

# THE ALABAMA MUNICIPAL JOURNAL

December 2003

Volume 61, Number 6



*Happy Holidays!*

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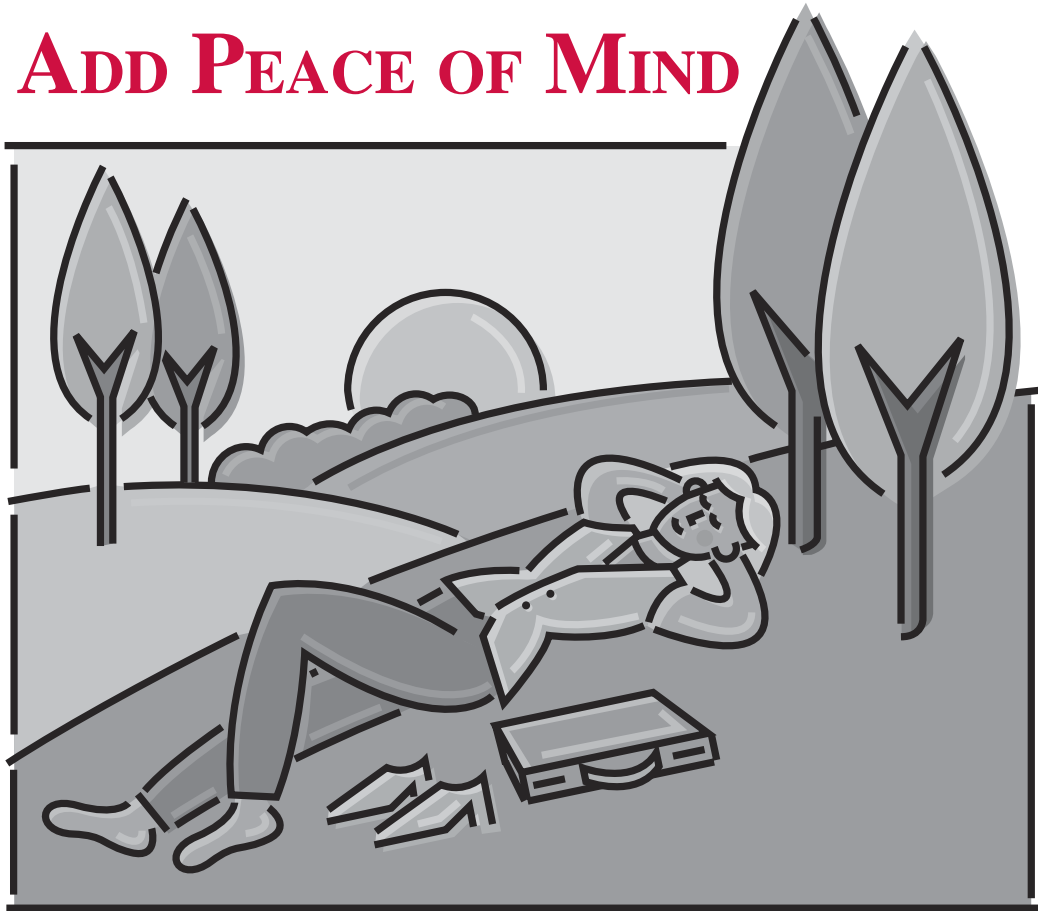
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# THE ALABAMA MUNICIPAL JOURNAL

Official Publication, Alabama League of Municipalities

December 2003 • Volume 61, Number 6

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1. Order the courses you wish to take by completing an official Order Form. Mail the completed Order Form together with the payment, either by check or credit card, to the address on Order Form. (To receive an Order Form, contact Theresa Rogers at 334-262-2566 or via e-mail at [theresar@alalm.org](mailto:theresar@alalm.org). You may also download an official Order Form from the League's website at [www.alalm.org](http://www.alalm.org).)
2. You will receive the CD(s) ordered and a true/false test for each course. Listen to each course and complete the test as you listen. Return the completed test(s) to the designated address. The CD(s) are yours to keep.
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# The President's Report

Dan Williams  
Mayor of Athens

## State and Local Officials Continue Opposition to S. 150

National League of Cities Immediate Past President Karen Anderson, mayor of Minnetonka, Minn., joined Senate supporters, the National Governors Association and International Association of Fire Fighters last week to express strong support for legislative efforts to protect local and state budgets from further losses in revenue that would occur if the Internet Tax Non-discrimination Act (S. 150) is passed.

Mayor Anderson lauded the vigorous efforts of Sens. Lamar Alexander (R-Tenn.), Thomas Carper (D-Del.), George Voinovich (R-Ohio), Dianne Feinstein (D-Calif.), Ernest Hollings (D-S.C.) and several others to oppose S. 150 and adopt an alternative measure that will protect consumers as well as local and state authority.

"Reducing existing sources of revenue for our cities and towns will only exacerbate the current budget crisis affecting states and local governments," Anderson said, while noting that NLC's position is not an attempt to tax e-mail or impose any new taxes, as industry has claimed.

"S.150 would expand the scope of the Internet Tax Freedom Act, thereby preempting authority over existing taxes that are currently collected and used for public safety, education, infrastructure and other essential services," Anderson said.

As it is currently written, S. 150 would expand the definition of Internet access to prevent states and localities from taxing telecommunications services "used to provide Internet access," resulting in losses of gross receipts taxes and franchise fees at an estimate of approximately \$9 billion annually, according to the Multistate Tax Commission.

The Congressional Budget Office (CBO) released a study stating that state and local governments stand to lose "substantial" tax dollars because of the bill's provisions to change the definition of Internet access. This proposed change is a reversal of commitments made to state and local governments at the time the Internet Tax Freedom Act was enacted in 1998. The legislative history of the Act makes clear that state and local governments were to be allowed to tax telecommunications services underlying the Internet. CBO also determined that the Internet Tax Non-discrimination Act would create intergovernmental mandates by restricting existing sources of revenue. Carper highlighted this concern

during last week's press conference to oppose the passage of S. 150.

As former mayors and governors, "we still remember what it's like to raise the money, balance the budget and pay the bills everyday," Carper said while announcing with Alexander and Voinovich that a nine-month extension of the previous Internet tax moratorium, imposed under the Internet Tax Freedom Act, will be a likely compromise to S. 150.

This extension would protect existing revenue, allowing Congress, industry and state and local governments time to negotiate an appropriate definition of "Internet access."

"Of course it sounds good for Congress to say it is banning a state tax," said Alexander. "But what it is really doing is favoring one local tax over another with the decision made in Washington."

Governors Ed Rendell (D-Pa.) and Mike Huckabee (R-Ark.) characterized S.150 as a subsidy for industry at the expense of states and local governments. "This train is going to derail on a bridge that is already out," Huckabee said, noting state budget constraints that exist across the nation.

