

## CHAPTER 4

### CANDIDATE REQUIREMENTS

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#### **4.1 Table of Minimum Qualifications for Public Office**

Office <sup>1</sup>	Minimum Age	State Resident	US Citizen	Term of Office	Number of Terms
US Senate <sup>2</sup>	30	1 day	9 years	6	no limit
US House of Representatives <sup>3</sup>	25	1 day	7 years	2	no limit
Governor <sup>4, 6</sup>	30	7 years	10 years	4	2
Lt. Governor <sup>4, 6</sup>	30	7 years	10 years	4	2
Secretary of State <sup>5, 6</sup>	25	5 years	7 years	4	2
Attorney General <sup>5, 6</sup>	25	5 years	7 years	4	2
State Auditor <sup>5, 6</sup>	25	5 years	7 years	4	2

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Office <sup>1</sup>	Minimum Age	State Resident	US Citizen	Term of Office	Number of Terms
State Treasurer <sup>5, 6</sup>	25	5 years	7 years	4	2
Commissioner of Agriculture and Industry <sup>5, 6</sup>	25	5 years	7 years	4	2
Public Service Commission <sup>7, 8</sup>	18	1 day	1 day	4	no limit
Supreme Court Justice <sup>7, 9, 26</sup>	18	1 day	1 day	6	no limit
	Must be licensed to practice law in Alabama. No one may be elected or appointed to a judicial office after reaching the age of 70. Must have been licensed by the Alabama State Bar a combined total of 10 years or more, or by any other state bar association for a combined total of 10 years or more, prior to beginning a term of office or appointment to serve a vacant term of office.				
Court of Criminal Appeals <sup>7, 9, 27</sup>	18	1 day	1 day	6	no limit
	Must be licensed to practice law in Alabama. No one may be elected or appointed to a judicial office after reaching the age of 70. Must have been licensed by the Alabama State Bar a combined total of 10 years or more, or by any other state bar association for a combined total of 10 years or more, prior to beginning a term of office or appointment to serve a vacant term of office.				
Court of Civil Appeals <sup>7, 9, 27</sup>	18	1 day	1 day	6	no limit
	Must be licensed to practice law in Alabama. No one may be elected or appointed to a judicial office after reaching the age of 70. Must have been licensed by the Alabama State Bar a combined total of 10 years or more, or by any other state bar association for a combined total of 10 years or more, prior to beginning a term of office or appointment to serve a vacant term of office.				
State Board of Education <sup>7, 9</sup>	18	1 day	1 day	4	no limit
State Senate <sup>7, 11</sup>	25	3 years	1 day	4	no limit
	Must be a resident of the district for one year prior to the election.				

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Office	Minimum Age	State Resident	US Citizen	Term of Office	Number of Terms
<b>State House of Representatives</b> <sup>7, 11</sup>	21	3 years	1 day	4	no limit
	Must be a resident of the district for one year prior to the election.				
<b>Circuit Judge</b> <sup>7, 9, 12, 28</sup>	18	1 year	1 day	6	no limit
	Must be licensed to practice law in Alabama. Must have resided in the circuit which candidate seeks to represent for one year prior to election. No one may be elected or appointed to a judicial office after reaching the age of 70. Must have been licensed by the Alabama State Bar a combined total of seven years or more, or by any other state bar for a combined total of seven years or more, prior to beginning a term of office or appointment to serve a vacant term of office.				
<b>District Judge</b> <sup>7, 9, 13, 29</sup>	18	1 year	1 day	6	no limit
	Must be licensed to practice law in Alabama. Must have resided in the circuit which candidate seeks to represent for one year prior to election. No one may be elected or appointed to a judicial office after reaching the age of 70. Must have been licensed by the Alabama State Bar a combined total of four years or more, or by any other state bar association for a combined total of four years or more, prior to beginning a term of office or appointment to serve a vacant term of office.				
<b>District Attorney</b> <sup>7, 14</sup>	18	1 year	1 day	6	no limit
	Must be licensed to practice law in Alabama. Must have resided in the district which candidate seeks to represent for one year prior to election.				
<b>Judge of Probate</b> <sup>7, 9, 15</sup>	18	1 year	1 day	yes	6 no limit
	Must have resided in the district which candidate seeks to represent for one year prior to election. No one may be elected or appointed to a judicial office after reaching the age of 70.				
<b>Circuit Clerk</b> <sup>7, 16</sup>	18	1 day	1 day	6	no limit
<b>Sheriff</b> <sup>7, 17</sup>	18	1 day	1 day	4	no limit
<b>Coroner</b> <sup>7, 18, 25</sup>	25	1 day	1 day	4	no limit
<b>County Superintendent of Education</b> <sup>7, 19</sup>	18	1 day	1 day	varies	varies
	See § 16-9-2 for qualifications.				
<b>County Board of Education</b> <sup>7, 20</sup>	18	1 day	1 day	4 & 6	no limit
	Must be a resident of the county which the candidate seeks to represent one year prior to election.				
<b>County Commission</b> <sup>7, 21</sup>	18	1 year	1 day	4 & 6	no limit
	Must be a resident of the county for at least one year prior to the date of taking office. If representing a specific district, must be a resident of the district for at least one year prior to the date of taking office.				

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Office	Minimum Age	State Resident	US Citizen	Term of Office	Number of Terms
<b>Mayor</b> <sup>7, 22</sup>	18	90 days	1 day	4	no limit
	Must be a resident of the city for 90 days prior to election.				
<b>City Council</b> <sup>7, 23</sup>	18	90 days	1 day	4	no limit
	Must be a resident of the city or district for 90 days prior to election.				
<b>City Commission</b> <sup>7, 23, 24</sup>	19	90 days	1 day	4	no limit
	Must be a resident of the city for 90 days prior to election.				

