certain types of action by the council require a public hearing, and in those cases, the public must be allowed to address the issue under consideration. And, most municipalities do set aside a portion of council meeting for public comment, even if a public hearing is not required. Public comments during a meeting remain subject to reasonable time, place and manner restrictions.

What type regulations are generally upheld? Some of these were cited in *Timmons v. Wood*, 2006 WL 2033903, "The council has an agenda to be addressed and dealt with . . . [government may stop a speaker] if the speaker becomes disruptive 'by speaking too long, by being unduly repetitious, or by extended discussion of irrelevancies.'" Another court, in *Scroggins v. City of Topeka*, 2 F.Supp. 1362 (DC Kan. 1998), noted further that these actions disrupt a meeting ". . . because the Council is prevented from accomplishing its business in a reasonably efficient manner. Indeed, such conduct may interfere with the rights of other speakers."

Additionally, government may restrict speech as to amount of time permitted and may limit the number of citizens allowed to participate at a particular meeting. A public body may also require prior notice from citizens wishing to be heard. These regulations must, of course, be enforced evenly as to all parties without regard to the content of their speech.

A public body may also prevent personal attacks that are unrelated to issues of public interest. Special care must be used here because when a matter becomes an issue of public interest and concern is often a subjective matter. In *Gault v. City of Battle Creek*, 73 F. Supp. 811 (W.D. Mich. 1999), a speaker was ruled out of order when his discussion of problems within the police department spilled over into comments about the police chief's affair with his wife. The presiding officer ruled this out of order as a personal attack and unrelated to his duties as police chief. The court disagreed, finding that:

> Sexual affairs have caused government ministers to lose power, corporate presidents to resign, spouses to commit murder, not to mention dissension and disruption in offices and organizations. This type of behavior is of even greater public concern when it involves a paramilitary organization such as a police department. The allegation against [the police chief] could directly relate to the morale, leadership, and teamwork of the Battle Creek Police Department and its officers.

Care must be taken to ensure that when the public is granted the opportunity to address the council, that right is protected. In *Jocham v. Tuscaloosa County*, 289 F.Supp. 887 (E.D. Mich. 2003), a group of atheists appeared at the council meeting to protest placement of a nativity scene on public property. A council rule limited public comment to five minutes. During their five minutes, councilmembers repeatedly interrupted them, telling them that they had no rights because they weren't Christian and making comments like "if you don't like it, don't look at it," and ridiculing them for their position. Further, other groups at the same meeting were permitted to talk beyond the five-minute period. The court held that the council's hostile nature presented a factual question as to whether they had enforced the rule selectively against this group due to the content of their speech.

The Council Meeting—Dealing with Disruptions

Courts are almost unanimous in their view that public comment cannot be permitted to disrupt the orderly conduct of business at a council meeting. When members of the public violate reasonable time, place and manner restrictions on their conduct or speech during meetings, clearly the presiding officer is within his or her authority to ask the person to stop the disrupting behavior. If this instruction is not heeded, the presiding officer may have the person removed from the meeting or even arrested.

In Alabama, Section 11-43-163, Code of Alabama 1975, provides that "During a session of the council or of a committee any person who is guilty of disorderly or contemptuous behavior in the presence of the council or the committee, may be punished by the council or committee by arrest and imprisonment not exceeding 24 hours. A committee may require any officer of the police force or any patrolman to act as secretary of such committee."

Although this provision has never been interpreted, it clearly allows for the removal—and jailing—of individuals for disruptive behavior during council and committee meetings. Courts in other states, though, have frequently been asked to address questions concerning the removal of persons from these meetings.

The presiding officers' discretionary authority to remove spectators is not without limitation, however.

Courts have made clear that a presiding officer may not remove someone based solely on a disagreement with the content of the speech. For example, in *Dayton v. Esrati*, 125 Ohio App.3d 60, 707 N.E.2d 1140 (1997), the Ohio Court of Appeals found it improper for the presiding officer to remove an individual who donned a ninja mask in protest, but otherwise sat quietly in his seat because his action constituted protected First Amendment speech and did not disrupt the meeting.