Rendell pointed out that in addition to the reduction in federal funding to states and localities, S.150 would also take away authority over state and local revenues, creating the "perfect storm" for more budget perils.

Feinstein issued a statement last week noting that "if this bill's definition of 'telecommunications services' is interpreted in an overly broad way, it would decimate local budgets — leading to the possibility of reduced preparedness in our fire houses and police stations, and less money for our schools."

Please urge your senators to oppose S.150 or the Manager's Amendment to S. 150 and vote for the Alexander/Carper amendment to the bill, which would grant the nine-month extension of the Internet tax moratorium. Since industry has mounted an extensive effort to posture this issue as states and local governments trying to impose a new tax on e-mail, please assure senators that this assertion is not the case and that NLC's position is to protect existing sources of revenue, especially with the record budget shortfalls affecting states and localities.

For the latest updates and legislative action alerts on S. 150, the Internet Tax Non-discrimination Act, visit [www.nlc.org](http://www.nlc.org). ■

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# Municipal Overview

By  
PERRY C. ROQUEMORE, JR.  
*Executive Director*

## 2004 League Legislative Package

The Alabama League of Municipalities Committee on State and Federal Legislation, which is chaired by Mayor Michael C. Dow of Mobile, met at League Headquarters on Monday, November 3, 2003. The committee, which is composed of elected municipal officials from throughout the state, considered a multitude of legislative recommendations from the League's five policy committees, member municipalities and the League staff. At the conclusion of their meeting, the committee unanimously approved the following package of bills to be introduced during the 2004 Regular Session, which begins on February 4, 2004. The source from which the legislative recommendation is based is stated at the end of each legislative proposal. "PG" means *Proposed Policies and Goals 2004*.

### Appropriation for Wastewater Treatment SRF

Several years ago, the Alabama Legislature established a State Revolving Loan Fund for Wastewater Treatment (SRF). The purpose of the SRF was to take state funds and match them with federal dollars to create a loan fund to offer low interest loans to governmental entities for wastewater treatment projects. The League will seek additional matching funds from the legislature to continue this nationally recognized SRF program. (PG – E-11.1)

### Appropriation for Drinking Water SRF

Several years ago, the Alabama Legislature established Alabama Drinking Water Finance Authority for the purpose of taking state funds and matching them with federal dollars to create a loan fund to offer low interest loans to governmental entities for drinking water projects. This program is very similar to the wastewater SRF discussed above. The League will seek funds from the legislature to match federal dollars available for drinking water SRF programs. (PG – E-11.2)

### Penalty For Violation of Municipal Ordinances

Section 11-45-9, Code of Alabama 1975, provides that the maximum fine that can be assessed for violation of a municipal ordinance is \$500 and/or six months in jail. The sole exception applies to DUI offenses where the fine can be as high as \$5,000. The DUI penalties have been increased and include fines for reckless driving. In order for the municipal court to be in line with other courts for the same offenses, the League will ask the legislature to amend the Code of Alabama so as to provide that the maximum fine for violation of a municipal ordinance shall be \$500 or the maximum allowed by state law for the offense, whichever is higher. (PG – F-10.47)

### Corrections Funds

Section 11-47-7.1, Code of Alabama 1975, authorizes municipalities to levy additional court costs and establish a corrections fund for the operation of municipal jails and court complexes. Legislation will be sought to provide that 60 percent of the money in the corrections fund must be expended for municipal court purposes and that the remaining 40 percent of the money in the corrections fund may be spent for municipal court systems, jails or law enforcement purposes. The bill will also allow for the payment of debt service in relation to allowed expenditures. (PG – P-8.16)

### Zoning of Newly-Annexed Territory

Municipalities have the legal authority to zone territory within their corporate limits. Currently, newly-annexed territory comes into the municipality either "unzoned" or zoned for a classification as set out in the zoning ordinance for newly-annexed territory. The League will offer legislation to authorize municipalities to establish a zoning classification for territory proposed to be annexed prior to the actual annexation. The zoning classification would only become effective upon annexation to the municipality. (PG – C-1.3)

### Zoning in the Police Jurisdiction

Currently, municipalities can only zone territory located within the corporate limits of the municipality. The League will propose legislation to give cities and towns permissive authority to zone territory located within their police jurisdiction. (PG – C-1.2)

### Planning Commission Jurisdiction

Current Alabama law states that a municipal planning commission can enforce subdivision regulations in the corporate limits of the municipality and in any territory located within five miles of the corporate limits. The League proposes legislation to make it clear that a municipal governing body may adopt an ordinance to limit the

*continued next page*

enforceability of subdivision regulations to an area less than the five-mile limit established by law. (PG – C-1.13)

### **Alternates on Municipal Planning Commission**

Current Alabama law provides that a municipality may establish a municipal planning commission composed of nine members. There have been numerous instances over the years where several members are absent from a meeting thus causing a lack of a quorum. This bill would give the mayor permissive authority to appoint two alternate members to the planning commission to serve only in the absence of regular members. (Floor)

### **Alabama Historic Preservation Tax Credit**

The League proposes legislation to establish the Alabama Historic Preservation Tax Credit. Currently, federal law provides a federal income tax credit equal to 20 percent of approved costs for qualified rehabilitation for income-producing buildings. This bill proposes to create a state tax credit for the rehabilitation of both income producing and non-income producing properties. More specifically, this bill proposes:

To create a 20 percent state income tax credit for rehabilitating an income-producing historic property.

To create a 20 percent state income tax credit for rehabilitating residential historic properties (non-income producing properties). For the historic homes located in a target areas, as defined by the Internal Revenue Code, the credit will increase to 25 percent on the minimum rehabilitation expenses of \$5,000 or 50 percent of the adjusted basis of the property.

Currently 12 other states have enacted tax credits similar to the one proposed for Alabama. (Floor)

### **Joint Audit Authority**

The League proposes legislation to authorize joint taxpayer audits and the sharing of taxpayer information and tax entity resources between municipal, county and state revenue departments. (PG – F-3.18)

### **Cater Act Amendment**

The League will offer legislation to amend the Cater Act so as to prevent the use of industrial development financing to remove existing taxable industrial property from the tax rolls. (PG – F-4.2)

### **Conclusion**

The Committee on State and Federal Legislation has adopted an ambitious Legislative Package for 2004. All municipal officials are urged to get behind this package and push for its passage during the session. ■

## *Job Listings*

### **ECONOMIC DIRECTOR, City of Phenix City \$48K-\$81K**

The City of Phenix City, Alabama is seeking a professional Economic Director. Position requires minimum bachelor's degree in Urban Planning or closely related field; seven years of municipal planning experience with five years increasingly responsible managerial or professional experience in an administrative area preferred. Master's degree preferred. Responsible for day-to-day operation of the Economic Development Department to include planning, organizing and analyzing economic development trends and directing research and evaluation of proposal industrial and commercial expansion, retention and recruitment. Resumes may be mailed to: City of Phenix City, ATTN: Barbara Goodwin, Personnel Director, 601 12th Street, Phenix City, AL 36867 FAX 334-448-2712, e-mail: btillery@ci.phenix-city.al.us.