**Footnotes**

1. All candidates participating in party primary elections must be registered voters. § 17-13-6
2. U.S. Constitution, Art. 1, § 3
3. U.S. Constitution, Art. 1, § 2
4. Ala. Const. § 117
5. Ala. Const. § 132
6. Ala. Const. § 116
7. §§ 17-3-30 and 36-2-1
8. § 37-1-3
9. Ala. Const. §§ 146, 154, and 155
10. §§ 16-3-1 and 16-3-3
11. Ala. Const. § 47
12. § 12-17-22
13. §§ 12-17-63 and 12-17-64
14. §§ 12-17-180 and 12-17-183
15. §§ 12-13-30 and 12-13-31
16. Ala. Const. § 160.
17. Ala. Const. § 138
18. § 11-5-1
19. §§ 16-9-1 and 16-9-2
20. §§ 16-8-1 and 16-8-2
21. §§ 11-3-1 and 36-3-4
22. §§ 11-43-1, 11-43-2, and 11-46-25
23. §§ 11-43-63 and 11-46-25
24. § 11-44-38
25. § 11-5-33
26. § 12-2-1(b)
27. § 12-3-1
28. § 12-11-1
29. § 12-12-1

## **4.2 Qualifications for Specific Offices**

Certain elective offices have qualifications mandated by the Alabama Constitution.

### **4.2.1 Legislators**

State senators must be at least 25 years of age and state representatives must be at least 21 years of age at the time of their election. They must have been citizens and residents of Alabama for at least three years and residents of their respective districts for one year before their election. Following their election, both senators and representatives must continue to reside in their respective districts. Ala. Const. § 47.

### **4.2.2 Governor and Lt. Governor**

The Governor and Lieutenant Governor are required by the Constitution to be at least 30 years of age when elected, citizens of the United States for 10 years, and residents of the state for seven years prior to the date of election. Ala. Const. § 117. Furthermore, the Governor is to remain a resident of the city of Montgomery for the term of office (except during epidemics). Ala. Const., § 118.

### **4.2.3 Attorney General and Other Constitutional Offices**

Any candidate for the office of Attorney General, State Auditor, Secretary of State, State Treasurer, or Commissioner of Agriculture and Industries must be at least 25 years of age when elected, citizens of the United States for at least seven years, and residents of the state at least five years prior to the election. Ala. Const. § 132. Additionally, each officer listed above must reside in the city of Montgomery for the term of office. Ala. Const., § 118.

### **4.2.4 The Commissioner of Agriculture and Industries**

The commissioner is required by statute to be a person of good moral character, recognized for executive ability, and trained in the practice and science of agriculture. § 2-2-2.

### **4.2.5 Judicial Officers**

In 1973, Constitutional Amendment No. 328, the “Judicial Article,” was adopted, repealing and replacing Article VI of the Constitution of Alabama, 1901. It authorized the establishment of an entirely new judicial department - the Unified Judicial System. Under the provisions of this article, changes in a number of qualifications for officers of the judicial branch were enacted.

The judicial article specifies that judges of the state Supreme Court, courts of appeals, circuit courts and district courts must be licensed to practice law and meet other qualifications as the law provides. Ala. Const. § 146. However, no one may be elected or appointed to a judicial office after reaching the age of 70. Ala. Const. § 155. Judges serve six-year terms. In the event of a vacancy, a replacement is appointed by the governor. After serving one year in office, the replacement stands at the next general election. Ala. Const. § 153. However, no appointee may serve a term lasting beyond the ordinary term of office of their predecessor. *Hooper v. Siegelman*, 386 So. 2d 207 (Ala. 1980). Thus, if a vacancy is filled less than one year before a general election, the election for the seat proceeds as scheduled. Additionally, some counties have local amendments establishing a different process of appointment via nominating commission for circuit or district court vacancies.

Justices of the Supreme Court and judges of the courts of appeals must have been licensed by the Alabama State Bar a total of 10 years or more prior to beginning their term in office. § 12-2-1; § 12-3-1. Act 2019-469 provides a permanent place number for each seat on these three courts, effective February 2021.

Circuit court and district court judges are required by the Alabama Code to have resided in the circuit or district for at least 12 months prior to election or appointment. A circuit court judge must have been a licensed attorney for at least seven years prior to the election thereto. § 12-11-1. A district court judge must have been a licensed attorney for at least four years prior to their election. § 12-12-1. Additionally, the judge is to reside within the bounds of the circuit or district for the length of the term. § 12-17-22.

Under the Judicial Article, circuit clerks are to be elected for six-year terms. Should a vacancy occur, the judges of the circuit are empowered to select a suitable replacement. Ala. Const. § 160.

Constables, elected to assist the court, may receive remuneration for the performance of official duties while holding any other elected or appointed office. Ala. Const. § 280.

#### **4.2.6 Judge of Probate**

A candidate for the office of judge of probate must be a citizen of the state who has resided in the county for which they seek the office for at least one year prior to the election. § 12-13-31. Judges of probate were elected in November 2018 for a term of office of six years with the next elections being in 2024 and 2030. § 12-13-30.

#### **4.2.7 County Commissioner**

In addition to other qualifications prescribed in §§ 36-2-1 through 36-2-10 for public officers generally, candidates for county commissioner must be a qualified electors of the county. § 36-2-1(a)(1). All candidates for county commission must reside in the district they seek to represent. § 11-3-1(a). There is an exception for the first year following county redistricting. § 11-3-1(a).