The goal of removing someone, of course, should not be to prevent individuals with opposing viewpoints from expressing those views, but to allow the meeting to proceed in an orderly manner. Removal from a meeting is an extreme remedy that should generally only be employed as a last resort so that a meeting can proceed. But courts consistently affirm the right to take this action when it is necessary to allow the council or a committee to conduct the public's business.

The Council Meeting – Public Hearings

While most council meetings are open to the public, it is important to understand the difference between a public meeting and a public hearing.

Public hearings are specifically set up to allow the public to comment and express opinions and concerns on matters related to the purpose of the hearing. Stated another way, a public hearing is an official proceeding during which the public is accorded the right to be heard on a specific issue.

Some public hearings are required by law. For example, Section 11-52-77, Code of Alabama 1975, requires that a public hearing be held before passing any zoning ordinance (or amendments to zoning ordinances, See Section 11-52-78, Code of Alabama 1975). Another example of a mandated public hearing relates to increases in ad valorem taxes. Subsection (f) of Section 217, as amended by Amendment 373 of the Alabama Constitution of 1901, provides that a municipality may, under certain conditions, increase ad valorem taxes after a public hearing.

There are circumstances, however, where even if the law does not require a public hearing, a governmental body may want to conduct a hearing to gauge public opinion on a matter before it takes any formal action. For example, state law does not require a municipality to hold a public hearing before issuing an alcoholic beverage license, but it is certainly prudent for a municipality to hold a hearing and take steps to protect an applicant's due process rights in the event of a denial of a license. In instances like this, the public input and testimony may help support the basis for the council's decision.

Notice and Location

Consideration should be given as to the location for a hearing before giving notice to the public. Space, furnishings and equipment needs should be assessed as soon as possible keeping in mind the nature of the public hearing and expected attendance, to the extent that it can be ascertained, of people who are likely to provide comment.

Regardless of the reason for the public hearing, the public must be put on notice of the hearing. While particular statutory requirements may come into play in the case of a mandated public hearing, all notices should, at a minimum provide the date, time, and location of the hearing as well as a brief statement of the purpose of the hearing. Other considerations for the notice include:

- A name and contact information for additional information;
- Information on where copies of relevant documents can be reviewed or obtained;
- Information on how individuals or groups may testify during the hearing including any applicable rules for the public hearing if they are available.

Establishing "Ground Rules"

In order to run a smooth public hearing and cut down on disorder, it is advisable that the city council, or other governmental entity conducting the public hearing, establish some ground rules which balance the public's right to be heard with the need to maintain order. These rules may be set up in writing and provided in advance of the public hearing or they may be done verbally at the beginning of the public hearing. Whether they are provided in advance or not, the rules should be publicly announced at the beginning of the public hearing and may need to be repeated during the course of the hearing if it is clear that they are not being followed or there appears to be some confusion. As with any rules, they are only effective if they are enforced consistently and fairly.

The rules must respect the public's first amendment right to free speech given that a public hearing is considered a designated public forum. As such, any rules or restrictions should only apply to time, place, and manner of the speech as opposed to the content of the speech. In a public forum the government may impose reasonable restrictions on the **time, place**, or **manner** of protected speech, provided the restrictions "are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information." *Ward v. Rock Against Racism*, 491 U.S. 781,791 (1989) (quoting *Clark v. Community for Creative Non-Violence,* 468 U.S. 288, 293 (1984)).

