

## CHAPTER 22

### NON-CANDIDATE ELECTIONS

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#### **22.1 Constitutional Amendments**

Article XVIII of the Alabama Constitution, “Mode of Amending the Constitution,” governs the process for amending and replacing the Alabama Constitution. It contains Sections 284, 284.01, 285, 286, 286.01, 286.02, and 287, which provide the exclusive means by which the Alabama Constitution may be changed. *State v. Manley*, 441 So.2d 864 (Ala.1983). Only the Legislature may initiate amendments to the Alabama Constitution, and approval of the Governor is not required. The prescribed procedures for amending the State Constitution must be strictly followed, and any deviation from the procedure renders the proposed amendment a nullity. *Water Works and Sewer Bd. of City of Prichard v. Board of Water and Sewer Comr’s of City of Mobile*, 141 So.3d 958 (Ala. 2013). There is no process for citizen-initiated constitutional amendments or conventions.

A new constitution may not be approved by the same process as are amendments. *State v. Manley*, 441 So. 2d 864, 875 (Ala. 1983). Rather, a new constitution or even a major overhaul of the existing constitution requires a constitutional convention. *Id.*

It should be noted that in 2020 Alabama voters ratified Amendment 951 (Act No. 2019-271), now appearing as Ala. Const. § 286.02, which authorizes the Legislature to consider an official recompilation of the

constitution, which shall be strictly limited to the following changes: (1) Removing all racist language, (2) Deleting duplicated and repealed provisions, (3) Consolidating provisions regarding economic development, and (4) Arranging all local amendments by County. If the Legislature approves this recompilation by a three-fifths vote in each chamber during the 2022 Regular Session, it shall be submitted to voters for ratification at the 2022 general election. Under Amendment 951, if approved by the majority of voters, the recompilation will become the new official constitution of Alabama.

## **22.2 Statewide Constitutional Amendments**

Article XVIII of the Alabama Constitution provides two primary methods by which the constitution may be amended: **by amendment and by constitutional convention.**

### **22.2.1 Amendment**

The ordinary process for statewide constitutional amendments is established by Section 284. Amendments may originate in either the Senate or the House of Representatives. Following approval by a three-fifths vote of both houses of the Legislature, a proposed constitutional amendment shall appear on a statewide election ballot. If that amendment is approved by a simple majority of those voting in that election, it becomes part of the constitution. Ala. Const. §§ 284, 285.

**22.2.1.1 Election.** Amendments may appear on the ballot at the next primary or general election, or at a special election scheduled by the Legislature. In the case of a primary or general election, the officers of the election open the polls for voting on the amendment along with the other races and issues on the ballot. However, any special election for a constitutional amendment must take place at least three months after the final adjournment of the legislative session at which the amendment was proposed. Three months need not pass between the final adjournment of the session of the Legislature during which an amendment is proposed and its appearance on a primary or general election ballot. In this case, officers are appointed for the election, and the election is to be held in accordance with the law governing general elections. In all elections for constitutional amendments, the votes are canvassed, tabulated, and returned to the

Secretary of State, and counted, in the same manner as in elections for representatives in the Legislature. Ala. Const. § 284.

**22.2.1.2 Notice / Ballots.** Notice of an election on a proposed amendment must be issued via proclamation of the Governor and published in each county of the state for at least four successive weeks prior to the election. Ala. Const. § 284.

The nature and substance of each proposed amendment are to be clearly indicated on the ballot. Following each proposed amendment on the ballot are printed the word “Yes” and underneath that, the word “No.” Each elector votes via a cross mark made opposite the word expressing their desire. Ala. Const. § 285.

**22.2.1.3 Adoption/ratification/proclamation.** No amendment is adopted unless it receives the affirmative vote of a majority of all the qualified electors who vote at such election. The result of such election is issued via proclamation of the Governor. Ala. Const. § 284. The ratification date of a constitutional amendment is the date of the election at which the proposed constitutional amendment was presented to the voters. AG AO 2008-014.

## **22.2.2 Constitutional Convention**

A constitutional convention may be called to amend or replace the constitution by completion of two steps. First, both chambers of the Legislature must adopt a resolution supporting a convention by a simple majority vote. Second, a statewide election must be held with a ballot question on whether to have a statewide constitutional convention. If approved by a majority of those voting in that election, then a constitutional convention is called. Ala. Const. § 286.

All votes of the Legislature upon proposed constitutional amendments, and upon bills or resolutions calling a convention, are taken by yeas and nays and entered on the journals and do not require the governor’s approval. Ala. Const. § 287.