Candidates for the office of commissioner should make certain that they are familiar with both the general and local qualifications and other requirements prescribed for the position that they are seeking. Qualifications include:

- (a) The filing of a bond of an authorized surety company in the proper amount, either under § 11-3-3 or under local law applicable to the specific county, within 40 days after the declaration of election. §§ 36-5-2, 36-5-3, 36-2-10, 11-2-1, 11-2-2, and 11-2-3;
- (b) Taking and filing an official oath of office. §§ 36-2-10, 36-4-1, and 36-4-4; and,
- (c) Not holding another office while serving as commissioner. §§ 11-3-2 and 36-2-1(b).

#### **4.2.8 Sheriff**

Except for the term of office, Alabama law does not expressly provide qualifications for the office of sheriff. § 36-3-4. The law does, however, place limitations on the eligibility of an individual to hold public office. Since the office of sheriff is a constitutional office (*See* § 138 of the Alabama Constitution), they are subject to the general disqualifications of

office under § 36-2-1.

A deputy sheriff may be required by the sheriff to take an unpaid leave of absence or resign his or her position if the deputy sheriff seeks election for the office of sheriff. Ala. Const. § 138.

#### **4.2.9 Tax Assessor, Tax Collector and Revenue Commissioner**

In order to be qualified to hold the office of tax assessor, tax collector, or revenue commissioner, a person must be a qualified voter of the county but must not come within any of the categories of ineligibility provided by law. As with other offices, § 36-2-1(a) prescribes general disqualifications.

#### **4.2.10 License Commissioner**

The office of license commissioner (or an office with a similar title) has been legislatively created in 11 Alabama counties. Depending upon the county, the office may be filled by election or appointment.

### **4.3 Political Party Requirements**

Alabama law grants the governing body of a political party wide discretion in determining who may vote in its primaries as well as establishing qualifications for those seeking the party nomination. Indeed, the qualifications of electors entitled to vote in a party's primary do not as a matter of necessity have to be the same as the qualifications for electors to become candidates. § 17-13-7. Consequently, candidates for office must be mindful that a political party may impose specific requirements on its party's candidates.

### **4.4 Party Qualifying Filing Procedures**

Anyone desiring to become a party's candidate for a federal, state, or county office is required to file a declaration of candidacy no later than 5:00 p.m. 116 days prior to the date of the primary. For offices other than county offices (i.e., federal, state, district, circuit, the state senate and the state house) a person must file a statement of candidacy with the state party chair. All party candidates for county offices must file the statement with the county party chair. § 17-13-5(a)(1). Declaration of

candidacy forms may be obtained from either the county party chair or by writing the parties' state headquarters.

Candidates at every level of government must file a statement of economic interests for the previous calendar year with the state ethics commission within five days of the candidate filing their qualifying papers, or, in the case of an independent candidate, on the date the candidate complies with the requirements of § 17-9-3, § 36-25-14(a)(3) and 36-25-15. The candidate does not have to file a second statement of economic interests if a current statement of economic interests is on file with the commission. § 36-25-15(a). Failure to comply with this requirement shall cause the candidates to be deemed not qualified and their names shall not appear on the ballot. § 36-25-15(c).

Each election official who receives a declaration of candidacy will notify the commission of the candidate's name and the date upon which they became a candidate within five days of receipt. The commission will notify the election official within five business days of receipt of notification whether the candidate has complied with all requirements to become a candidate. § 36-25-15(b).

The names of all primary candidates must be certified to the Secretary of State or the respective judge of probate depending on the office sought. The party chair must certify to the Secretary of State the names of all primary candidates except those for county offices no later than 5:00 p.m., 82 days prior to the election. The Secretary of State then must certify to the judge of probate of every county in which an election is to be held the names of all the candidates except those for county offices. This must be accomplished not less than 74 days prior to the date of the primary election. § 17-13-5(b). The county party chair certifies to the judge of probate all the names of candidates for county office. The judge of probate is then responsible for seeing that the names of all legally qualified candidates appear on the ballot. § 17-13-5(c).

#### **4.4.1 Unopposed Candidates**

If a legally qualified candidate for election to a public or party office is unopposed after the last qualifying date, the candidate's name will not appear on the primary ballot. The unopposed candidate for a public office shall be declared the nominee of the party § 17-13-5(c).

## **4.5 Independent and Minor Party Candidates**

Independent candidates or candidates nominated by caucuses or mass meetings follow a different procedure from candidates nominated by primary election for having their names printed on the general election ballot.

A candidate is entitled to be on the ballot when a political party has placed the candidate in nomination by caucus, convention, mass meeting, or other assembly of any political party or faction (meeting the definition of a party under state law, pursuant to § 17-13-40) and the nomination has been certified in writing by the chair and secretary of the group, and filed with the judge of probate if seeking county office, or filed with the Secretary of State in all other cases. Filing of the candidate certification must be on or before 5:00 p.m. on the date of the first primary election. § 17-9-3(a)(2) and § 17-13-52.

Political parties that do not reach the statutory thresholds for ballot access can reach the ballot through the petition process. The number of qualified electors required to sign the petition must equal or exceed three percent of the total number of registered voters who voted for the office of Governor during the last general election for the state, county, or other political subdivision in which the office seeks to qualify candidates. The ballot access petition and the certified list of candidates must be filed on or before 5:00 p.m. on the date of the first primary election. § 17-6-22 and § 17-9-3(a)(2).