With this general principal in mind, following is a suggested framework, including some suggested ground rules, for conducting public hearings:

1. **Opening Comments.** The person responsible for conducting the public hearing, such as the chair of the planning commission for zoning public hearings, should welcome the public and state the purpose of the hearing. It might also be a good idea to acknowledge the manner in which notice was provided for the hearing and state that everyone wishing to speak on the subject at issue will be given the opportunity to speak. The procedures to be followed for the hearing should be stated clearly and the public should be put on notice that failure to follow the procedures or otherwise because disruption will lead to them being asked to leave the hearing immediately. For example, if there is a time limit on speaking or a limit on the number of people who may speak on either side of an issue, it should be made clear to attendees up front. This will help the public understand, and hopefully, follow the procedures established.
2. **Sign-up Sheets.** A common practice for any public hearing is to require individuals or groups to sign-up if they wish to speak. A sign-up sheet should be easily accessible to attendees at the public hearing and announcements should be made before and during the hearing that if people want to speak, they must sign-up to do so. Also, keep in mind that persons with disabilities must be accommodated with assistance in both signing up to speak and speaking if necessary.

   In an effort to maintain fairness and efficiency, testimony and comments should be taken in the order listed on the sign-up sheet. This also helps avoid people bunching up or crowding at the podium where people are speaking. It is also recommended, unless the circumstances warrant otherwise, that people who wish to speak multiple times must wait until everyone has had their chance to speak initially. Whatever approach is taken, it should be enforced consistently and fairly.
3. **Limiting Subject Matter.** The prohibition against regulating the "content" of speech doesn't mean that the rules cannot limit speakers at the public forum to the subject matter of the public hearing. The 11th Circuit Court of Appeals has held that limiting testimony or remarks to a particular subject matter or topic does not violate the First Amendment to the United States Constitution. *See Jones v. Heyman*, 888 F.2d 1328 (11th Cir. 1989). Therefore, if a public hearing involves the potential rezoning of an area of land from residential to commercial, it would be proper to limit comments to this subject. It is important to note, however, that both positive and negative comments on the subject matter at hand must be permitted. *See, e.g. Madison Joint Sch. Dist. No. 8 v. Wisconsin Employment Relations Comm'n,* 429 U.S. 167 (1976) (prohibiting negative comments violates the First Amendment).
4. **Time Limits and Repetitive Comments.** Reasonable time limits on an individual's comments during a public hearing may be imposed but there isn't a one-size-fits-all as to the amount of time and this should be looked at carefully depending on the subject matter of the hearing. Limiting oral comments encourages witnesses to be focused and direct. While time limits of three to five minutes during public comment at a public *meeting* might be appropriate, when there are specific parties in interest at a public *hearing* (such as a land use applicant) time limits may need to be considerably longer. A party in interest is one whose property rights are directly affected by or at issue and limiting their time to speak at a public hearing should be imposed only if absolutely necessary. For those persons who are not a party in interest, three to five minutes may be more acceptable depending on the subject matter and nature of the hearing. Another option or consideration, if it appears that there will be a large number of people wishing to speak, is to limit

the time for individuals to speak but allow for written comments to be submitted in addition to their oral comments.

What about limiting the number of times an individual may speak? Again, it is important to keep in mind that the purpose of a public hearing is to allow the public to speak and to gather input and comments from the public. Therefore, care should be taken before restricting the number of times an individual may address the body. What is reasonable will depend on the subject matter and whether the individual is simply repeating the same comments over and over rather than adding additional comments. Certainly, if an individual is making repetitive comments that are disruptive and are preventing the hearing from progressing in an orderly fashion then that person may be interrupted and asked to stop.

5. **DISORDERLY PEOPLE.** Perhaps the most challenging aspect of a public hearing, especially if the issue is a contentious one, is dealing with disorderly people who refuse to cede the floor when asked or who interrupt and disturb other people who are providing comment. There are numerous ways a person may **disrupt** a public hearing. They may speak too long, be unduly repetitious, or get completely off the subject matter and start discussing irrelevancies. No one has the right to disrupt a public proceeding (meeting or hearing) and interfere with the business at hand. While an individual has a First Amendment right to free speech and expression, that right does not extend to disrupting proceedings in a manner that prevents a governmental entity from being able to proceed in an orderly manner. In fact, the governmental body may need to act to maintain order so that the rights of others, to speak on the matter at hand, are protected. *See generally White v. City of Norwalk,* 900 F.2d 1421 (9th Cir. 1990).