There is no limitation on method, time or place of conducting an election to approve a constitutional convention, except that it must take place prior to the holding of the convention. Opinion of the Justices, 81 So.2d 666 (Ala.1955). The constitution makes no requirement or limitation as to election of delegates to convention. Opinion of the Justices, 81 So. 2d 688, 689 (1955). Once assembled, a convention has the jurisdiction and power

of to establish such ordinances and to do and perform such things as to the convention deems necessary or proper for the purpose of altering, revising, or amending the existing Constitution. Ala. Const. § 286.

Section 286.01 of Article XVIII governs the process for ratifying a new constitution. Any proposed replacement of the Alabama Constitution, whether adopted by a constitutional convention pursuant to Section 286 or by any other method later authorized by the constitution, becomes effective only if the proposed constitution is ratified by a majority of the qualified electors of the state voting on the question of such ratification.

### **22.3 Local Constitutional Amendments**

Section 284.01 of Article XVIII establishes the process for proposal and ratification of local constitutional amendments. The Legislature determines whether a proposed constitutional amendment shall be a statewide amendment or local amendment (*i.e.*, applying to only one county or a political subdivision within one or more counties). Local amendments may originate in either the Senate or the House of Representatives, but must be approved by each house of the Legislature under the following process:

- (a) A proposed local amendment must first be approved by at least three-fifths of all the members elected to the house in which it originates.
- (b) Immediately following this approval, the house of origin considers a resolution of local application declaring that the proposed amendment affects or applies to only one county or a political subdivision within one or more counties and specifying by proper name the county or the political subdivision and the county or counties within which the political subdivision is located.
- (c) The proposed amendment is then sent to the other house for consideration and, if at least three-fifths of all the members elected to that house vote in favor of the proposed amendment, that house likewise immediately proceeds to consider a resolution of local application as provided in (b).

The above-described local application resolution process is critical. If a proposed amendment receives approval by a three-fifths vote in both houses

and approval of a local application resolution in both house *without dissent*, the proposed amendment is placed on the ballot only in the county or political subdivision and county or counties affected. To be adopted, the proposed local amendment must receive a favorable vote from the majority of electors in the affected county or, if applicable, the political subdivision and the county or counties in which the political subdivision is located, via the procedures described below. If, however, there is at least one dissent to the local application resolution in either house, the proposed amendment shall be submitted to a statewide vote for approval in accordance with the procedures described above for statewide constitutional amendments. In such cases, the amendment must be approved both within the locality to which it applies, as described above, and statewide, as described. Ala. Const. § 284.01.

### **22.3.1 Notice**

Notice of an election for a local constitutional amendment, together with the proposed amendment, is given by proclamation of the Governor, which must be published in each newspaper qualified to run legal notices in the county or counties affected. once a week for four straight weeks immediately prior to the day appointed for the election Ala. Const. § 284.01.

### **22.3.2 Timing & Ballots**

The same timing and ballot requirements described above for statewide constitutional amendments apply to local constitutional amendments. Ala. Const. §§ 284, 285. However, the legislature has also granted authority to the affected local jurisdiction for setting the date of a special election for a proposed constitutional amendment of local application.

## **22.4 Local Bond Elections**

Section 222 of the Alabama Constitution authorizes the Legislature to pass general laws authorizing the counties, cities, towns, villages, districts, or other political subdivisions of counties to issue bonds. No bonds, however, may be issued under authority of a general law unless such issue of bonds is first authorized by a majority vote of the qualified voters of such county, city, town, village, district, or other political subdivision of a county voting upon the proposition. The ballot used at such election shall contain the words: “For .....bond issue,” and “Against ..... bond issue” (the character

of the bond to be shown in the blank space), and each voter indicates their choice by placing a cross mark before or after one or other. Ala. Const. § 222.

Section 222 does not apply to obligations incurred or bonds to be issued to procure means to pay for street and sidewalk improvements or sanitary or storm water sewers, the cost of which is to be assessed, in whole or in part, against the property abutting said improvements or drained by such sanitary or storm water sewers. Ala. Const. § 222.

