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STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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Honorable Cleophus Thomas, Jr.  
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Municipalities – Mayors – City Councils –  
City Managers – Calhoun County

Under the City Manager Act of 1953, as amended, the mayor serves as a member and presiding officer of the city council and as the chief executive officer of the city. The mayor has the same voting privileges as the other members of the council.

The mayor shares executive power with the city manager. The city manager retains the powers stated in sections 4.01 through 4.06 of Act 404 (1953). The mayor has the powers stated in section 3.06 of Act 2000-388.

Dear Mr. Thomas:

This opinion of the Attorney General is issued in response to your request on behalf of the Anniston City Council.

QUESTIONS

1. Does the designation of the mayor as “chief executive officer for the city” affect the mayor’s role as presiding officer and a member of the city council? Is the mayor permitted full voting power on the council in all instances?

2. Does the designation of the mayor as chief executive officer revise, alter, modify, or diminish the role, scope, and duties vested in the city manager prior to the amendment?

### FACTS AND ANALYSIS

Your request states that the City of Anniston operates under the City Manager Act of 1953, as amended. Article III of the act governs the city council. Section 3.08 provides for the appointment of the city manager by the council. 1953 Ala. Acts No. 404, 472, 479. Article IV governs the city manager, and sections 4.01 through 4.06 of that article place certain executive powers in the hands of the city manager. *Id.* at 485-86.

Section 3.06 also provides for the mayor as presiding officer of the city council. Section 3.06 was amended by Act 84-400, providing as follows:

The Councilman elected by all of the qualified electors of the City shall have the title of Mayor. He shall preside at meetings of the Council, and shall be recognized as the head of the City Government for all ceremonial purposes and by the Governor for purposes of military law, ***but shall have no regular administrative duties.*** The Council shall elect an Assistant Mayor, who shall act as Mayor during the absence of the Mayor, or disability of the Mayor. The Mayor and Assistant Mayor when so elected, shall hold their respective offices until the next Council takes office; provided that if the Mayor or Assistant Mayor or both shall cease to be a member of the Council, his or their offices as such Mayor or Assistant Mayor shall become vacant. If a vacancy shall occur in the office of Mayor, the Assistant Mayor shall immediately declare such position vacant and call for an election to be held no less than thirty (30) days nor more than forty-five (45) days from the date such vacancy occurred. The Mayor shall receive as compensation for his services, in addition to the amount he receives as a Councilman, the sum of \$250.00 per month or each partial month that he serves as Mayor.

1984 Ala. Acts No. 84-400, 938, 939 (emphasis added).

Section 3.06 was amended again by Act 2000-388. 2000 Ala. Acts No. 2000-388, 610, 610. The act removed the restriction on administrative duties and added specific executive functions to be performed by the mayor. Section 3.06 currently provides as follows:

The Councilman elected by all of the qualified electors of the City shall have the title of Mayor. He or she shall preside at meetings of the Council, shall be recognized as the head of the City Government for all ceremonial purposes and by the Governor for the purposes of military law, *shall serve as chief executive officer for the City*, shall develop the basic objectives and policies of the City in conjunction with the Council and with advice from the City Manager, shall ensure the preparations of adequate plans for the long-range growth and development of the City and annually present such plans for the review of the public and approval by the Council, shall ensure the preparations of plans for the development of resources in this the City and periodically present such plans to the Council for review and approval, shall maintain programs along with the Council to ensure successful future management of the City, shall take the necessary steps with the advice and approval of the Council to protect and enhance the city's sound fiscal posture, shall develop orderly rules of procedure for the conduct of business by the council for consideration and approval by the council, *and shall have all privileges as any other member of the Council.*

The Council shall elect an Assistant Mayor, who shall act as Mayor during the absence of the Mayor, or disability of the Mayor. The Mayor and Assistant Mayor when so elected, shall hold their respective offices until the next Council takes office; provided that if the Mayor or Assistant Mayor or both shall cease to be a member of the Council, his, her, or their offices as such Mayor or Assistant Mayor shall become vacant. If a vacancy shall occur in the office of Mayor, the Assistant Mayor shall immediately declare such thirty (30) days nor more than forty-five (45) days from the date such vacancy occurred.

*Id.* (emphasis added). Although Act 2000-388 made the mayor "chief executive officer," it did not amend the provisions regarding the mayor as a member and presiding officer of the city council. Thus, the mayor now serves in both capacities.

