

## **CHAPTER 40-13 GENERAL PROVISIONS GOVERNING OFFICERS IN MUNICIPALITIES**

### **40-13-01. Qualifications of elective and appointive officers.**

A person is not eligible to hold an elective municipal office unless that person is a qualified elector of the municipality and has been a resident of the municipality for at least nine months preceding the election. A person is not eligible to hold an appointive office unless that person is a citizen of the United States. A person in default to the municipality is not eligible to any office.

### **40-13-02. Bonds of city officials - Requirements - Approvals - Additional bonds.**

The auditor, municipal judge, assessor, and the city manager of any city, and such other officers as the governing body may direct, before entering upon the discharge of the duties of their respective offices, shall execute and deliver to the city their separate bonds payable to the city, conditioned for the honest and faithful performance of their official duties. The bond must be in an amount fixed by the governing body of the city at a regular meeting in June of each year in an amount at least equal to twenty-five percent of the average amount of money that has been subject to the auditor's control during the preceding fiscal year, as determined by the total of the daily balances of the auditor for the calendar year divided by the figure three hundred or the sum of two hundred fifty thousand dollars whichever is least. All official bonds must be approved by the executive officer of the city and filed in the office of the city auditor. The bonds must conform to the law applicable to the bonds of state officers and employees except that no personal surety may be accepted on any bond. A city may not pay the premium on any bond except a bond written in the state bonding fund or a bond procured to replace a bond canceled by the state bonding fund. The governing body at any time may require new and additional bonds of any officer.

### **40-13-03. Oaths of municipal officers.**

Every person elected or appointed to any municipal office, before the person enters upon the discharge of the duties thereof, shall take and subscribe the oath of office prescribed for civil officers, and, except in the case of the auditor, shall file the same with the city auditor within ten days after notice of the election or appointment has been given. The oath of the city auditor shall be filed in the office of the auditor of the county in which the municipality is located. Refusal to take the oath of office, as required by this section, shall also be deemed a refusal to serve and, therefore, a failure to qualify for the office pursuant to section 44-02-01.

### **40-13-04. Salaries of officers and employees fixed by ordinance - Diminution of officers' salaries during term prohibited.**

Except when otherwise provided by law, any officer or employee of a city is entitled to receive the salary, fees, or other compensation fixed by ordinance or resolution. After having been once fixed, the salary of an officer may not be diminished to take effect during the term for which the officer was elected or appointed.

### **40-13-05. Officers not to be interested in contracts or work of municipality - Exception.**

Except as otherwise provided by law, no municipal officer, in a municipality having a population of ten thousand or more according to the last federal decennial census, shall be directly or indirectly interested in:

1. Any contract, work, or business of the municipality;
2. The sale of any article the expense, price, or consideration of which is paid from the municipal treasury or by any assessment levied by any act or ordinance; or
3. The purchase of any real estate or other property belonging to the municipality or which shall be sold for taxes or assessments or by virtue of any process issued in any suit brought by the municipality.

Provided, however, that the foregoing shall not be applicable if unanimously approved by the other members of the governing body of the political subdivision by a finding unanimously adopted by such other members and entered in the official minutes of the governing body, to be necessary for the reason that the services or property obtained are not otherwise available at equal cost.

**40-13-05.1. Municipal officers - Contracts - Disclosure required - Penalty.**

A municipal officer may not refuse or fail to disclose to the governing board of which that person is a member any personal interest, direct or indirect, in any contract requiring the expenditure of municipal funds. Any person who violates this section is guilty of an infraction and is, in addition, subject to removal from office.

**40-13-06. Penalty for illegal interest in contract of municipality - Contract void.**

Repealed by S.L. 1975, ch. 106, § 673.

**40-13-07. Office deemed vacant on removal from municipality or failure to qualify.**

When any officer removes from a municipality or refuses or neglects for ten days after official notification of that person's appointment to qualify and enter upon the discharge of the duties of the office, the office shall be deemed vacant.

**40-13-08. Vacancy existing in appointive office - How filled.**

Whenever a vacancy occurs in an appointive office, the same proceedings shall be had to fill such vacancy as are provided for in case of an appointment in the first instance.

**40-13-09. Vacancies to be filled for unexpired term.**

Unless otherwise specifically provided in this title, every person elected or appointed to fill a vacancy in a municipal office shall hold the office and discharge the duties thereof for the unexpired term.

**40-13-10. Delivery of property, books, and other effects to successor in office.**

Within five days after notification and request, any officer of a municipality whose term has expired shall deliver to the person's successor in office all property, books, and effects of every description in the person's possession belonging to the municipality or pertaining to the person's office. Upon the person's refusal to deliver such property, books, and other effects, the person shall be liable for all damages caused thereby and subject to a penalty prescribed by ordinance.

**40-13-11. Additional duties, powers, and privileges of officers may be defined by ordinance.**

The duties, powers, and privileges of all officers of every character in any way connected with a municipal government, not defined in this title, shall be defined by the governing body. The definition by this title of the duties of municipal officers shall not preclude the governing body from defining by ordinance further and additional duties to be performed by any such officer.

**40-13-12. Municipal officers liable to criminal prosecution - Fine - Removal from office.**

Repealed by S.L. 1975, ch. 106, § 673.

**40-13-13. Nepotism by city officials restricted.**

The head of an executive or administrative department of a city may not appoint that individual's spouse, son, daughter, brother, or sister to any position under the control or direction of that individual, unless the appointment has previously been approved by the governing body of the city.