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Qualifications include but are not limited to: BS Accounting; experience in a comparable position, including financial and business management or related field, financial reporting and tax laws; supervisory experience; excellent management, communication, interpersonal and organizational skills; computer proficiency including Windows, Word and Excel; resident of Athens or willing to relocate; valid Alabama driver's license and safe driving history; and the ability to perform all essential job functions. Salary Range: \$51,802.40 – \$68,400.80. Excellent benefit package including Blue Cross medical and dental insurance and State Retirement Plan. Deadline: Open until filled. City application required: Mail application and resume to City of Athens, Attention: Human Resources Department, PO Box 1089, Athens, Alabama 35612, or e-mail to: sseyay@ci.athens.al.us or apply in person at Athens Municipal Building, 200 West Hobbs Street, Athens. For further information, please refer to web site at [www.ci.athens.al.us](http://www.ci.athens.al.us) or call 256-233-8737. The City of Athens is a Drug Free Workplace. Pre-employment drug screen and physical required. Equal Opportunity Employer.



# ENVIRONMENTAL OUTLOOK



By Gregory D. Cochran  
Director, State and Federal Relations

## Clearing Smoggy Skies

Statistics from the Environmental Protection Agency show the amount of smog over the US failed to decline during the past decade despite a nationwide effort to improve air quality. Smog levels dropped during the 1980s. However, the latest edition of the EPA's annual report on air quality shows that smog levels didn't improve from 1993 through 2002. Independent scientists have drawn similar conclusions.

One likely reason why the smog isn't lifting: Americans are driving more miles than they did in the 1980's and they're driving vehicles that give off more pollution than those cars driven during that time. America's love of driving helps explain why levels remain high. Vehicles contribute to smog by emitting nitrogen oxides from their tailpipes. In 2002, cars and trucks traveled roughly 50 percent more miles than in 1993. And during 2001 and 2002, Americans bought more light trucks – pickups, minivans and sport-utility vehicles – than cars. EPA rules permit light trucks to emit more nitrogen oxides than cars.

Smog, also known as ozone, often appears as a grayish-white haze. It forms when sunlight mixes with nitrogen oxides and volatile organic compounds. Nitrogen oxides are gases emitted by factories and vehicles. Volatile organic compounds are vapors given off by gasoline, paint and other substances. A layer of ozone in the upper atmosphere helps protect humans from the sun's radiation, but ozone near the ground – smog – causes lung inflammation and triggers asthma attacks.

During the 1980s, the EPA focused on cutting emissions of the organic compounds. That lowered smog levels at the time. But now, most scientist agree, vapor levels have been cut so low that reducing them further won't help. That

has the EPA focusing on cutting nitrogen oxides, a method that scientists say reduces smog slowly and inefficiently.

During the next few years, new regulations are likely to help reduce smog in some parts of the country. Those rules will force 22 states and the District of Columbia to lower their emissions of nitrogen oxides. The EPA also is requiring new cars and light trucks to emit fewer nitrogen oxides. To comply with the rules, companies will have to spend more than \$15 billion to install new technologies to control pollution and to retool manufacturing lines.

Environmentalists fear that recent changes to power plant rules will make eliminating smog even harder. In August, the EPA loosened rules requiring power plants to add pollution-control equipment when the plants expand. The National Academy of Sciences will soon start studying how the change will affect pollution levels. Power plants began cutting emissions of nitrogen oxides in 1996. Those cuts, coupled with cleaner cars, caused nitrogen oxide emissions to drop 12 percent from 1993 to 2002. Yet – because big cuts in nitrogen oxides are needed – smog levels remained the same.

The Environmental Protection Agency, after loosening anti-pollution rules, is leaving open the possibility of dropping some investigations into whether coal-burning power plants, refineries and factories are violating federal clean air laws. Administration officials say the rule changes last December and again in August cut red tape that prevented factories from upgrading equipment because of costly anti-pollution controls. Critics insist the changes will allow industry to pollute more.

*continued next page*

During the Clinton administration, the government began suing 51 aging power plants and succeeded in forcing several to install hundreds of millions of dollars of pollution-control equipment. Since then, about half the companies that operate the plants have settled with the Justice Department, resulting in estimated cuts of about seven million tons of pollutants annually.

**Federal Judge Nixes Deal for Atlanta to Tap More Water**

A federal judge in Alabama has ruled that a deal that would allow metro Atlanta to take as much as 50 percent more water from Lake Lanier violates a previous court order. The ruling, issued in October by U.S. District Judge Bowdre in Birmingham, jeopardizes the metro area’s plan for ensuring enough drinking water for the next 20 years. The order cited by Bowdre was issued after Alabama sued the U.S. Army Corps of Engineers in 1990. It said federal regulators could not promise any more water from Lake Lanier to metro Atlanta without the consent of Alabama and Florida. Georgia, Alabama and Florida have been fighting over access to common waters for more than a decade. In September, five years of negotiations fell apart, primarily over the water deal for metro Atlanta that left out Alabama and Florida. ■

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By Ken Smith  
Deputy Director/Chief Counsel

# THE LEGAL VIEWPOINT

## 2003 AAMA Update

Dues statements for membership in the Alabama Association of Municipal Attorneys (AAMA) for 2004 went out in November. The deadline for the return of dues is January 31, 2004. Membership is voluntary, but any attorney who represents municipalities is eligible for membership. If you are an attorney who represents municipalities, I hope you will strongly consider joining your fellow attorneys in this organization. The cost of an annual membership is only \$25.00.

This past year, AAMA held its midyear meeting in Opelika, following the format that was developed last year of splitting the meeting into two concurrent sessions, one for prosecutors and one for municipal attorneys. Again, this format seemed popular with attendees.

This is an election year for most municipalities in Alabama and AAMA and the League plan to offer many opportunities for assistance to attorneys. We have prepared an elections manual that is available on-line at the League's web site, [www.alalm.org](http://www.alalm.org). We also plan to host for the first time an elections training seminar in February in Montgomery strictly to instruct AAMA members on the laws applicable to the municipal election. The legislature made numerous changes in the election laws during the last legislative session and it is crucial that attorneys be aware of these developments.