Those not qualifying through a political party may obtain ballot access as an independent candidate through the petition process as well. The petition signatures required for ballot access for an independent candidate are the same as those of a minor political party. The number of signatures on the petition must equal or exceed three percent of the qualified electors who cast ballots for the office of Governor in the last general election in the county, district, or other political subdivision for which he or she is seeking ballot access. The ballot access petition must be submitted on or before 5:00 p.m. on the date of the first primary election. § 17-9-3(a)(3).

In federal elections, an independent congressional candidate must submit a petition with enough signatures to meet or to exceed three percent of the qualified electors who cast ballots for the office of Governor in the last general election for the district in which the candidate is running.

However, an independent U.S. Senate candidate requires the number of signatures for statewide candidacy.

The Secretary of State must certify to the judge of probate of each county the names of statewide, district, or circuit candidates who have qualified to have their names printed on the ballot no later than 74 days after the second primary or runoff. § 17-9-3(b). The judge of probate then has the responsibility of preparing the ballots for the printing of candidates' names on the ballot for the general election. § 17-9-3(b).

The Secretary of State has the obligation to review the qualifications based on facts within their official knowledge but no duty to investigate facts not within their official knowledge. *See* AG AO 98-00200.

## **4.6 General Qualifications for Primary Candidacy**

A person must meet three basic eligibility requirements to be a candidate in a party primary election:

- (a) The person must be legally qualified for the office. This means a person must fulfill both statutory and state constitutional requirements for the office.
- (b) The person must be eligible to vote in the primary election in which the person is a candidate. Thus, a person must be a registered voter in the state. § 17-13-6.
- (c) The person must also possess the political qualifications prescribed by their political party.

### **4.6.1 Qualifying Fees of Candidates for Party Nomination**

The governing body of a political party determines the amount of the qualifying fee and any other qualifications for persons desiring to become candidates. Such fees cannot exceed two percent of one year's salary for the office sought. If the office being sought by the candidate is a non-paying political party position, candidates cannot be assessed more than \$50 for a county office or more than \$150 for a state party office. § 17-13-47.

Imposition of an excessive fee upon a candidate is a violation, which, in the event of conviction, can result in a fine on the assessor. § 17-17-47.

Case law indicates that parties should also provide an option for any candidate who can demonstrate an inability to pay the qualifying fee.

#### **4.6.2 Run-Off**

In order to become a party's nominee for office, the candidate must receive a majority of the votes in the first primary. If a candidate fails to obtain a majority vote, a second primary (or run-off) becomes necessary between the two candidates who received the highest number of votes in the first primary. § 17-13-18.

Should a candidate decide not to enter the run-off, that candidate must notify either the state party chair or the county party chair, depending on the office sought, within three days after the first primary. The party official will then declare the remaining candidate the nominee and certify their name to the Secretary of State or the judge of probate, whichever is appropriate. § 17-13-19.

#### **4.6.3 Party Disqualification**

A political party may amend its certification of a candidate to the Secretary of State. However, if the amendment is filed after the 76th day before an election, then the candidate's name will remain on the ballot as originally certified. If the amendment seeks to withdraw or disqualify a party candidate, no replacement candidate will appear on the ballot and no votes will be certified for the withdrawn or disqualified candidate. § 17-6-21

### **4.7 Disqualifications from Running for Office**

Alabama law provides general restrictions that disqualify persons from becoming public officers:

- (a) Persons who are not qualified electors, except as otherwise expressly provided;
- (b) Persons who have not been inhabitants of the state, county, district, or circuit for the period required;
- (c) Persons who have been convicted of treason, embezzlement of public funds, malfeasance in office, larceny, bribery, or any other

- crime punishable by imprisonment in the state or federal penitentiary, and persons who are mentally incompetent;
- (d) Persons against whom there is a judgment unpaid for any moneys received by them in any official capacity due to the United States, this state, or any county or municipality thereof; and
  - (e) Soldiers, seamen, or marines in the regular army or navy of the United States. § 36-2-1(a).

Moreover, a person may not simultaneously hold an office of profit under the United States and the State of Alabama, nor may a person hold two offices of profit at the same time under this state, except for constables, notaries public, and commissioners of deeds. § 36-2-1(b). *See also*, Ala. Const. § 280.

The provision requiring one to have the right to vote to be eligible for the office of judge of probate was upheld in *Mitchell v. Kinney*, So. 2d 788 (1942). The word “ineligible” as used in the code section, means unelectable - not capable of being chosen - and hence, the qualifications enumerated relate not merely to the date of actual induction into the office. *Finklea v. Fasish*, 49 So. 366 (Ala. 1909).

Eligibility to public office is of a continuing nature. One must be eligible at the commencement of the term and continuously remain eligible during the term of office. *State ex rel. Graddick v. Rampey*, 407 So. 2d 823 (Ala. 1981). The conviction of a public official of a felony is basis for removing an official from office under Alabama law. § 36-9-2. “Public officer” is defined as one who performs a public function and whose authority is derived directly from a state legislative enactment, and the law prescribes their duties, powers, and authority. *Montgomery v. State ex rel. Enslin*, 18 So. 157 (Ala. 1895). The word “office,” in its broad terms, means that the individual must be invested with a portion of the sovereign power of the state. *Alexander v. State ex rel. Carver*, 150 So. 2d 204 (Ala. 1963).