   A good practice is for the person responsible for conducting the public hearing to be clear with anyone who interrupts, refuses to cede the floor, or insists on making irrelevant and/or repetitive comments that they must come to order or leave the hearing. If a person is asked to stop their behavior and refuses to do so, he or she should be directed to exit the hearing and if necessary be escorted out by a police officer.

6. **Recesses/Continuances.** Depending on the circumstances and subject matter of the public hearing, it may become necessary at some point during a public hearing to take a recess or even call for a continuation of the hearing at another date and time. In the case of a recess, it should be made clear to everyone in attendance at the public hearing the length of the recess and when it will reconvene. The hearing should not reconvene until the time announced.

   If a public hearing has gone on longer than anticipated due to the volume of people who wish to be heard or the length of their comments, it may be necessary to continue the hearing to another date and time. It is rarely advisable to put an absolute time limit on a public hearing because this could frustrate the purpose of the hearing if people are prevented from being heard. It is certainly acceptable, however, to place a time limit at which a continuation will be called. Should a continuance be necessary, it should be announced to those in attendance, before suspending the hearing, the date, time, and location of the continuation. While a second notice is not specifically required by law, it is always a good practice to formally re-notice the continuation of the public hearing in the same manner as the notice for the underlying hearing.

7. **Closing the Meeting.** A public hearing is concluded when all attendees who wish to comment have been given the opportunity to do so. Generally, there is not vote or action taken at the close of the hearing and the person responsible for conducing the hearing simply calls it to a close. If the public is going to be allowed to submit written comments, it should be announced how long those comments will be accepted and where they should be turned in. It is appropriate to thank the attendees for attending and providing comment and should explain the steps the governmental entity will take to use the information gathered.

Referenda

The League is often asked if a municipality can submit non-binding, or even binding, questions to the voters. The Attorney General has consistently ruled that a municipality may only call for an election if it authorized to do so by legislative authority. In numerous opinions, the Attorney General has said a municipality may not hold an advisory election in the absence of statutory or charter authority. The cost of holding these elections is not a proper expenditure of city funds. The Attorney General has also disapproved submitting questions to the voters at the general election so that the cost is negligible.

Essentially, these rulings mean that the council cannot agree to be bound by the vote of the people unless the election is allowed by statute, the constitution, or charter power. This would be in improper delegation of the council's legislative power.

A summary of the Opinions on this issue addresses most of the questions that arise in this area:

- A city may not allocate and spend funds in order to hold non-binding city-wide referendum on the question of a 1% sales

tax increase. AGO 1982-198 (to Hon. George A. Monk, February 16, 1982).

- A city may not sponsor and hold a non-binding referendum using city employees and officials to work on the election, even if the cost of the referendum is paid for with private funds. AGO 1994-001.
- A private group may conduct a non-binding referendum for a municipality. The municipality may not participate other than as private citizens. The council cannot agree to be bound by the referendum. AGO 1997-257.
- A city may not sponsor and hold a non-binding referendum using city employees and officials to work on the election, even if the cost of the referendum is paid for with private funds. AGO 1994-001.
- A private group may conduct a non-binding referendum for a municipality. The municipality may not participate other than as private citizens. The council cannot agree to be bound by the referendum. AGO 1997-257.
- The probate judge has no authority to include a municipal advisory referendum on a primary election ballot. AGO 2006-075.
- A city council may not make zoning in a particular district subject to a referendum of the residents. AGO 1991-262.

Similarly, Section 212 of the Alabama Constitution, 1901 provides that, "The power to levy taxes shall not be delegated to individuals or private corporations or associations." this would prohibit the council from making the levy of a tax subject to a referendum without specific authority from the legislature.

In *Opinion of the Justices*, 251 So.2d 739 (Ala. 1971), the Alabama Supreme Court interpreted this provision to mean that the public has created a legislative department for the exercise of the legislative power, including the power of taxation. The Court held that the legislature can't relieve itself of the responsibility. In *Opinion of the Justices*, 251 So.2d 744 (Ala. 1971), the Court further held that this Section prevents holding public elections on tax issues, unless authorized by the Constitution.