### 2004 Midyear Meeting

The 2004 midyear seminar promises to be even more successful than the 2003 conference. In Opelika, we were able to iron out many of the wrinkles in the new format that we discovered the first year. As a result, the meeting in Opelika was, judging by comments, a resounding success. The facilities were first-class; the speakers and topics were uniformly informative and interesting; and the format, as mentioned above, was much appreciated.

In 2004, AAMA will return to the beach, this time to a resort community in Destin, Florida. The location will be

the Tops'l Resort. We have reserved a block of one-, two- and three-room condominiums for attendees. The dates for the meeting are Friday and Saturday, September 24-25, 2004. The Tops'l Resort is a fabulous facility directly on the beach, offering attendees a chance to bring their families for an extended weekend. We hope to see you in Destin.

### AAMA in Birmingham

While you're marking your calendar, don't forget the AAMA annual meeting in Birmingham. This meeting will be held on Saturday, May 22, 2004, at the Birmingham/Jefferson Convention Complex. The AAMA Planning Committee will be meeting soon to plan this event. Also, don't forget that the annual meeting is when the AAMA business meeting is held. If you are an AAMA member, you will have the opportunity to vote on by-law changes and to elect officers for the next two years. I hope you will plan to attend.

### Joining AAMA

Since its creation, AAMA members have worked closely with the Alabama League of Municipalities on conducting educational seminars for municipal attorneys and prosecutors, as well as the development and passage of legislation and ordinances. Additionally, AAMA has helped keep members informed about current developments in municipal law both in Alabama and nationally. AAMA has also provided the means for members to communicate with each other when seeking legal advice or assistance with court advocacy through the filing of amicus briefs.

AAMA's accomplishments are due to the input and participation of its members. Interest and participation in AAMA is at an all-time high. In 2003, more than 230 attorneys and prosecutors joined AAMA. These attorneys represent municipalities of all sizes and come from all parts of the state.

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One of the greatest services AAMA provides municipal attorneys and prosecutors is the opportunity to meet and confer with other attorneys in Alabama who face many of the same problems. Municipal lawyers confront unique issues that don't arise in the day-to-day practice of law in the private sector. From the application of federal regulations through the implementation and enforcement of local ordinances, municipal lawyers are on the front lines, advising officials and employees on a broad range of legal topics involving an endless variety of fact situations. Answers frequently must be given immediately, with little or no advance warning. An attorney's response influences public policy and can, potentially, subject the municipality or its representatives to liability. Keeping up with every law and regulation that affects municipalities is an impossible mission.

To help, AAMA hosts two conferences each year and brings in expert speakers from around the country. Members are provided ample opportunities at these meetings to discuss common concerns and potential solutions. Additionally, AAMA has an e-mail listserve for its members to share their thoughts, suggestions and news. An AAMA member can post a message to the listserve and have his/her message automatically sent to every other municipal attorney who is a member of the list. Presently, some 197 attorneys and prosecutors belong to the listserve and can provide nearly instantaneous responses.

AAMA also has a web page as part of the League's web site. News that is pertinent to attorneys is posted on this page. AAMA's page can be accessed at [www.alalm.org](http://www.alalm.org). Here, members can find a membership directory that provides them with contact information for other members. Members can also learn about upcoming educational opportunities.

Members may join one or more AAMA committees. There are five committees: Litigation, Prosecution, Ordinances, Legislation and Conference Planning.

These committees benefit the League and its members, as well as AAMA members. The Conference Planning Committee has been instrumental in the success of both the annual and midyear conferences the past few years. Evaluations for these meetings have been extremely high since AAMA was organized and this accomplishment can be traced directly to the effort and assistance of the attorneys who serve on this committee. The Prosecution Committee planned the prosecution session of the midyear meeting and did an outstanding job. Members of the Legislation Committee have reviewed bills and offered public comments to legislative committees. Members of the Ordinance Committee have assisted the Alabama Law Institute's Ordinance Review Service.

The AAMA by-laws are included below. If you aren't a member of AAMA and represent municipal attorneys or

prosecute municipal cases, I hope will join with your fellow municipal attorneys and prosecutors in AAMA. If you were a member in 2003, I hope you will rejoin.

## **CHARTER OF THE ALABAMA ASSOCIATION OF MUNICIPAL ATTORNEYS OF THE ALABAMA LEAGUE OF MUNICIPALITIES**

### **Governing Document**

This Charter governs the organization known as the Alabama Association of Municipal Attorneys (AAMA), a Section of the Alabama League of Municipalities (ALM), a nonprofit association of Alabama municipalities.

#### **ARTICLE I**

##### **Name**

The name of this organization shall be the Alabama Association of Municipal Attorneys (referred to as "AAMA" or the "Section"), which shall be a section of the Alabama League of Municipalities (referred to as ALM).

#### **ARTICLE II**

##### **Purposes**

The purposes of AAMA shall be to do all of the following, but not for pecuniary profit:

1. To strengthen the quality of legal representation of municipal corporations through continuing education and the publication of newsletters and other works of interest in the field of municipal law;

2. To be an educational and research organization for the benefit of corporate counsel representing Alabama cities and towns which are members of ALM.

3. To provide corporation counsel representing public entities the opportunity to exchange ideas, to consult with one another, and to meet with persons in or associated with public corporation law.

4. To recognize persons who have made significant contributions to the area of municipal law.

5. In the performance of its purposes AAMA shall take no action in conflict with the constitution of ALM, nor jeopardize the tax-exempt status of ALM.

#### **ARTICLE III**

##### **Offices**

The principal office of AAMA shall be the principal place of business of ALM.

#### **ARTICLE IV**

## **1. Membership**

Every city and town attorney and prosecutor representing on a more or less regular basis a member of ALM, as well as their deputies and assistants, and ALM staff members, duly admitted to practice law in the State of Alabama, shall be entitled to full membership in the Section.

Any attorney admitted to practice law in the State of Alabama who has a substantial interest in municipal law may become an associate member upon application and approval by the Board of Directors.

Questions as to the status of an applicant as either a full or associate member shall be resolved by the Board of Directors.

## **2. Dues**

The amount of dues to be paid by each full member and associate member of the Section shall be determined by a majority vote of full members attending their annual meetings.

## **3. Meetings, Notice**

Annual meetings of AAMA members shall be on one or more dates of the annual convention of ALM, and at the same general location.

## **4. Quorum**

The number of full members of the Section present in person at any membership meeting of members shall constitute a quorum.

## **5. Voting Rights**

Each municipal attorney present in person who is a full member shall have one vote upon each matter to be considered at the annual meeting, or at any special meeting. Voting shall not be cumulative nor by proxy. Associate members shall be entitled to participate in the meetings and affairs of AAMA, but shall not have a vote.