## **4.8 Effects of a Criminal Conviction on Candidate or Voter Eligibility**

Article IV, § 60 of the Constitution of Alabama of 1901 states that “no person convicted of embezzlement of the public money, bribery, perjury, or other infamous crime, shall be eligible to the legislature, or capable of

holding any office of trust or profit in this state.” In conjunction with § 36-2-1(a)(3), this prohibition means that no one convicted of one of these felonies can hold public office. This prohibition does not totally deny the right to hold office, forever, as convicted persons may become eligible through a pardon and restoration of their voting rights.

A pardon relieves the convicted person from the legal consequences of a specific crime. Amendment No. 38 of the Constitution grants to the Governor the power to authorize pardons and § 15-22-36 allows the Board of Pardons and Paroles to grant pardons in all cases except treason and impeachment, and cases in which a sentence of death is imposed and not commuted. A pardon to relieve one from civil and political disabilities must specifically express the relief in the pardon. § 15-22-36(c).

Article VIII, § 177(b) provides “no person convicted of a felony involving moral turpitude shall be eligible to vote until restoration of civil and political rights.” Those convicted of certain felonies may have their voting rights restored once they have completed their sentence and made restitution. Act 2017-378; §§ 17-3-30.1; and 15-22-36.1; *see* Chapter 6.

#### **4.9 Political Activities of State, County and City Employees**

Alabama law provides in part that:

No employee in the classified service shall be a member of any national, state or local committee of a political party or an officer of a partisan political club, a candidate for nomination or election to any public office nor shall take any part in the management or affairs of any political party or in any political campaign, except on his personal time and to exercise his right as a citizen privately to express his opinion and to cast his vote. Any employee in the classified service may engage in political action or political activities on personal time before and after work, holidays and during approved leave. § 36-26-38.

However, this statute is modified by §§ 17-1-4(a), 17-17-4, and 17-17-5 which provide that no person in the employment of any city, county, or the State of Alabama shall be denied the right to participate in political activities to the same extent as any other citizens, including endorsing candidates and contributing to campaigns of their choosing. Regardless,

however, any person within the classified service of the state must comply with § 36-26-38.

Further, all employees have the right to join local state or national political organizations and support issues of public welfare of their choosing. State employees in state agencies receiving federal funds should ensure that they are complying with the requirements of the federal Hatch Act.

Prior to the passage of the Equality of Citizenship Act (§ 36-26-38), the general belief was that a state employee could not run for state office unless the employee resigned or took a leave of absence. AG AO 82-00422. Since the passage of the Equality of Citizenship Act, state employees may seek public office on their own time without being required to take a leave of absence from their employment so long as they comply with §§ 17-1-4, 17-17-4, 17-17-5, and 36-26-38. *See* AG AO 85-00349 (Opinion to Hon. Allen E. Tapley, May 14, 1985).

Members of the legislature may not, during their term in office, be an employee of any other branch of state government, any department, agency, board, or commission of the state, or any public education institution. § 29-1-26.

#### **4.10 Time of General Election and Terms of Office**

The Governor, Lieutenant Governor, Attorney General, Auditor, Secretary of State, Treasurer, Commissioner of Agriculture and Industries, senators and representatives in the Legislature, a sheriff in each county, and a coroner in all counties having a coroner, and any other officers not otherwise provided will be elected in November of 2022 and will be elected every fourth year thereafter. § 17-14-3; 36-3-1. Offices listed above, except senators and representatives in the legislature, assume the responsibilities of office on the first Monday after the second Tuesday in January following their elections.

The terms of office of senators and representatives in the legislature begin on the day after the general election at which they are elected, and expire on the day after the general election held in the fourth year after their election. Alabama Const. § 46.

Both tax collectors and tax assessors will be elected at the general election in November 2020 to serve six-year terms. Unlike many other elected

officials, who assume the responsibilities of office on the first Monday after the second Tuesday in January following their elections, the tax assessor and tax collector take office on the following October 1. §§ 36-3-5 and 36-3-6.

The president of the Public Service Commission will be elected in 2020 for a four-year term. Two positions for associate public service commissioners were elected in 2018 for four-year terms. §§ 17-14-3; 36-3-1. Public service commissioners take office on the day after the general election at which they are elected. § 37-1-3(b).

Members of the county commission, and the county treasurer in those counties having a treasurer, will be elected in 2020. § 17-14-4. Except as otherwise provided by law, the term of each county commissioner begins at 12:00 a.m. of the second Wednesday following the general election and expires at 11:59 p.m. on the first Tuesday following the general election. §§ 11-3-1 and 36-3-4. All members shall hold office until their successors have been elected and qualified. § 17-14-5.

Members of county boards of education serve staggered six-year terms. Elections occur every two years to replace those members whose terms of office expire at that time.

On the Supreme Court, the chief justice and four associate justices were up for election in 2018, while two associate justices are scheduled to be up for reelection in each of 2020 and 2022. On the courts of appeals, three judges on each court were up for reelection in 2018, while two judges on each court are scheduled to be up for reelection in 2020. The seats will rotate on this six-year cycle unless there is a vacancy, in which case vacancy procedures may alter the alignment. Several circuit and district judges will also be elected in 2020 for six-year terms. Ala. Const. § 153; Ala. Code §§ 17-14-6, 17-14-9, and 36-3-2.

#### **4.10.1 Commissions**

Commissions are issued in the name of the State of Alabama and sealed with the state seal. The Governor signs all commissions, with the Secretary of State countersigning them (only the Governor signs the Secretary of State's commission). § 36-2-7. The judges of the various courts, the attorney general, district attorneys, the auditor, the Secretary of State, the treasurer, the public service commissioners, circuit clerks, the sheriffs, the tax collectors, the tax assessors, county commissioners, constables, county treasurers, and other officers when specifically required

by law must obtain a commission prior to assuming office or be subject to a fine. §§ 36-2-6 and 36-2-9.