Citizen Petitions

The First Amendment to the U.S. Constitution guarantees citizens the right to petition the government for a redress of grievances. But what is the legal effect of a petition brought by a citizen or citizens? While petitions certainly have a political effect and may at least lead to discussion of the issues, most do not require a city council to take any action or even debate the petition. A petition has legal effect only if a statute gives it some significance.

There are only a few instances where a petition will require the city to take legal action. Quite often the petition only brings the issue before the governing body, and the council may deny the petitioner's request, or even refused to consider the petition at all.

If a statute allows citizen petitions, however, it is important to know how many signatures are required to compel the body to act, what action is required and that the signatures are properly verified.

In some cases, such as requesting a variance from a zoning ordinance, courts indicate that a petition by a single property owner is sufficient to require the board of adjustment to act. See, *Fulmer v. Board of Zoning Adjustment of Hueytown***,** 286 Ala. 667, 244 So.2d 797 (1971). Other situations, such as requesting a wet/dry referendum, require the filing of a petition signed by a specific number of individuals before the governing body can act. See, Section 28-2A-1, Code of Alabama 1975.

The action the governing body must take can vary from merely considering the petition to calling for a referendum. In some cases, the body must specifically act or the petition is granted. For example, Section 11-52-32(a) provides that upon the filing of a subdivision "plat," essentially a petition for approval of a subdivision, "The planning commission shall approve or disapprove a plat within 30 days after the submission thereof to it; otherwise, such plat shall be deemed to have been approved. . . ." Thus, when a petition is filed, it is imperative that the governing body determine whether the petition legally requires it to act, and what form that action should take.

The verification process is crucial. Improper signatures should be rejected. Improper signatures may cause the petition to fail because there were not a sufficient number of signers to force (or allow) the governing body to act. If these signatures are not rejected, the petition is subject to legal challenge in court.

The goal, of course, is to meet statutory requirements. For example, if the Code requires signatures of a certain percentage of citizens, the citizenship of those signing must be verified. Unfortunately, there is very little guidance in Alabama on the verification process. Some guidance is available from court decisions and Attorney General's Opinions:

General Rulings:

- When a petition must be filed within a fixed time, signatures to the petition cannot be withdrawn after the expiration of such time. AGO to Hon. Sam E. Loftin, January 8, 1985.
- Where a petition was submitted to a local body, but was not certified by that body, and where the original petition is over a year and a half old, it cannot be withdrawn and recirculated for additional signatures. The petition, though, is a

public record. AGO 1998-036.

- A municipality is not required to hold an election to determine whether an Improvement Authority may proceed to acquire, establish, purchase, construct, maintain, lease, or operate a cable system if no petition is timely filed or if the petition filed is insufficient. However, when an election is required to be held, and there is no previously scheduled general or special municipal election, a municipality must designate a special election date in accordance with sections 11-50B-8 and 11-46-21 of the Code of Alabama 1975. AGO 2003-006.
- Petitions for referendum elections do not require a petitioner to have actually voted in the last general election. Instead, the law requires that a petitioner be a qualified elector of the municipality and that the number of valid signatures must equal the specified percentage of the number of qualified voters who voted in the last general municipal election. AGO 2014-073.

Annexation Petitions:

