Annual Budgets: What are the legal requirements and who is in charge?

LANNY RICHMOND, II, LEGAL COUNSEL
Black letter law ...
Fiscal Year vs. Calendar Year

- Technically, everyone is on a “fiscal year” it is the “year” which aligns with your budget
- (July 1st through June 31st for the State).
- Our “fiscal” year also happens to be the “calendar year.”
- Always, Jan. 1 through Dec. 31st.
Fiscal Year vs. Calendar Year

For these reasons, I conclude that municipalities may not formulate their budgets to end on January 31 of each year rather than on December 31.

Question 2 - Can municipalities adopt a fiscal year that begins February 1 and ends January 31 of each year?
No.


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

Under this subchapter, the governing body of the municipality shall, on or before February 1 of each year, adopt a budget by ordinance or resolution for operation of the city or town.
Wait, what about January?

- So we have a budget presented in December?
- Approved by February?
- What about Jan?
Wait, what about January?

During that time period, the city must operate by way of specific city council action for expenditures. Such specific city council action can take the form of simply adopting the previous year's budget on a temporary basis, or can be applied to individual expenditures.

***

Although this issue has not been addressed by the Arkansas Supreme Court, at least one court of another jurisdiction that has addressed the issue has adopted this approach.

See Wilson v. Dawson, 590 So.2d 263 (Ala. 1991) (city council's statutory authority to control city's finances gave it authority to approve expenditures in absence of valid budget).
SPEND
ONLY WHAT’S IN THE BUDGET


(a) The approval by the municipal governing body of the budget under this subchapter shall, for the purposes of the budget from time to time amount to an appropriation of funds which are lawfully applicable to the items therein contained.
Amending the Budget


(b) The governing body may alter or revise the budget and unpledged funds appropriated by the governing body for any purpose may be subsequently, by action of the governing body, appropriated to another purpose, subject to the following exceptions:

1. Funds resulting from taxes levied under statutes or ordinances for specific purposes may not be diverted to another purpose;

2. Appropriated funds may not be diverted to another purpose where any creditor of the municipality would be prejudiced thereby.
Other quick notes:

14-43-313. City clerks and attorneys generally.

“The city clerks and the city attorneys in cities of the first class **shall** ... receive **such salary as is prescribed by ordinance** in each of these cities.”

14-43-316. City clerk, treasurer, or clerk-treasurer in mayor-council cities of fewer than 50,000. (first class only per (a))

(c) The city clerk and city treasurer, or city clerk-treasurer... **shall** receive a salary **as is prescribed by ordinance** in each of these cities.

Cities of the second class and incorporated towns... lucky you!
Mayor’s Report

- MAYOR: Report, report, report!
- What do you do?
- Monthly, weekly…
- The better informed the council is, the better the budget.
In a city of the first class, the mayor or his duly-authorized representative 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 municipal governing body shall, by ordinance, establish in that connection a maximum amount, and the payment or disapproval of such bills, debts, or liabilities exceeding that amount shall require the confirmation of the governing body.

Limits on Mayor’s Spending Authority

- § 14-55-204 – appropriations require a majority vote of the council.

- § 14-58-203 – the budget is an appropriation.
Mayor’s Fiscal Investigations

Upon discovery or notification of an alleged violation of the fiscal responsibility and management laws, the executive officer of the political subdivision shall investigate such allegations and take appropriate administrative action. ACA § 14-77-103. See § 14-77-102 for a list of fiscal responsibility and management laws.
So if it hasn’t been appropriated...

- ... **Then it shouldn’t be spent.**
- **AGAIN: NO APPROPRIATION; NO SPENDING**
- If it got spent anyway, amend the budget before the End of Year.
- If you don’t do it by the End of the Year, do it ASAP!
THE ROLE OF THE CLERK/RECORDER/TREASURER
Clerk/Recorder Fiscal Duties

- Annual report with the AR Fire and Police Pension Review Board. ACA 24-11-813.
  - Include number of firefighters, names, dates of appointment, dates of retirement, birth dates, amounts of pensions paid, etc.

- Insurance and retirement reports and claims. ACA 24-11-813.

- File with workers’ compensation carrier within 10 days after notice of personal injury or death of an employee of the municipality. ACA 11-9-529.
Clerk/Recorder Fiscal Duties

- May sit on depository board to designate depositories and supervise deposits of municipal funds. Can be replaced with finance officer or another official. ACA 19-8-106.
- Clerk shall sign all contracts, leases, bonds and debentures of the city. ACA 14-164-201.
- Bonds shall be executed by the presiding officer and clerk or recorder. ACA 14-57-606.
- Maintain Proper Ledger for electronic fund transfers of public officials’ and employees’ salaries. ACA 14-59-105(c).
Municipal Treasurers


- Treasurer shall maintain accounting records as provided in MAL. ACA 14-59-115.

- Also provides for a monthly financial report to council or board of directors. ACA 14-59-103 allows another system if approved by Legislative Joint Auditing Committee.

- Maintain separate accounts for general and street funds. ACA 14-59-104.
Municipal Treasurers

Formally receipt all funds received by the use of prenumbered receipts or mechanical receipting devices. ACA 14-59-109.

Annual publication of financial statement by April 1. ACA 14-59-116.