#### **4.10.2 Bonds**

Before any state elected official can obtain a commission, a bond must be filed with the Secretary of State. The Secretary of State files a bond with the Auditor. § 36-5-1. County officials file a bond with the judge of probate, and the judge of probate files a bond with the clerk of the circuit court. Further, duplicate copies of the bonds of the judge of probate, tax assessor and tax collector must be filed with the comptroller. § 11-2-3. State elected officials are now covered under a state blanket bond (for information, contact the Division of Risk Management). Tax collectors and tax assessors are permitted to file their bonds on or before September 1, following their election or appointment. § 36-5-2. Any official who fails to file a required bond on time vacates their office. § 36-5-15.

#### **4.10.3 Oaths**

Official oaths may be administered by any officer authorized to administer an oath. The oath must be in writing and subscribed by the person taking it and accompanied with the certificate of the officer administering the oath. The certificate must specify the day and year on which the oath was taken. § 36-4-1.

The oaths taken by the Governor, Supreme Court justices, judges on the Courts of Appeals, judges of the circuit court, Auditor, Treasurer, Attorney General, district attorney, or any officer whose general duties are not limited to one county, must be filed with the Secretary of State. The Secretary of State files an oath with the auditor. § 36-4-2. Judges of probate file their official oaths in the circuit clerk's office of their respective counties. § 36-4-3. District judges and other officers whose duties are confined to a single county file their oaths in the office of the judge of probate of their respective counties. § 36-4-4.

### **4.11 Federal Election Candidate Requirements**

An individual is considered a candidate for federal office upon the occurrence of one of the following events:

- (a) The individual has received contributions aggregating in excess

of \$5,000 or made expenditures aggregating in excess of \$5,000;

- (b) the individual has given his or her consent to another person to receive contributions or make expenditures on behalf of that individual and such person has received contributions aggregating in excess of \$5,000 or made expenditures aggregating in excess of \$5,000; or
- (c) after written notification by the commission that any other person has received contributions aggregating in excess of \$5,000 or made expenditures aggregating in excess of \$5,000 on the individual's behalf, the individual fails to disavow such activity within 30 days of receipt of notification; the aggregate contributions or expenditures by any combination of 1, 2 or 3 exceeds \$5,000. 2 U.S.C. § 431 (2); 11 C.F.R. § 100.3.

#### **4.11.1 Registering as a Federal Candidate**

An individual, within 15 days after becoming a candidate for federal office, must designate a "principal campaign committee" by filing a "statement of candidacy" on Federal Election Commission Form 2, or by submitting a letter containing the individual's name and address, party affiliation, office sought, as well as the name and address of the principal campaign committee. 11 C.F.R. § 101.1(a). If seeking a U.S. Senate seat, candidates must file this information with the secretary of the U.S. Senate. 2 U.S.C. § 432(g)(2) and 11 C.F.R. § 105.2.. If seeking the office of U.S. Representative, candidates must file the information with the clerk of the U.S. House of Representatives. 2 U.S.C. § 432(g)(1) and 11 C.F.R. § 105.1. Any candidates for President and Vice-President must file with the Federal Election Commission directly. 2 U.S.C. § 432(g)(4) and 11 C.F.R. § 105.3.

Within 10 days after the candidate files their "statement of candidacy," the principal campaign committee must file a "statement of organization" on Federal Election Commission Form 1. 11 C.F.R. § 102.1(a). The statement must include: the name, address, and type of committee; name and address of any other authorized committee which may be formed for the candidate; the name, address and committee position of the custodian of the books and accounts of the committee; the name and address of the committee treasurer; if the committee is authorized by a candidate, the candidate's name, committee name, office sought, party affiliation, and address to which correspondence should be sent; and a listing of banks,

safe deposit boxes or other depositories used by the committee, the Internet address of the committee's official website, or its electronic mail address (if the committee is required to file electronically under 11 C.F.R. § 104.18 or is a principal campaign committee of a candidate for the Senate or the House of Representatives). 11 C.F.R. § 102.2(a). The committee must register with the same persons the candidate filed with and all subsequent amendments to the "statement of candidacy" or the "statement of organization" shall be submitted to those same persons. 11 C.F.R. § 105.4.

Each "authorized committee" must file a separate "statement of organization" within 10 days after designation. The "statement of organization" made by the authorized committee shall be submitted to the principal campaign committee, which in turn must report it to the appropriate persons by amendment. 11 C.F.R. §§ 102.1(a) and (b) and 102.2(b).

Upon receipt of the "statement of organization", the Federal Election Commission assigns an identification number to the committee. This number must be used in correspondence, subsequent reports and amendments to the Federal Election Commission. 11 C.F.R. § 102.2(c).

For federal campaign requirements regarding registration, conducting a campaign, keeping records, filing periodic reports and other federal campaign requirements. See 11 C.F.R. § 100 et seq. All necessary forms and further information may be obtained through the Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, [www.fec.gov](http://www.fec.gov) or by calling 1-800-424-9530.

## **4.12 Principal Campaign Committees**

The principal campaign committee is the committee designated by the candidate to support him or her under § 17-5-4. A political action committee established primarily to benefit an individual candidate or an individual elected official shall be considered a principal campaign committee. § 17-5-2(a)(15). Principal campaign committees are governed by the Fair Campaign Practices Act, which is discussed in detail in Chapter 20.