- The probate judge in *Lett v. State*, 526 So. 2d 6 (Ala. 1988), improperly struck names from the annexation petition because they were not dated. The court held that there is no requirement that names on the petition be dated because annexation proceedings may continue for years. In addition, there is no requirement that all names listed on the petition own property that is contiguous, provided that the entire tract which is subject to the election is contiguous to the municipal limits.
- Where the annexation petition presented to the Probate Judge does not meet the statutory requirements, the city must start over with the adoption of a new resolution and must meet all of the Code requirements. AGO to Hon. O.D. Alsobrook, May 1, 1978.
- The State of Alabama is an owner of property within the meaning of the annexation statutes and may consent to the annexation of property it owns, even though the State is exempt from ad valorem taxation. The petition for annexation should be signed by the Governor. AGO 1998-009.
- In the case of separate and independent petitions for annexation, each parcel of land seeking to be annexed must be independently contiguous to the then existing city limits to permit the independent annexation of the parcel pursuant to Section 11-42-21 of the Code of Alabama 1975. However, separate parcels may join and file a single petition for annexation. Further, a city cannot annex separate parcels of property by adopting one ordinance if separate petitions for annexation have been filed unless the parcels are joined together by a single petition. AGO 2003-147. NOTE: The League disagrees with this opinion and knows of one circuit court that also disagrees with the conclusion in this opinion. See *City of Clay v. City of Trussville*, In the Circuit Court of Jefferson County, CV 02-0718ER.
- The area comprising public streets and rights-of-way should be included in the total property to be annexed for purposes of calculating whether the owners of 60 percent of the property to be annexed have joined in and consented to the petition for annexation as required by section 11-42-2(10) of the Code of Alabama. The owner of the acreage comprising the public streets and rights-of-way may consent to annexation. If the county is determined to be the owner, the commission chairman, upon approval of the county commission, may execute the appropriate consent. 2014-032.
- Town complied with zoning statutes relating to notice in its enactment of zoning code provision relating to rezoning of property proposed for a rock quarry as a special district. Further, the process of annexing property into town's corporate limits began with property owner's filing of an annexation petition, such that subsequent pre-zoning of the proposed annexed property complied with the exception to the statute prohibiting a municipality from zoning territory outside its corporate limits when property proposed for annexation. *Gibbons v. Town of Vincent*, 124 So.3d 723 (Ala. 2012).

Incorporation Petitions:

- A person may remove his name from an incorporation petition at any time prior to it being submitted to the Probate Judge. AGO to Hon. William B. Duncan, August 14, 1981.
- For incorporation purposes, a qualified elector is a person who is registered to vote in the county and precinct in which the area to be incorporated is located. AGO 1997-219.
- A person may not remove his name from an incorporation petition after the petition has been submitted to the probate judge. After the probate judge determines that the petitioners to incorporate an area are qualified electors, that the petition meets the statutory requirements, and sets an election, the petition is not invalidated by the presentation of new information alleging that a petitioner no longer resides on the property to be incorporated. AGO 2000-038.
- An incorporation petition should be treated as a judicial case. An original petition that has been withdrawn may be

returned to the parties if the probate court finds that the motion is timely filed. Copies of the original documents should be preserved in a manner consistent with closed judicial cases. 2002-034.

- Because the statute is silent on the time a petition for the incorporation of a community must be filed or re-filed after the signatures have been obtained, a probate judge, in determining the validity of the petition, decides on a case-by-case basis regarding the passage of time between the execution of the petition and the submission of the petition to the probate court for the requested election. A probate judge, in his or her judicial capacity, may conduct a hearing to determine the validity of a petition for the incorporation of a community. The election for incorporation must be held within thirty days after the filing of a valid petition. 2002-278.
- A person may remove his or her name from an incorporation petition at any time prior to submission of the petition to the probate judge. It is incumbent on any person who agrees to sign a petition for incorporation to initially contact the petition committee and not the probate judge when the person seeks to have his or her name removed from the petition. Whether a person's name should be removed from an incorporation petition in instances where the incorporation committee has not been notified is a decision best suited for a determination by the probate judge. AGO 2010-071.
- Section 11-41-1, Code of Alabama 1975, requires that valid incorporation petitions contain signatures from 15 percent of registered voters residing in the area, owners of 60 percent of the total land in the area, and 4 registered voters residing on each 40 acres of the unincorporated community. A petition for incorporation must fail when the petition lacks the requisite signatures as set forth in section 11-41-1 of the Code. The 60-percent-ownership requirement is in relation to the entire area to be incorporated. This figure should not be applied to each quarter of a quarter section of land in a proposed municipality. Invalid petitions may be amended by the petitioner. AGO 2011-099.