# **ARTICLE V**

## **1. Officers**

Members of the Board shall include the following officers: President, Vice President, Secretary/Treasurer, who shall be the ALM Attorney, and the two Immediate Past Presidents.

## **2. Terms of Office**

Officers shall be elected to two (2) year terms, by a majority of the votes cast for each position by Section members present at annual meetings. Officers shall take office immediately upon their election. Nominations for Officer positions shall be by the Nominating Committee and

may be by nominations from the floor at annual meetings. The Nominating Committee shall consist of not less than three nor more than five AAMA members appointed by the President of AAMA.

## **3. Reelection**

Officers shall be eligible for reelection.

## **4. Qualification**

An officer must hold a full membership with AAMA at the time of election and must continue as a full member during his or her term of office. The subsequent loss of eligibility to participate in AAMA as a full member shall disqualify the officer from holding office.

## **5. Duties Of Officers**

**President:** The President shall preside at all meetings of the members of the Section and the Board. The President may appoint members to all standing and special committees except as otherwise provided herein. The President, or designee thereof, shall represent the Section at meetings of the ALM Board of Trustees.

**Vice-President:** In the absence of the President, the Vice-President shall perform the duties of the President. In the event of a vacancy in the position of President, the Vice-President shall succeed to the office of President for the unexpired term. Vacancies in the office of Vice-President shall be filled by the President.

**Secretary/Treasurer:** The Secretary/Treasurer shall give notice and keep minutes of all meetings of the Section members and the Board, and shall maintain the Section membership list. The Secretary/Treasurer shall account for all financial matters of the Section and report thereon at their annual meeting, and shall render such financial statements as the Board may require. The Secretary/Treasurer shall also be responsible for the municipal legal news publications of the Section, and their distribution to Section members.

**Immediate Past Presidents:** Among other assignments identified in this Charter, the Immediate Past Presidents shall serve to promote participation in Section activities. The Immediate Past Presidents shall perform other duties as the Board may request to use the talents and experience of this Officer to the advantage of the Section.

## **6. Compensation**

Directors and officer shall not be compensated for serving in their respective capacities.

# **ARTICLE VI**

## **Participation in Other Organizations**

*continued next page*

AAMA may join or cooperate with other national, state and local attorneys organizations which will benefit the Section and its members.

**ARTICLE VII**

**1. Contracts and Finance**

AAMA shall not have power to bind its future boards, nor to bind the ALM beyond the authorized budget to pay for goods and services without ALM consent. The President, or the Vice-President, and the Secretary/Treasurer shall be signatories to such agreements as are authorized.

**2. Checks and Other Instruments**

The Secretary/Treasurer shall have authority to execute any and all checks and other negotiable instruments authorized by the membership, on behalf of the Section.

**ARTICLE VIII  
Charter Amendment**

This Charter may be amended by the members of the Section having full voting membership, who are present in person at any annual meeting of AAMA. Amendment shall require a vote in favor of amendment by at least two-thirds (2/3) of such members present. The written text of any proposed amendment shall be furnished all members at least thirty (30) days before the meeting at which the amendment is to be considered.

**ARTICLE IX**

Upon termination of AAMA as a Section of ALM, all assets of AAMA shall become the property of ALM.

**NOTE:** The 2004 Membership Application is on page 23.

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Lorelei A. Lein  
League Counsel

# Legal Notes

## COURT DECISIONS

**Annexation:** An act which alters city limits based on the results of an annexation election authorized by a prior act does not violate the Alabama Constitution even though the act took effect immediately after a trial court judgment invalidating the prior act. The subsequent act did not retroactively affect any rights available to the plaintiff's under then existing law but rather created an independent, prospective annexation. *City of Daphne v. City of Spanish Fort*, 853 So.2d 933 (Ala. 2003). **NOTE:** See related decision in *City of Daphne v. City of Spanish Fort*, 774 So.2d 567 (Ala. 2000).

## DECISIONS FROM OTHER JURISDICTIONS

**Inverse Condemnation:** A property owner's claim that the government effected a Fifth Amendment taking of its property as a result of increased storm drainage caused by the government's construction of a facility on an adjacent uphill site does not require a showing that the entire property was destroyed or permanently invaded but, instead, can be established as a taking of flowage easement by inverse condemnation if the property owner can prove that the damaging effects were predictable consequences of the government's action and that the owner had a protectable property interest in the parcel that is the basis of the takings claim. *Ridge Line Inc. v. United States*, 346 F.3d 1346 (Fed. Cir. 2003).

**Telecommunications:** A provider of service that permits voice communications via the Internet provides an "information service" that cannot be regulated by the states as a "telecommunications service" under the 1996 Telecommunications Act. *Vonage Holdings Corp. v. Minnesota Public Utilities Comm'n.*, – F.Supp.2d –, 2003 WL 22567645 (D. Minn. Oct. 16, 2003).

## ATTORNEY GENERAL OPINIONS

**Competitive Bid Law:** An E-911 board must comply with the Competitive Bid Law when determining which ambulance providers receive dispatch calls. Such boards should work with municipalities and ambulance service providers to ensure the most efficient service to persons in their districts. 2004-009.

**Capital Improvement Fund:** A municipality may transfer any available money from the Alabama Trust Fund monies it maintains in a separate account pursuant to law into their general fund account for the purpose of purchasing real property for the construction of a new city hall. 2004-010.

**Appropriations:** If a county determines that a public purpose is served, Section 94 of the Alabama Constitution is not violated by the county utilizing its equipment and employees to assist a soil and water conservation district in conducting stream or creek restoration and protection project. 2004-012.

**Industrial Development Boards:** Pursuant to Section 11-54-83, a municipal industrial development board has no authority to change the style of its name from anything other than "The industrial development board of the \_\_\_\_\_ of \_\_\_\_\_." 2004-014.

**Sunshine Law:** A county commission may select the method of electing its chair. However, voting by written ballot to elect a chair should be done only when a decision absolutely cannot be reached with voice votes or a show of hands. 2004-016.

*continued next page*

**Jails:** The expenses of a municipal inmate are to be assessed against the inmate. If the inmate is indigent and has been convicted of violating a municipal ordinance, the municipality is responsible for the costs and expenses of housing indigent municipal prisoners in the county jail. The county is responsible for the medical expenses of county inmates housed in the county jail. A municipality, however, is not responsible for the medical costs of a municipal inmate housed in a county jail unless the municipality has contracted to provide for such costs. 2004-017.