Within five days after any person becomes a candidate, the person must file a statement showing the names of not less than two nor more than five

persons chosen to serve as the principal campaign committee for such candidate. § 17-5-4. This statement is otherwise known as the Appointment of Principal Campaign Committee form. A candidate may instead serve as their own committee. If a candidate serves as their own principal campaign committee, they shall designate a person responsible for dissolving that principal campaign committee in the event of death or incapacity by filing a statement of dissolution and filing a termination report. If the designated person is unable to serve in this capacity at the time of death or incapacity, the principal campaign committee shall be dissolved by the candidate's personal representative as appointed by the judge of probate. § 17-5-4(c). In accordance with § 17-5-7, the principal campaign committee, or its treasurer, has exclusive custody of all moneys contributed, donated, subscribed, or in any manner furnished to or for the candidate, and must account for and disburse the same. No candidate may expend any money on their nomination or election except by contributing such money to the principal campaign committee. § 17-5-4.

Money received by the principal campaign committee may only be used for the following purposes:

- (a) expenditures of the campaign;
- (b) expenditures that are reasonably related to the duties of the office, but do not include personal or legislative living expenses;
- (c) donations to the state general fund, educational trust fund or equivalent funds, county or municipal funds;
- (d) donations to an organization to which a federal income tax deduction is permitted or to any other charitable, educational, or eleemosynary cause to a Section 501 non-profit organization;
- (e) inaugural or transitional expenses;
- (f) donations to a legislative caucus and;
- (g) legal fees and costs associated with any civil action, criminal prosecution, or investigation related to conduct reasonably related to performing the duties of the office held. §17-5-7.

A principal campaign committee after election for office may pay qualifying fees to a political party and may expend up to \$5,000 cumulatively for tickets to political dinners or party dues every two years. § 17-5-7(d).

One way candidates fund their principal campaign committee is by

making personal loans to the committee. Loans are debts of the committee. These debts may be paid from contributions received at a later date by the same campaign committee AG AO 01-0056.

It is recommended that candidates maintain a note or other evidence of the loan in order to distinguish the loan from an outright contribution. The listing for debt on the Annual Report is another location where candidates can show their debt.

A candidate may appoint a designated filing agent on a form prescribed by the Secretary of State (Appointment of Principal Campaign Committee). The Secretary of State shall enable the designated filing agent to electronically submit any report or other filing on behalf of the principal. The submission of a timely, complete, and correct report or other filing required by this chapter by a designated filing agent shall satisfy the filing or reporting requirement of the designated filing agent's principal. The submission of a report or other filing required by this chapter by a designated filing agent creates a rebuttable presumption that the submission was approved and intended by the candidate, or their principal campaign committee. § 17-5-20.

### **4.13 General Presidential Election**

The number of presidential and vice-presidential electors is equal to the number of United States Senators and Representatives in Congress that Alabama is entitled to at the time of the election. U.S. Const. Art. II, § 1.

All candidates for President and Vice-President who are nominated either by a national convention or other like assembly of any political party or by written petition signed by at least 5,000 qualified Alabama voters shall have their names placed on the general election ballot. § 17-14-31(a). The electors' names do not appear on the ballot; a vote for a president and vice-president is a vote for their electors. § 17-14-32.

### **4.14 Municipal Elections**

#### **4.14.1 Statement of Candidacy and Residency Requirements**

All candidates seeking office in municipalities are required to complete a statement of candidacy which is found in § 11-46-25(g) and is substantially as follows:

“State of Alabama, \_\_\_\_\_ County.  
I, the undersigned, being first duly sworn, depose and say that I am a citizen of the city (or town) of \_\_\_\_\_, in said county, and reside at \_\_\_\_\_ in said city (or town); that I have been or will have been on the date of the municipal election a resident of said city (or town) for a period of not less than 90 days; that I desire to become a candidate for the office of \_\_\_\_\_ in said city (or town) for the term of \_\_\_\_\_ years at the election of such office to be held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_; that I am a qualified elector of the city (or town) of \_\_\_\_\_; and I hereby request that my name be printed upon the official ballot at said election. (signed) \_\_\_\_\_  
Subscribed and sworn to before me by said \_\_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_(Style of officer).”

The general municipal election law states that candidates may qualify after notice of the election is given by the mayor, published on the first Tuesday in July preceding the election or on the first business day thereafter. § 11-46-22(a).

The candidate is responsible for submitting, in addition to a statement of candidacy, an affidavit certifying that they are a duly qualified elector. § 11-46-25. For instance, a person who seeks the office of mayor must be at least 18 years old and a registered voter and must have resided within the municipality for at least 90 days prior to the election. Ala. Const. § 177; Ala. Code §§ 11-46-22, 11-46-25, and § 17-3-30 et seq. Upon election the officer must continue to reside within the town or city limits for the term of the office. Similarly, an individual seeking the position of councilman is required to reside within the established boundaries of the ward from which they are elected and remain in that ward until the term of office expires. § 11-43-1. In Alabama, residency requires actual physical residence with the intention to remain permanently or at least for an unlimited time. *Osborn v. O’Barr*, 401 So.2d 773 (Ala. 1981).

#### **4.14.2 FCPA Applicability to Municipal Elections**

Municipal candidates are subject to the Fair Campaign Practices Act, but file campaign reports with the judge of probate of the county in which their city hall sits. §§ 17-5-1 et seq. For further discussion of the Fair

Campaign Practices Act. See discussion in Chapter 20.