## **22.5 Local Sales Tax and School Property Tax Elections**

There are two methods of increasing local sales taxes or school property taxes: (1) a new tax may be authorized or (2) the rate of an existing tax may be increased. Authorizing a new tax requires a constitutional amendment following the process described. Increasing the rate of an existing tax is less burdensome and follows the process outlined in Amendment 373, commonly known as the “Lid Bill.” Ala. Const. 217(f)

The Lid Bill contains the following three requirements for increasing the rate of an existing local school tax:

- 1) The local taxing authority (*e.g.* county commission) must conduct a public hearing on the proposed tax increase and pass a resolution or similar legislation formally proposing the tax increase.
- 2) Thereafter, the Legislature must approve the proposed increase by passing a local act.
- 3) Finally, a local election must be held, and voters must approve the proposed tax increase. The election should follow the local elections processes for general and special elections contained in Title 16. If the voters reject the proposed increase, the local taxing authority must start the entire procedure over. Ala. Const. § 217(f)

## **22.6 Wet/Dry Elections in Counties**

Title 28 of the Alabama Code contains specific procedures for wet/dry elections in counties and wet/dry elections in municipalities. Chapter 2 of Title 28 governs the process wet/dry elections in counties and provides two different methods: a general method and a special method referendum

applicably only to certain counties.

### 22.6.1. General Method

Any county in the state may change its classification from wet to dry or from dry to wet by following the general method. Ala. Code § 28-2-1.

The general method requires the following:

- 1) **Petition.** A petition of 25 percent of the number of voters voting in the last preceding general election must first be filed with the judge of probate of the county.
- 2) **Election.** After the petition is filed, the judge of probate must call an election, and the election shall be held in the manner provided by law for holding other county elections. The election shall be held at least 82 days, but not more than 97 days, from the date of filing of the petition.
- 3) **Notice.** Notice must be provided by the judge of probate by publication at least three weeks before the date of the election, in a newspaper in the county or, if there be none, by posting such notice at the courthouse apprising the voters of the county that an election will be held in the several precincts thereof to determine whether such county shall be wet or dry under the laws regulating alcoholic beverages.
- 4) **Costs.** The cost of the election, including the cost of notice by publication, shall be paid out of the general funds of the county.
- 5) **Ballot.** On the ballot to be used for such election the question shall be in the following form: “Do you favor the legal sale and distribution of alcoholic beverages within this county? Yes \_\_\_\_ No \_\_\_\_.”
- 6) **Voting.** Only qualified voters shall vote in the election.
  - (a) If a majority of the voters voting in the election vote “Yes,” the county shall be wet or remain wet under the terms of Ala. Code 28-2-1 unless the county shall in a subsequent election held under this section change to a dry county.
  - (b) If a majority of the electors voting in the election vote “No,” the county shall be a dry county under the terms of Chapter 4 of Title 28 of the Code of Alabama unless it shall by a subsequent election, held under this section, vote wet.
- 7) **Subsequent Elections.** The elections in the counties may be held at any time, provided that at least two years must elapse between the dates of such elections.

### 22.6.2 Special Election Method

Counties that did not authorize the sale and distribution of alcoholic beverages prior to September 22, 1971 and wish to become a wet county may elect to follow the Special Method Referendum Act of 1971 (“special method”), instead of the general method. The procedures of special method are very similar to the general method, except that the special method triggers potential action in the county’s municipalities after passage. Ala. Code § 28-2-21.

The special method requires the following procedures:

- 1) **Petition.** A petition of 25 percent of the number of voters voting in the last preceding general election must first be filed with the judge of probate of the county, and the petition must expressly state the following: “It is requested that the election herein requested be on the adoption of the Special Method Referendum Act of 1971.”
- 2) **Election.** After the petition is filed, the judge of probate must call an election, and the election shall be held in the manner provided by law for holding other county elections. The election shall be held at least 82 days, but no more than 97 days, from the date of filing of the petition.
- 3) **Notice.** Notice must be provided by the judge of probate by publication at least three weeks before the date of the election, in a newspaper in the county or, if there be none, by posting such notice at the courthouse apprising the voters of the county that an election will be held in the several precincts thereof to determine whether such county shall be wet or dry under the laws regulating alcoholic beverages.
- 4) **Costs.** The cost of the election, including the cost of notice by publication, shall be paid out of the general funds of the county.
- 5) **Ballot.** On the ballot to be used for such election the question shall be in the following form: “Do you favor the legal sale and distribution of alcoholic beverages within this county under the Special Method Referendum Act of 1971? Yes \_\_\_\_\_, No \_\_\_\_\_.”
- 6) **Voting.** Only qualified voters shall vote in the election.
  - (a) If the majority of the voters approve the sale and distribution of alcoholic beverages, the sale of alcoholic beverages in such county shall be governed by the following conditions:
  - (b) Within 90 days after the affirmative vote, each governing body of any incorporated municipality within such county may vote to exclude the sale of alcoholic beverages within its limits as



provided in Article 2 of Title 28 of the Code of Alabama.