**Public Works Bid Law:** A city has met the “substantial compliance” standard set forth by Alabama’s Appellate Courts if it inadvertently advertises for a public works contract in one newspaper that is not of statewide general circulation and has let the contract before determining that the advertisement ran in error. 2004-018. **NOTE:** This opinion involves a very specific set of facts and should be examined carefully before being relied upon.

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# Federal Legislative and Regulatory Issues

Mary Ellen Wyatt Harrison  
Staff Attorney

## Internet Tax Bill Vote Postponed

On November 7, 2003, the Senate decided to postpone a vote on the Internet Tax Non-Discrimination Act, or Senate Bill 150. At the point of publication of this article, it was uncertain when the bill would be voted on.

The bill was pulled from the Senate floor in early November due to the efforts of local and state governments that rallied in support against the bill. The bill causes concern because it would preempt local governments' ability to collect telecommunication taxes and generally applicable gross receipts and utility taxes.

Senate Commerce Committee Chairman John McCain (R-Ariz.) took the floor during the hearing and urged a resolution before the Senate's Christmas break.

## Senate Committee Approves Highway Legislation

The Senate Environment and Public Works Committee approved legislation that would authorize \$255 billion over six years for highway construction and expand the state infrastructure banks program to all 50 states. The bill does not spell out how the provisions will be funded. Many Senators expressed concern over this fact.

The Transportation Equity Act for the 21<sup>st</sup> Century was extended through February after it expired at the end of the fiscal year this year.

The Finance Committee is working on drafting the funding mechanism for the bill, which will likely be included in the public works committee's measure next year on the Senate floor.

## Brownfield's Conference Held in Portland

The Environmental Protection Agency (EPA) held a conference on brownfields the first week in November in Portland, Oregon.

Many of their sessions addressed the 2003 brownfields legislation, including new funding levels, new eligibilities and successful local government implementation, augmented with best practices workshops.

The new legislation will expire in 2006, and it provides a dramatic increase in funding levels; however, it restricts

eligibility only to sites acquired after the act was passed, and does not provide funding for administrative costs. The Senate is trying to address these issues in the appropriations bill.

One concern addressed at the conference was new eligibility of leaking underground storage tank sites (LUST). Formerly, these sites were not available for funding, but under the new law, up to 25 percent of funding appropriated can be used for these sites.

The General Accounting Office estimates that there are 200 abandoned gas stations in the United States. These sites can qualify for this funding, including abandoned car dealerships and car rental companies.

As more sites are discovered, and as more sites are abandoned, pressure to increase funding will increase tremendously.

For more information, please see the EPA Petroleum Brownfields Fact Sheet at [http://www.epa.gov/oust/ustfield/phc\\_facts.pdf](http://www.epa.gov/oust/ustfield/phc_facts.pdf). At the end of 2003, the Section 198 Brownfield Expensing Tax Initiative, which provides tax benefits to private developers who clean-up their brownfield sites, will expire. Please let your Senator know if you would like for this initiative to continue.

## Senate Committee Passes Head Start Bill

Members of the Senate's Health, Education, Labor and Pensions (HELP) Committee marked up legislation the last week of October that reauthorizes Head Start. The Bush Administration proposed a block grant of the program earlier this year; however, the measure does not contain a plan to block grant the popular Head Start program to the states. Head Start was created in 1965 by President Lyndon Johnson as one of "The Great Society" initiatives. The program provides an array of comprehensive services to the neediest pre-schoolers in the nation. Since the inception of the program, more than 20 million children and their families have benefited from Head Start. In 2002, Head Start and Early Head Start programs worked with more than 900,000 children through 2,590 local programs.

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The legislation authorized as much as \$2 billion in additional funds over the next five years to expand Head Start programs. Once authorized, the \$2 billion will have to be included in the federal budget and subject to the Congressional appropriations process.

### **Firefighter Safety**

The Federal Emergency Management Agency (FEMA) has released a special report compiled by the U.S. Fire Administration on the risks of firefighting training and ways to reduce deaths and injuries to firefighter trainees. The report emphasizes the inherent danger of firefighter training, and the report reiterates the importance of experience gained in real fires. The review also highlights the importance of following procedures and standards to avoid training deaths and injuries, and the need for instructors to avoid situations for which students are not prepared. According to FEMA, reported training-related injuries have increased by nearly 21 percent since 1987. In 2001, almost 7,000 training-related injuries were reported. While live fire training buildings and simulators fed by propane or natural gas have built-in safety features, these simulations do not provide the same quality as live fire training, said FEMA. In addition, training is needed for situations that involve hazards other than fires, such as hazardous materials incidents, which increase the danger to participants. A copy of the full report can be found at <http://www.usfa.fema.gov/applications/publications/tr100.shtm>.

### **Funding for Emergency Calls**

The House passed legislation that would provide \$100 million in each of the next five years to promote the ability of wireless phones to reaching 9-1-1 call centers. The E-9-1-1 Implementation Act of 2003, H.R. 2898, would authorize grants to states, local governments and tribal organizations to plan, improve infrastructure, purchase telecommunications equipment and train 9-1-1 call center personnel to implement enhanced 9-1-1 (E-9-1-1) wireless services, or systems that can pinpoint the location of persons who call the emergency number from a mobile telephone. The bill would provide up to \$100 million for these activities annually through FY 08. Grantees would have to match at least 50 percent of the project cost. Entities eligible for the grants would have to coordinate their applications with the PSAPs located in their jurisdiction; establish a plan for the coordination and implementation of E-9-1-1 services; and integrate telecommunications services involved in the implementation and delivery of E-9-1-1 services. States would also have to designate a governmental body or officer to coordinate the implementation of E-9-1-1 services. H.R. 2898 also would establish an E-9-1-1 Coordination Office to improve

communication between federal, state and local public safety officials. Similar legislation, S. 1250, is pending a vote in the Senate.

### **Program Funding for Addressing Health of Aging Americans**

The Robert Wood Johnson Foundation (RWJF) will provide funding for local partnerships that address quality-of-life issues for persons over age 60 to improve long-term care and supportive services systems for older adults who are at risk of disability because of poverty, race, ethnicity, chronic illness or age, or physically or cognitively impaired.

The foundation is the nation's largest philanthropy focusing on health and health care issues. Through its Community Partnerships for Older Adults program, RWJF funds the development and implementation of collaborative efforts — involving social service and health organizations, nonprofit and public agencies, private businesses, community leaders, elected officials, tribal leaders, caregivers and older adults themselves — to better address the needs of America's senior population.

Up to 17 partnerships will be funded with development grants of as much as \$150,000. Twelve grantees will receive implementation grants of up to \$750,000 each as well.

Public entities and nonprofit organizations may apply for the grants on behalf of a community partnership, provided the group has existed for at least two years and represents 10,000 or more residents age 60 and older. Only one grant will be awarded per geographic area.