#### **4.14.3 Qualification Fee**

A qualifying fee may be required of all candidates by an ordinance adopted by the municipal governing body. The fee, if established, must not be less than \$10 nor more than \$50 for any office. The ordinance setting the qualifying fee must be adopted by the governing body at least five days prior to the first day upon which the candidate seeking election must qualify. § 11-46-2.

A municipality may require such a fee *only* if the ordinance establishing the fee contains a provision enabling the indigent to become candidates. 152 AG AO 17 (Opinion to Hon. Roy H. Philips, 1973). This requirement is based upon the language of *Thomas v. Mims*, 317 F. Supp. 179 (S.D. Ala. 1970), which held that one may not be disqualified as a candidate when he or she is indigent.

#### **4.14.4 When Only One Person Qualifies**

When only one person has filed a statement of candidacy by 5:00 p.m. on the third Tuesday in July preceding the set election date, that person is considered elected and is issued a certificate of election by the council at its next meeting. § 11-46-26. (Same as described in the Commission Form of Government below.)

#### **4.14.5 Election Dates and Taking Office**

Generally, elections in mayor-council municipalities are held every four years on the fourth Tuesday in August. § 11-46-21. However, there are exceptions for municipalities which operate under local acts of the Legislature permitting or requiring elections at other times. Ala. Code § 11-46-74.

When a candidate fails to receive a majority of the votes cast in the election, a run-off is held on the sixth Tuesday following the regular election. When necessary, special elections are held on either the second or fourth Tuesday of any month as ordered by the municipal governing body so long as public notice has been given on and before the corresponding Tuesday of the second month preceding the month in which the special election is to be held. § 11-46-21(b).

Municipal officials elected at regular elections assume the duties of their respective offices on the first Monday in November following the election. § 11-46-21(c).

#### **4.14.6 Composition of City Council**

The primary statute dealing with the composition of city councils is § 11-43-40. Under this section, cities having a population of 20,000 or more and seven or fewer wards may provide that the president of the city council must be elected from the municipality at large, while two aldermen are to be elected by the voters of each individual ward. In cities having a population of less than 20,000, the two aldermen representing each ward must be elected at large. § 11-43-40(a)(1).

In cities having more than seven wards, only one aldermen may be elected from each ward, with a sufficient number elected by the voters at large to make the total number of alderman equal 14, exclusive of the president of the council. However, the statute provides that in cities with a population of 50,000 or more, the city council may create up to, but not more than, 20 wards. § 11-43-40(a)(2).

Cities which have a population greater than 30,000 and only five wards can allow the president and one alderman from each ward to be elected by the voters of the entire city, provided the council, at least six months prior to a municipal general election, adopts such a plan by a two-thirds vote. Each alderman must reside in his or her respective district, regardless of the fact that he or she is elected by the voters at large. § 11-43-40(a)(3).

Notwithstanding the above provisions, the city council of a municipality with a population of 12,000 or more may, by an ordinance or a resolution, reduce the number of aldermen to five to be elected at large. This ordinance or resolution must be adopted by a two-thirds vote of the governing body more than six months prior to any general municipal election. § 11-43-40(a)(4).

Alabama law further provides that, notwithstanding any of the previous subsections, any city having a population of 12,000 or more which either now elects council members from single-member districts or cities presently operating with five single-member districts as established by federal court order may, by ordinance or regulation, provide that the city council of that city shall consist of eight aldermen to be elected from single-member districts (wards) with the city council president to be

elected by the city at large. Again, this ordinance or resolution must be adopted by a two-thirds vote of the governing body more than six months prior to any general municipal elections. § 11-43-40(a)(5).

Different provisions apply when cities implement the single-member district election system. § 11-43-63. This law provides that any city not holding elections under the single-member district plan may implement such a plan upon passage of a municipal ordinance at least six months prior to the regular municipal election. The law further provides for the size of the council, residency requirements for candidates and elector requirements.

The usual residency requirement for all other cities is a 90-day period of residency. § 11-43-63. There is a reduced residency requirement for Class 3 Cities (Huntsville and Montgomery) under certain conditions. When one of these cities expands their council to more than seven members, the residency requirement is reduced to 30 days. § 11-43-63.

Candidates may withdraw their statements of candidacy for one place prior to the filing deadline and may then file another statement of candidacy for a different place on the council provided they re-file before the filing deadline. 160 AG AO 40 (Opinion to Hon. Walker Hobbie Jr., 1975).

#### **4.14.7 Political Activity of Municipal Employees**

Any city employee may participate actively in county and state politics to the same extent as any other Alabama citizen. Such activities include endorsing candidates, making campaign contributions, and joining parties or political organizations on the local, state or national level. § 17-1-4(a). Furthermore, city employees may publicly support state and national issues of public welfare, circulate petitions calling for or in support of referendums, and contribute freely to those of their choosing. § 17-1-4(a)(5). However, Alabama law makes it illegal for anyone to use their official authority to influence the vote or political action of any person. §§ 17-17-4 and 17-17-5.

Where a municipal or county employee seeks a political office with the city or county with which the person is employed, then the employee is required to take an unpaid leave of absence from their employment, use accrued overtime leave, or use accrued vacation time from the date the employee qualifies to run for office until the date on which the election

results are certified. This unpaid leave of absence will continue until the employee is no longer a candidate or until there are no other candidates on the ballot. Employees who violate this subsection forfeit their employment positions. This section also applies to off-duty, out of uniform firefighters and police officers as long as they are in compliance with this section. §§ 17-1-4(b) and (c), 17-17-4, and, 17-17-5; *see also* 788 F.Supp. 2d 1283.