Wet/Dry Petitions:

- In verifying signatures on a wet-dry petition, the probate judge may include in the total all who are registered voters at the time of verification. AGO to Hon. John L. Beard, November 25, 1981.
- All valid names of voters in the county calling for a wet/dry referendum are to be counted regardless of when and where the heading is stamped on the petition. AGO 1986-279.
- A wet-dry petition which does not contain the proper number of names may be withdrawn and recirculated for additional names to be added. AGOs 1987-037 and Hon. Hal Kirby, January 27, 1984.
- Act 2228, 1971 Regular Session, allows annexation by unanimous consent of the property owners. If two small parcels of land included in the petition did not join in the petition, the first petition is null and void. However, the council may adopt an ordinance accepting the petition as amended. AGO to Hon. James W. Grant, III, June 1, 1978.
- A municipal governing body may not call for a special election and have that special election considered the election next succeeding the filing of the wet/dry petition. A municipal wet/dry referendum must be held at the same time as one of the elections enumerated in Section 28-2A-1 of the Code of Alabama. Section 28-2A-1(f) of the Code of Alabama does not authorize a municipal governing body to set a special election for a wet/dry referendum. It only allows the municipal governing body to determine which election date next succeeding the filing of the wet/dry petition will be used for holding the wet/dry referendum. AGO 2009-089.
- Electronic signatures obtained online and/or on electronic signature pads, if printed and submitted with a wet-dry petition, are not valid signatures as required by Section 28-2-1 of the Code of Alabama 1975. AGO 2015-059.
- The Probate Judge is responsible for verifying that the individuals who sigh a petition filed for a wet/dry referendum pursuant to Section 28-2-1 of the Code of Alabama are valid registered voters. AGO 2015-059.
- Zoning Petitions:
- Whether a petition presented to the planning commission in 1985 requesting that an area be rezoned may be resubmitted, must be decided by the planning commission. AGO 1991-340.

Dormant Municipal Reinstatement Petitions:

- The boundaries of a dormant municipality must be established by a court of competent jurisdiction before a probate court proceeds with the matter of a reinstatement petition for the dormant municipality. AGO 2001-125.
- Section 11-41-7 of the Code of Alabama 1975 does not authorize a probate judge to clear up errors or omissions in the legal description of the boundaries of a dormant municipality. A probate judge may not accept a plat and legal description

from an original petition for incorporation of a dormant municipality, even if he or she also received a signed affidavit of a licensed land surveyor purporting to clear up scrivener's errors in the legal description. 2001-282.

- Towns or cities that have permitted their organization to become dormant and inefficient may petition the probate court for an order to reinstate the municipality pursuant to section 11-41-7 of the Code of Alabama. Once a municipality has been dissolved the town or city may not be reinstated under section 11-41-7, but may be able to incorporate pursuant to sections 11-41-1 through 11-41-6 of the Code of Alabama if the population requirements are satisfied. A community with a population of less than 300 may not be incorporated pursuant to section 11-41-1 of the Code of Alabama. AGO 2008-039.

Form of Government Petitions:

- The qualified electors who sign petitions filed under Section 11-43A-2 of the Code of Alabama 1975, are not required to have actually voted in the last general municipal election. The number of signatures on the petition must equal at least 10 percent of the total number of qualified voters who voted in the last general municipal election held in the municipality. The total number of votes cast should be recorded in the minutes of the council meeting in which the results of the election were canvassed. 2004-034. NOTE: Section 11-43A-2 of the Code of Alabama 1975 provides for a petition for an election to change to the Council-Manager form of Government.
- The authority to adopt the mayor-council form of government under section 11-43C-2 of the Code of Alabama existed only in the year 1987 and expired before January 1, 1988, with the election of new officials under such a government first taking place in 1988. Thus, after receiving a petition, as set out in section 11-44E-201 of the Code of Alabama, from at least 25% of qualified voters to change its form of government, the City of Dothan was not required to call for the election to abandon the current form of government. 2007-051.

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