- (c) If a municipal governing body does not take such action 90 days after the affirmative election, the provisions of Article 2 of Title 28 of the Code of Alabama shall apply for a period of 10 years, after which the municipality shall again have 90 days to exclude said municipality.
  - (d) Should a municipality choose to exclude the application of Article 2 of Title 28 of the Code of Alabama from its limits, it may, by its own action, include the municipality under provisions of that article at any subsequent time for a period of 10 years and, after said 10-year period, shall have 90 days to continue or discontinue its applicability.
  - (e) A municipality may, within the 90-day period, submit the decision on the applicability of this article to its voters by a special election, said election being binding on the governing body.
  - (f) If a majority of the electors voting in the election vote “No,” the county shall be a dry county under the terms of Chapter 4 of Title 28 of the Code of Alabama until it shall by a subsequent election, held under this section, vote wet.
- 7) **Amendments.** The governing body of any county which has adopted the special method may from time to time vote to exclude the sale of alcoholic beverages within all or any part of its unincorporated areas, but if a municipality annexes any unincorporated area, that area shall be subject to the rules of the municipality with regard to the sale and distribution of alcoholic beverages.
  - 8) **Subsequent Elections.** The elections in the counties may be held at any time, provided that at least two years must elapse between the dates of such elections.

## 22.7 Wet/Dry Elections within Municipalities

Chapter 2A of Title 28 governs the process wet/dry elections in municipalities. It provides that any municipality with a population of 1,000 or more may change its classification from dry to wet or wet to dry by a municipal option election. Ala. Code § 28-2A-1. The population of the city may be determined by using the federal decennial census, a special federal

census, or a municipal census, not from estimated or projected census figures. Ala. Op. Atty. Gen. No. 1998-208.

The municipal option election requires the following:

- 1) **Petition.** A petition containing 30 percent of the number of voters voting in the last preceding general election of the municipality must be filed with the city or town clerk or governing body of the municipality, and the petition must state the following: “It is petitioned that a municipal option election be held to permit the legal sale and distribution of alcoholic beverages within this municipality.”
- 2) **Election.** After receiving the petition, the governing body must call an election, and it shall be held in the same manner provided by law for holding other municipal elections. The election shall be held at the time of the primary, general, county-wide, or municipal election next succeeding the date of the filing of the petition, provided, however, the election shall not be held less than 30 days from the date of the filing of the petition. The election in the municipality may be held at the time of any primary, general, county-wide, or municipal election as determined by the county commission or the municipal governing body, as applicable, provided a period of not less than 720 days must elapse between the dates of such municipal option elections; provided further, that a county wet-dry election or special method referendum may be held at any time without regard to the lapse of time between the dates of any county option elections.
- 3) **Notice.** Notice of the municipal option election shall be given by the governing body of the municipality by publication at least three weeks before the date of election, in a newspaper in the municipality, or, if there be none, in a newspaper in the county, or, if there be neither, by posting such notice at the town or city hall, apprising the voters of the municipality that a municipal option election shall be held to determine whether such municipality shall be wet or dry under this article.
- 4) **Ballot.** On the ballot to be used for such municipal option election, the question shall be in the following form: “Do you favor the legal sale and distribution of alcoholic beverages within this municipality? Yes \_\_\_\_\_ No \_\_\_\_\_.”
- 5) **Costs.** The cost of the election, including the cost of notice by publication, shall be paid out of the general fund of the municipality.

- 6) **Voting.** Only qualified voters shall vote in the municipal option election.
- (a) If a majority of the voters in the municipal option election vote “yes,” the municipality shall be wet, and alcoholic beverages can be legally sold, distributed, and consumed within the corporate limits of the municipality, and all of the provisions of this Title 28 of the Code of Alabama, relating to alcoholic beverages in wet counties, including Chapters 3, 3A, 6, and 7, shall be immediately put into operation with respect to and effective within the corporate limits of the municipality.
  - (b) The municipality shall remain wet unless the municipality shall be changed to a dry municipality in a subsequent municipal option election held under this article, notwithstanding the results of any subsequent county election or special method referendum.
  - (c) All other laws to the contrary notwithstanding, the electors residing within the corporate limits of any such municipality that has become wet pursuant to a municipal option election held under this article shall not be entitled to vote in any subsequent county election or special method referendum held to determine if the county in which such municipality is located shall become wet.  
  