Assignment of duties to another employee or contractor. ACA 14-59-115.
  - If requested by treasurer; or
  - If treasurer is out of compliance with the MAL.
Collecting and disbursing of funds must be done by an employee (not a contractor).
Municipal Treasurers

- **Fixed asset Record**
  - ACA 14-59-107 in general.
  - ACA 14-237-108 for water and sewer departments.

- **Improvement Districts**
  - Treasurer of each and every improvement district unless the board designates and appoints some other person. ACA 14-48-131.
  - Verify signatures on the petition that purport to be a majority of owners of real property in the designated district. ACA 14-88-203.
Municipal Treasurers

- **Custodian of the Local Police and Fire Pension Fund.** ACA 24-11-408.

- Prepare annual reports giving the precise status of the firemen’s relief and pension fund. Show all receipts and disbursements, as well as a complete list of all beneficiaries, and the amount paid to each beneficiary. ACA 24-11-405.

- Keep a list of all persons entitled to payment from the fund in a book known as “The Firemen’s Relief and Pension Fund Book.” ACA 24-11-408.

- Collect occupational taxes and licenses. ACA 26-77-203.

- The public employee with fiduciary responsibility over fiscal matters must report unauthorized disbursements, apparent theft or misappropriation of public funds or property, or other loss of public funds to Arkansas Legislative Audit. ACA 25-1-124.
14-58-101. Audit by independent accountant. (every municipality!)

(a) The **audit or agreed-upon procedures engagement** of every municipality **shall be made** by the **Arkansas Legislative Audit or other independent persons** licensed and in good standing to practice accounting by the Arkansas State Board of Public Accountancy, **to be selected by the governing body of the municipality.**

14-58-307. Annual audit. (First Class)

In cities of the first class, the municipal governing body **shall** have the financial affairs of the city **audited annually** by an **independent certified public accountant**, who is not otherwise in the service of the city, **or by the Division of Legislative Audit** of the State of Arkansas.

- Compliance with:
  - (1) Arkansas Municipal Accounting Law, 14-59-101 et seq.;
  - (2) Arkansas District Courts Accounting Law, 16-10-201 et seq.;
  - (3) Improvement contracts, 22-9-202 → 22-9-204;
  - (4) Budgets, purchases, and payments of claims, etc., 14-58-201 et seq. and 14-58-301 et seq;
  - (5) Investment of public funds, 19-1-501 et seq.; and
  - (6) Deposit of public funds, 19-8-101 → 19-8-107.
(c) (2) (A) The financial statements of municipalities shall be presented on a fund basis with, as a minimum:

(i) The general fund and the street fund presented separately; and

(ii) All other funds included in the audit presented in the aggregate.

(B) The financial statements shall consist of the following:

(i) A balance sheet;

(ii) A statement of revenues (receipts), expenditures (disbursements), and changes in fund equity (balances);

(iii) A comparison of the final adopted budget to the actual expenditures for the general fund and street fund of the entity; and

(iv) Notes to financial statements.
Audits

A.C.A. § 14-58-101

- (C) The report shall include as supplemental information a schedule of general fixed assets, including land, buildings, and equipment.

- (3) In the alternative to subdivision (c)(2) of this section, the governing body of the municipality may adopt an annual resolution requiring their audit to be performed in accordance with the guidelines and format prescribed by the Governmental Accounting Standards Board, the American Institute of Certified Public Accountants, and the United States Government Accountability Office, if applicable.
(b)(1) A council member, official, or municipal employee shall not be interested, directly or indirectly, in the profits of any contract for furnishing supplies, equipment, or services to the municipality unless the governing body of the city has enacted an ordinance specifically permitting council members, officials, or municipal employees to conduct business with the city and prescribing the extent of this authority.

ACT 582 OF ‘15, 14-59-115

- Authorizes electronic distribution of funds by private person/entity (payroll)
- Requires ordinance dictating a method accounting control, documentation etc.
- Requires city to ensure the private person/entity is insured, bonded and uses best practices
- Treasurer must still approve disbursement before funds are dispersed
Uniformed Officers’ Workweek

- The FLSA provides a partial overtime exemption for uniformed employees who work a “work period” established by the city of no fewer than:
  - seven days and no more than twenty-eight days.
  - The city can establish separate work periods for the police department and the fire department.
  - If the city fails to establish a work period, 207(k) does not apply and a fire or police employee working over forty hours will accrue overtime compensation.

  - See handout for chart.

  - 29 C.F.R. § 553.230.
The city as employer has the option of paying overtime or of giving comp time off.

- The employee must understand that the city has a policy of compensatory time off.

Compensatory time is accrued at 1½ hours for each hour worked.

- Police and fire employees can accrue a maximum of 480 hours of comp time or 320 hours worked.

After an employee has accrued maximum compensatory time, the employee must be paid in cash for overtime worked.

- 29 C.F.R. § 552.230
There is no FLSA limit on the number of hours per day worked (other than child labor). 29 C.F.R. § 778.102.

A work week under the FLSA is defined as seven consecutive 24-hour periods (although this may be altered for police and firefighters as discussed above). Note that this may not be the same as the city’s “pay period.”

Only hours worked count in calculating overtime. Pay for holidays, vacations, sick time, jury duty, etc., do not count as hours worked.

29 C.F.R. § 778.102.
FFCRA and what we learned about Budgets
Questions for John?

General Counsel?

(what does he do, counsel generals?)
Questions for Lanny?

Legal Counsel,

Has cute dogs.
Questions/Comments?