Development grants must be used to:

assess the strengths and challenges of a community's long-term care and supportive services, and identify the concerns and preferences of older adults and their caregivers; identify and prioritize system changes that will result in sustainable improvements; develop a work plan that includes measures of success for implementing system improvements; and strengthen the partnership among public, nonprofit and private organizations. Development grants require a 20 percent match.

Recipients of implementation grants must:

implement the plans they created with their development grants; create communitywide changes and improvements to long-term care and supportive services that will be sustained after RWJF funding is completed; create a greater awareness of the facts about an aging society and their

implications for the future; and share their experiences with other communities.

A 25 percent match is required for the first year of an implementation grant. By year four, grantees must match 50 percent of the cost.

Letters of intent must be submitted by interested applicants no later than Jan. 9, 2004. In no more than five pages, a letter should briefly describe the community partnership's history, successes and governance structure; the target population; the current long-term care and supportive services infrastructure; the scope, goals and objectives of the proposed project; the project's work plan; the roles and responsibilities of the applicant agency; and what types of technical assistance the partnership would need.

From these letters, RWJF will determine which partnerships it would like to invite to submit an application, and full proposals will be due in April 2004.

Proposals will be evaluated according to the following criteria:

evidence of the partnership's success in improving the lives of older adults; clarity and feasibility of the project scope, goals, objectives, strategic plan and budget; and meaningful participation by older adults in the partnership.

RWJF plans to announce grantees in December 2004. Letters of intent and full applications can be submitted online only at <http://www.partnershipsforolderadults.org>.

### **Child Nutrition Bill**

The Senate has voted to continue funding school lunch and other child nutrition programs until March 31, 2004, to keep meals at a low cost for needy school kids and their families while Congress works on reauthorization legislation.

Without the extension, which now awaits the president's signature, the National School Lunch and School Breakfast programs, the Special Supplemental Nutrition Program for Women, Infants and Children, the Child and Adult Care Food Program, the After School Snack Program and the Summer Food Service Program would have expired Nov. 7, 2003.

The Senate passed H.R. 3232 on the eve of the expiration date. House action on the measure occurred Oct. 28, 2003.

In related news, two other bills aimed at improving the health of schoolchildren have been proposed.

To combat obesity, Sen. Arlen Specter, R-Pa., has proposed legislation that would help school cafeterias acquire more nutritious food while also teaching students about the value of such products. The Farm-to-Cafeteria Projects Act of 2003, S. 1755, would authorize \$10 million annually through FY 07 for programs that connect students with local farms.

Nonprofit organizations and educational institutions would be eligible for grants of up to \$100,000 each to purchase food from local farms, as well as for storage and preparation equipment for school cafeterias. Funds also could be used to conduct training and education programs for the benefit of cafeteria workers and students.

Favored projects include those that would involve:

procuring local foods from small- and medium-sized farms for school meals; supporting nutrition education activities or curriculum planning that incorporates school children in farm and agriculture education projects; and developing a sustained commitment to farm-to-cafeteria projects in the community by linking schools, agricultural producers, parents and other community stakeholders.

S. 1755 has been referred to the Senate Committee on Agriculture, Nutrition and Forestry.

The second related proposal involves expanding eligibility for free school lunches and breakfasts.

Under this bill, reduced price lunches and breakfasts would be phased out over a five-year period while the number of children qualifying for free meals would increase simultaneously.

Between the 2003 and 2008 school years, the minimum income requirement to participate in the school lunch program would be raised from 130 percent of the poverty level to 185 percent. Come July 1, 2008, only free lunches would be available.

H.R. 3441 has been referred to the House Education and the Workforce Committee. Similar legislation, S. 1549, has been introduced in the Senate by Sen. Elizabeth Dole, R-N.C., and Sen. Pat Roberts, R-Kan.

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Would you be willing to serve as a regional chair and contact attorneys in your area concerning legal developments? \_\_\_\_\_ Yes   \_\_\_\_\_ No

Do you prosecute cases in municipal court? \_\_\_\_\_ Yes   \_\_\_\_\_ No

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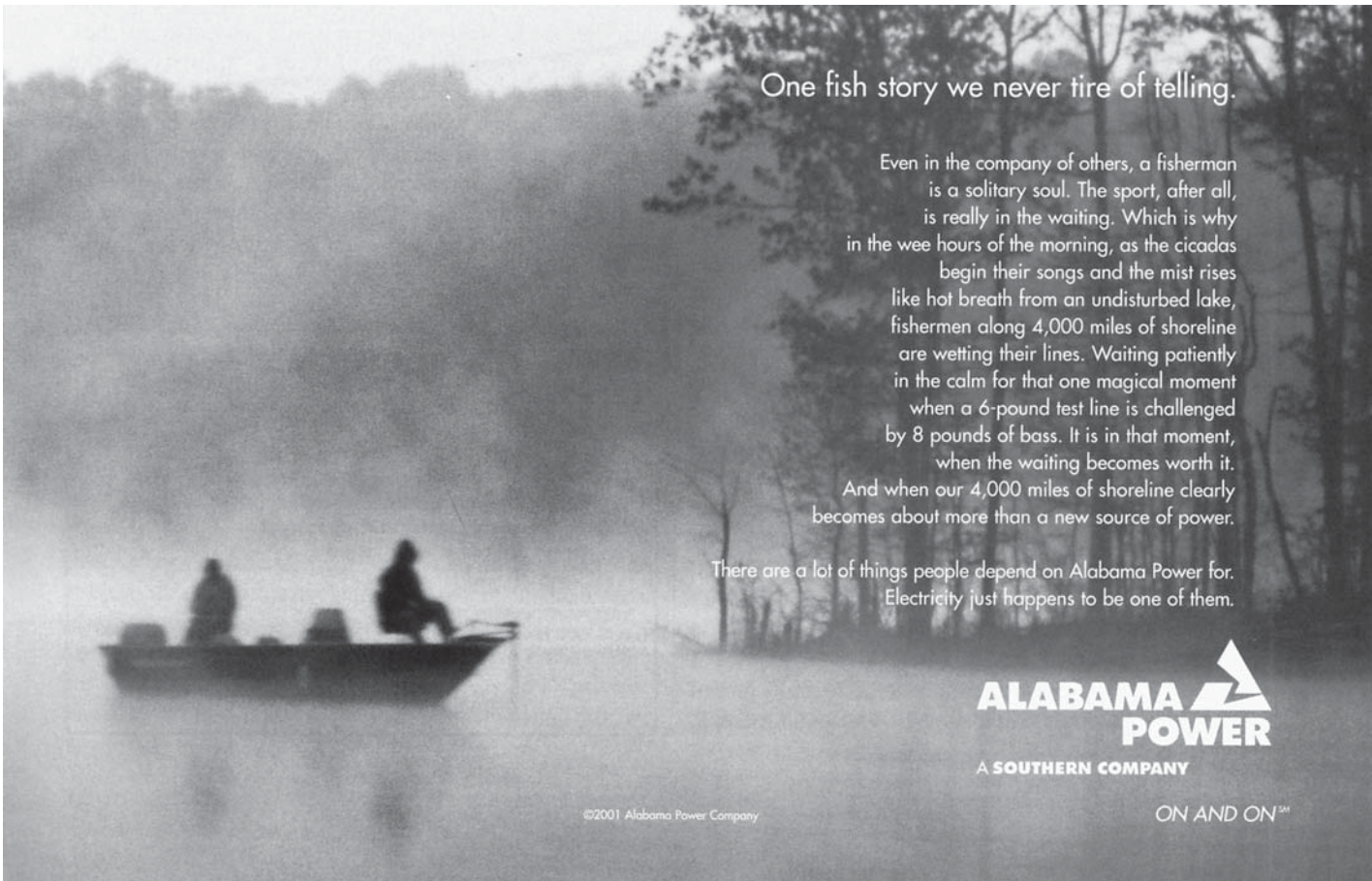
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# Speaking of Retirement