Act 2000-388 does not qualify the type of "privileges" to which the mayor is granted "as any other member of the council." Words used in a statute must

be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used, a court is bound to interpret that language to mean exactly what it says. *Ex parte Cove Properties, Inc.*, 796 So. 2d 331, 333-34 (Ala. 2000); *Ex parte T.B.*, 698 So. 2d 127, 130 (Ala. 1997); *State Dep't of Transp. v. McLelland*, 639 So. 2d 1370, 1371 (Ala. 1994). Black's Law Dictionary defines "privilege" as "[a] special *legal right*, exemption, or immunity granted to a person or class of persons." BLACK'S LAW DICTIONARY 1234 (8<sup>th</sup> ed. 2004) (emphasis added). The primary right of a councilmember is to vote on matters before the council.

Moreover, the term "privileges" is frequently used in the phrase, "voting privileges" or the same sentence as "vote" in statutes regarding similar members of other governmental bodies.

- ALA. CODE § 11-44E-75(2) (2008) (mayor as presiding officer of commission in mayor/commission/city manager form of government for a Class 5 municipality);
- ALA. CODE § 11-52-14(8) (2008) (ex officio member of municipal planning commission);
- ALA. CODE § 14-1-18(b) (1995) (ex officio and appointed members of the Alabama Department of Corrections Capital Outlay Oversight Commission);
- ALA. CODE § 22-2-10 (2006) (ex officio members of the State Committee of Public Health);
- ALA. CODE § 22-18-5(b)(9) (2006) (ex officio member of the State Board of Health advisory board); and
- ALA. CODE § 22-50-25(b) (2006) (ex officio and appointed members of the Alabama Department of Mental Health Capital Outlay Oversight Commission).

The common usage of those terms throughout the Code of Alabama indicates the Legislature's intent that the mayor has the same voting privileges as the other members of the city council.

Regarding the extent of the mayor's executive power as compared to that of the city manager, the Legislature has the inherent power to prescribe, alter, and change the form of municipal governments. *City of Birmingham v. Graffeo*, 551 So. 2d 357, 360 (Ala. 1989); *Siegelman v. Folmar*, 432 So. 2d 1246, 1248 (Ala. 1983); *Opinion of the Justices No. 181*, 277 Ala. 630, 633, 173 So. 2d 793,

796 (1965). Local Government Law has more specifically explained this principle with regard to the powers of the mayor as follows:

The official upon whom a local government entity's executive powers and functions are devolved is commonly styled the mayor, although the proper title for the chief executive official of a local government entity varies both between states and often within a state, embracing such titles as president, recorder, chairman, city manager, commission manager, and mayor-commissioner. . . .

The extent of the powers and functions devolved upon a local chief executive are determined by reference to applicable state and local legislative enactments. The general rule is that the local chief executive has only that authority expressly or impliedly conferred upon him by applicable law.

Sands, *Local Government Law*, § 9.12 (1992).

Although Act 2000-388 designates the mayor as chief executive officer, section 2 of the act provides that "[a]ll remaining provisions of Article III of [the City Manager Act of 1953] . . . shall remain in full force and effect." 2000 Ala. Acts No. 2000-388, 610, 611. Section 3.08 of the City Manager Act, which provides for the appointment of the city manager, specifically states that the manager "shall have the powers and perform the duties in this Act provided." 1953 Ala. Acts No. 404, 472, 479. Act 2000-388 did not amend the city manager's powers in sections 4.01 through 4.06. Therefore, the Legislature has chosen to divide executive powers between the city manager and mayor. The manager has executive power for the specific purposes enumerated in sections 4.01 through 4.06. The mayor has executive power for the specific purposes enumerated in section 3.06.

#### CONCLUSION

Under the City Manager Act of 1953, as amended, the mayor serves as a member and presiding officer of the city council and as the chief executive officer of the city. The mayor has the same voting privileges as the other members of the council.

The mayor shares executive power with the city manager. The city manager retains the powers stated in sections 4.01 through 4.06 of Act 404 (1953). The mayor has the powers stated in section 3.06 of Act 2000-388.

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I hope this opinion answers your questions. If this Office can be of further assistance, please contact Ward Beeson of my staff.

Sincerely,

TROY KING  
Attorney General  
By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH  
Chief, Opinions Division

TK/GWB

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