The question of whether such county shall become wet shall be decided by the electors of such county residing outside the corporate limits of such wet municipality as otherwise provided by law.
  - (d) If a majority of the voters voting in the municipal option election vote “no,” the municipality shall be a dry municipality under the terms of this Article 2A of Title 28 of the Code of Alabama unless the county shall by subsequent election or special referendum, vote wet, or the municipality shall by a subsequent municipal option election held under this article, vote wet.
- 7) **Subsequent Elections.** Each subsequent municipal option election must follow the petition process as provided in this subsection with a new petition.

## 22.8 The Fair Ballot Commission

The Alabama Fair Ballot Commission (the “Commission”) was created by the Legislature in 2014, and its purpose is to provide the public a fair and accurate explanation of what a vote for and what a vote against a statewide ballot measure represents. *See* Act 2014-399, p. 1462, §2; *see also* Ala. Code § 17-6-81.

### 22.8.1 Membership

The Commission consists of the following 18 members:

- (1) The Governor (or his/her designee),
- (2) A member appointed by the Governor who is an attorney licensed in the state,
- (3) A member appointed by the Governor who is a private citizen of the state and not an attorney,
- (4) The Lieutenant Governor (or his/her designee),
- (5) A member appointed by the Lieutenant Governor who is an attorney licensed in the state,
- (6) A member appointed by the Lieutenant Governor who is a private citizen of the state and not an attorney,
- (7) The Commissioner of Agriculture and Industries (or his/her designee),
- (8) A member appointed by the Commissioner of Agriculture and Industries who is an attorney licensed in the state,
- (9) A member appointed by the Commissioner of Agriculture and Industries who is a private citizen of the state and not an attorney,
- (10) The Speaker of the House of Representatives (or his/her designee),
- (11) A member appointed by the Speaker of the House of Representatives who is an attorney licensed in the state,
- (12) A member appointed by the Speaker of the House of Representatives who is a private citizen of the state and not an attorney,
- (13) The Secretary of State (or his/her designee),
- (14) A member appointed by the Secretary of State who is an attorney licensed in the state,
- (15) A member appointed by the Secretary of State who is a private citizen of the state and not an attorney,

- (16) A member appointed by the Alabama State University School of Public Policy,
- (17) A member appointed by the Samford University School of Public Policy, and
- (18) A member appointed by the Miles College School of Law.

The Chair, Vice Chair, and Ranking Minority Member of the House Constitution, Campaigns and Elections Committee and the Chair, Vice Chair, and Ranking Minority Member of the Senate Constitution, Campaign Finance, Ethics, and Elections Committee shall serve as non-voting advisors to the Commission. The appointments must reflect the geographic, gender, racial, and ethnic diversity of the state with at least one appointed member from each congressional district. The Chair and the Vice Chair of the Commission are elected by majority vote of the Commission. Ala. Code § 17-6-81(a)(2).

### **22.8.2 Ballot Statements**

The Commission's primary duty is to publish ballot statements, which include the following information:

- (1) The text of the statewide ballot measure, including sponsors, cosponsors, and the text of the question that will appear on the statewide ballot.
- (2) A summary of and the text of any implementing legislation directly related to the statewide ballot measure.
- (3) The placement of the statewide ballot measure on the statewide ballot.
- (4) A plain language summary of the statewide ballot measure, which shall include, at a minimum, the legal or constitutional authority for its passage, the effect of the statewide ballot measure if it is passed, including its cost and source of funding, and the effect of the statewide ballot measure if it is defeated.

Ballot statements are to be written in plain, non-technical language and in a clear and coherent manner using words with common and every day meaning that are understandable to the average reader. They must be true and impartial statements of the effect of a vote for and a vote against the measure in language neither intentionally argumentative nor likely to create prejudice for or against the proposed measure. Additionally, they must include language as to whether the measure will increase, decrease, or have

no impact on taxes, including the specific category of tax. Ala. Code § 17-6-81(b).