## Important Tax Information

Q. Are my retirement benefits from the RSA subject to federal income tax?

- A. Generally, your retirement benefit is subject to federal income taxation.

However, contributions to the RSA that were previously taxed and/or purchases of service credit with previously taxed funds are exempt from federal taxation over the life expectancy of the retiree.

Q. How will the taxable amount of my retirement benefit be reported to me?

- A. During the last week of January 2004, the RSA will mail all retirees a Form 1099-R Income Statement for use in filing a personal income tax return. The 1099-R will report the retirement benefits subject to federal income tax.

Approximately a week prior to mailing out the 1099-R, the RSA will send each retiree a letter outlining the tax reporting procedures needed to file their 2003 tax return.

Q. Are RSA retirement benefits subject to state of Alabama income tax?

- A. If you reside in Alabama, RSA retirement benefits are **not** subject to state of Alabama income tax. If you reside in another state, check with that state's revenue department to determine your tax status or click on [www.1040.com](http://www.1040.com).

Q. How do I increase the federal taxes withheld from my retirement check?

- A. You can increase the federal taxes by completing a Withholding Certificate for Pension or Annuity Payments form. You

can request this from the RSA by telephoning 334-832-4140 or 1-800-214-2158 toll-free (extension 399 for the Employees' Retirement System or extension 499 for the Teachers' Retirement System), writing the RSA at P.O. Box 302150, Montgomery, Alabama 36130-2150 or downloading the form from our web site at [www.rsa.state.al.us](http://www.rsa.state.al.us).

You can also obtain a Withholding Certificate, as well as other tax forms by contacting the IRS at 1-800-829-3676 or downloading it from the IRS Web site, [www.irs.gov](http://www.irs.gov).

Q. If I do not receive a Form 1099-R from the RSA by February 10, 2004, how may I obtain one?

- A. The RSA will provide a duplicate Form 1099R, but not until after February 10, 2004.

The original Form 1099-R is mailed to the home address on file with the RSA. If you have moved and have not provided the RSA with your correct address, the U.S. Postal Service may not forward your Form 1099-R.

To correct your mailing address, send the RSA written verification of your new address and include your full name and Social Security number. You can also obtain a Change of Information form from the RSA or download the form from our Web site.

Prepared by the Communications staff of the Retirement Systems of Alabama. To have your questions answered in "Speaking of Retirement", please address them to: Mike Pegues, Communications, Retirement Systems of Alabama, 135 South Union St., P. O. Box 302150, Montgomery, Alabama 36130-2150.

## Willie Maude Snow

**Willie Maude Snow**, former mayor and councilwoman of Hobson City died October 4, 2003. She was 68.

Snow was the first woman councilmember and mayor. Her public service record spanned three decades, including 11 years as a councilmember, one year as mayor pro-tem and 20 years as mayor. She was also a leader at the state level where she served as president of the Alabama Conference of Black Mayors. She was an active member of New Hope Missionary Baptist church as well as many civic organizations.

She is survived by her husband, two sons, two daughters and nine grandchildren. ■

## Thomas Edwin (Ed) Allen, Sr.

**Thomas Edwin (Ed) Allen, Sr.**, former mayor and councilmember of LaFayette, died October 17, 2003. He was 84.

Allen served on the Council for 32 years and was mayor for eight years. He was a charter board member of Home Federal Savings and Loan and owned Allen's Flowers for 30 years. He was a member of First United Methodist Church.

He is survived by wife, four children and nine grandchildren. ■

## Jack Sides

**Jack Sides**, former mayor of Cullman, died October 26, 2003. He was 74.

Sides was first elected mayor in 1984. He was elected mayor again in 1992, serving until 2000. In addition, he served as a Cullman County Commissioner from 1972 to 1978. He owned his own vending operation for 15 years before becoming the owner of Sides Concrete Products, which he retired from in 1980. ■

## Bobby R. Byram

**Bobby R. Byram**, former mayor of Leesburg, died November 7, 2003. He was 65.

Byram served as Leesburg's second mayor from 1979 to 1984. He is survived by two sons, and two grandchildren. ■

## Earl Neese

**Earl Neese**, former mayor of Florala died October 5, 2003. He was 81.

Neese was elected to the Council in 1992 and then became mayor pro-tem. He became mayor in 1995 when the current mayor resigned. He served in the Army Air Corps in World War II as a tail gunner and received many ribbons during his tour, including a bronze star. He was a member of the American Legion, Scottish Rite, Murat Temple and the Brownsburg Masonic Lodge #241 where he served as a past master and was a 50-year member.

Neese is survived by his wife, son, daughter, three stepdaughters, 10 grandchildren and 20 great-grandchildren. ■

## Penwell L. "Penn" Woods

**Penwell L. "Penn" Woods**, former mayor of Jasper, died October 20, 2003. He was 87.

Woods was a municipal employee for 30 years, including a period in which he served as city manager and city clerk. After retirement, he ran for mayor and was elected in 1984. He left office in 1996 after being re-elected for two additional terms.

A U.S. Army veteran of World War II, he is survived by his wife, a son, a daughter, and three grandchildren. ■

## Bowman Griffin, Jr.

**Bowman Griffin, Jr.**, mayor of Baker Hill, died October 31, 2003. He was 72.

Griffin was Baker Hill's first and only mayor. He won the post in 1997 when the residents voted to incorporate the community. He was re-elected in 2000. ■

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