### **22.8.3 Publishing Ballot Statements**

No later than sixty (60) calendar days prior to a vote on a statewide ballot measure, the Commission shall post a ballot statement in a conspicuous and publicly accessible location on the website of the Secretary of State. Ballot statements may be approved only at meetings of the Commission and only by a majority of the Commission members present at the Commission meeting. In the event a majority of the Commission cannot agree on a ballot statement within the 60-day time frame, the portion of the website of the Secretary of State containing the Commission's ballot statements shall contain a statement that a majority of the Commission cannot agree on the ballot statement as well as an explanation written by the Chair of the Commission as to why the Commission failed to reach an agreement. Additionally, in the event a majority of the Commission cannot agree on a ballot statement within the 60-day time frame, those portions of ballot statements which can be agreed upon by a majority of the Commission shall be posted on the portion of the website of the Secretary of State containing the Commission's ballot statements, along with links to other websites and individual statements of support and opposition.

Ballot statements approved by the Commission or, in the event the Commission does not approve a ballot statement, those portions of ballot statements which can be agreed upon by a majority of the Commission, shall be printed, posted, and distributed in the same manner and by the same officials as sample ballots are printed, posted, and distributed. Additionally, a printed copy of each ballot statement approved by the Commission or, in the event the Commission does not approve a ballot statement, those portions of ballot statements which can be agreed upon by a majority of the Commission, not later than fifty-five (55) calendar days prior to a vote on a statewide ballot measure, shall be made available for the purpose of public distribution at the office of the Secretary of State or at the office of each judge of probate, provided that these offices may cover their printing costs by requiring that the person requesting a printed copy pay a printing fee, the maximum amount of which shall equal the costs of fulfilling each printing request. Ala. Code § 17-6-81(b).

#### **22.8.4 Website Links**

The Chair of the Commission shall allow the portion of the website of the Secretary of State containing the Commission's ballot statements to also include links to other websites that discuss upcoming statewide ballot measures. This portion of the website of the Secretary of State shall clearly state that members of the Commission are not responsible for the content of any linked website and that the linking of a website does not represent the Commission's endorsement of the website's contents. Ala. Code § 17-6-81(f).

#### **22.8.5 Supporting/Opposing Statements**

Any member of the Legislature or their designees, may post individual statements supporting or opposing a statewide ballot measure on the portion of the website of the Secretary of State containing the Commission's ballot statements within three (3) calendar days of receipt. These individual statements of support or opposition may not exceed 300 words, must be provided to the Chair of the Commission at least ten (10) calendar days prior to the vote on the statewide ballot measure at issue, and shall be posted not later than seven (7) calendar days prior to the vote on such statewide ballot measure. Ala. Code § 17-6-81(g).

### **22.9 Supporting / Opposing Non-Candidate Elections**

The Fair Campaign Practices Act (“FCPA”) defines “election” to include constitutional amendments and propositions submitted to the popular vote (a “ballot initiative”). Under the FCPA, any group of one or more persons which receives or anticipates receiving contributions and makes or anticipates making expenditures in excess of \$1,000 to influence a ballot initiative must register as a political action committee (“PAC”) and file periodic reports disclosing its contributions and expenditures during the ballot initiative’s election cycle.

Federal Court rulings (and Alabama Attorney General Opinions interpreting those cases) have made clear that restrictions on contributions to PACs established to support ballot measure elections, such as restrictions on corporate contributions, are unconstitutional. However, this does not preclude the application of disclosure requirements to those contributions. *See*, *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1976); *Let’s Help Florida v. McCrary*, 621 F.2d 195 (5<sup>th</sup> Cir. 1980). *See also*, AG AO

1982-088 and AG AO 1982-217 [advising that since-repealed Alabama statutes restricting corporate contributions to ballot measure PACs were inconsistent with federal caselaw under the First Amendment].

Chapter 20 includes more guidance on the FCPA. *See* Ala. Code § 17-5-1 *et. seq.*

### **22.9.1 Public Entities and Ballot Measures**

City and county boards of education are exempt from the Fair Campaign Practices Act (“FCPA”) because public entities do not meet the definition of a “person.” *See* Ala. Code § 17-5-2 (11); *see also* Ala. Op. Atty. Gen. No. 2003-232; *see also* *Zeigler v. Strange*, CV 2015-900721 (Montgomery Co. Cir. Ct.) (July 17, 2015).

### **22.9.2 Tax Considerations**

PACs that engage primarily in ballot initiatives are typically recognized as tax-exempt social welfare organizations under Section 501(c)(4) of the Internal Revenue Code (“IRC”). This in contrast to Section 527 of the IRC, which addresses taxation for other “political organizations.” Attempting to influence a ballot initiative is generally considered a non-deductible lobbying expenditure; however, this handbook does not provide tax advice. Consulting an attorney is recommended for compliance questions involving the IRC.