

THE ALABAMA MUNICIPAL JOURNAL

April 2004

Volume 61, Number 10

2004 Convention Preview



Mayor Bernard Kincaid

Alabama League of Municipalities
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- Program Overviews for Municipal Attorneys, Municipal Clerks and Public Personnel Administrators
- Convention Entertainment

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 J. KENNETH SMITH, Deputy Director/Chief Counsel, kens@alalm.org
 STEPHEN S. MARTIN, Finance Director, stevens@alalm.org
 ROBERT C. BLACK, General Counsel
 CARRIE A. BANKS, Communications Director, carrieb@alalm.org
 GREGORY D. COCHRAN, Director, Intergovernmental Relations, gregc@alalm.org
 EDYE GOERTZ, Member Services Director, edyeg@alalm.org
 LORELEI A. LEIN, League Counsel, loril@alalm.org
 MARY ELLEN WYATT HARRISON, Staff Attorney, marye@alalm.org
 TWANNA MILLER KING, Legal Research, twannak@alalm.org
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2004 CONVENTION PREVIEW

Welcome to Birmingham!

Mayor Bernard Kincaid and the Birmingham City Council extend a warm welcome to all delegates and spouses to the 2004 League Convention. They hope your stay in the Magic City will be both pleasant and productive. The League staff would like to thank Mayor Kincaid and his staff; the Birmingham City Council; and the dedicated municipal personnel who have put in the extra time to make this convention a success.

Convention Pre-Registration Advised

To save time when arriving to Birmingham, delegates are advised to preregister with League Headquarters. Registration materials were mailed to each municipality in January. Additional registration packets can be obtained by calling the League office at 334-262-2566. This information is also available on the web at www.alalm.org. In addition to giving registrants more time for convention activities, preregistration assists the league staff in making arrangements for the large number of delegates who always attend the League's Annual Convention.

It is especially important for delegates and their spouses who wish to play in the Annual Municipal Golf Tournament on Sunday morning, May 23, to send in their advance entry forms as soon as possible. These forms are included in the registration packets available through the League office. The golf tournament will be a four player scramble with a shotgun start again this year. **You must be at the Mountain View Golf Course in Graysville at 7:30 a.m. to play.**

The Convention Program

Please take a moment to review the "Quick Guide to the Convention" segment on the next page for a brief overview of convention proceedings. In addition, the following pages provide program highlights which have been developed for each component of our municipal family. For the concurrent sessions, we urge each municipality to assign at least one member to each session so your municipality can benefit from all of the information presented. In addition to the concurrent sessions, we want to emphasize the importance of the following events:

- **Resolutions Committee meeting on Sunday, May 23 at 3:00 p.m.**
- **Opening Session on Monday, May 24 at 9:00 a.m.**
- **Ask Your Attorney/Roundtable Discussions on Tuesday, May 25 at 9:00 a.m.**
- **General Business Session on Tuesday afternoon at 3:00 p.m.**

We encourage each delegate to attend these sessions and to participate fully in convention proceedings. We on the League staff hope that your attendance at the 2004 convention is both beneficial and informative to you as municipal officials and to the continued progress of your communities. If we can assist you in any way, please don't hesitate to ask.

Exhibit Hall Information

The Exhibit Hall will be open Monday, May 24 from 10:00 a.m. to 5:00 p.m. and from 6:00 p.m. to 7:00 p.m. On Tuesday, May 25, the Hall will be open from 8:00 a.m. through lunch. The League has created several quality times for interaction between the exhibitors and officials by scheduling the Monday evening reception and the Tuesday morning coffee breaks in the Exhibit Hall. Holding these activities in the Exhibit Hall affords mayors, councilmembers and municipal employees the opportunity for additional interaction with exhibitors during the convention. There will be 176 booths and 12 bulk space vendors at this year's convention in Birmingham. For a complete list of vendors participating in this year's trade show, visit our website at www.alalm.org.

Welcome Reception

The League's Welcome Reception will take place Saturday, May 22 from 6:00 p.m. until 7:00 p.m. in the Piazza of the Birmingham-Jefferson Convention Center. Beer, wine and light finger foods (cheese, pretzels, etc.) will be served. Dinner is "on-your-own."

Spouses' Program

Saturday, May 22

Welcome Reception (see above).

Sunday, May 23

Spouses are invited to play in the Annual Municipal Golf Tournament at Mountain View Golf Course in Graysville. No activities have been scheduled for Sunday evening to allow delegates and spouses to enjoy the attractions and fine cuisine Birmingham has to offer.

Monday, May 24

The annual Spouses' Breakfast will begin at 9:00 a.m. in the Sheraton Birmingham Ballroom. Special entertainment is planned for that morning. See the "Quick Guide to the Convention" on this page for other Monday activities.

Tuesday, May 25

Special activities for spouses on Tuesday are still in the planning phase. Be sure to check the League's website at www.alalm.org for an update. See the "Quick Guide to the Convention" on this page for other Tuesday activities.

**Visit the League's website
at www.alalm.org for
additional convention
information.**

QUICK GUIDE TO THE CONVENTION

SATURDAY, MAY 22

- 1:00 p.m.-5:00 p.m. **Registration** – Birmingham-Jefferson Convention Center (BJCC), East Exhibit Registration
- 3:00 p.m. **AMIC Annual Meeting** – BJCC, East Meeting Rooms D-E-F
- 6:00 p.m. - 7:00 p.m. **Welcome Reception** – BJCC Piazza
- 8:00 a.m.-5:00 p.m. **Municipal Law Conference** – BJCC, East Meeting Room N

SUNDAY, MAY 23

- 7:30 a.m. **Annual Municipal Golf Tournament** – Mountain View Golf Course, Graysville
- 1:00 p.m.-5:00 p.m. **Registration** – BJCC, East Exhibit Registration
- 3:00 p.m. **Resolutions Committee*** – BJCC, East Meeting Room N

MONDAY, MAY 24

- 8:00 a.m.-5:00 p.m. **Registration** – BJCC, East Exhibit Registration
- 9:00 a.m.-11:00 a.m. **Opening Session*** – BJCC, East Ballroom B
- 11:15 a.m.-12:15 p.m. **Dr. Willie Larkin*** – BJCC, East Ballroom B
- 12:30 p.m. **Luncheon** – Governor Bob Riley (invited), Sheraton Birmingham Ballroom
- 2:00 p.m. - 5:15 p.m. **Concurrent Sessions*** – BJCC
- 6:00 p.m. **Reception** – BJCC, East Exhibition 2-3
- 7:15 p.m. **Banquet** – Sheraton Birmingham Ballroom
- Entertainment** – Lorrie Morgan, BJCC, Concert Hall

TUESDAY, MAY 25

- 8:00 a.m.-3:00 p.m. **Registration** – BJCC, East Exhibit Registration
- 9:00 a.m.- 12: 30 p.m. **Ask Your Attorney – Roundtable Discussions*** – BJCC
- 12:45 p.m. **Box Lunches** – BJCC, East Exhibit Lobby
- 3:00 p.m. **General Business Session** – BJCC, East Ballroom B
- 6:00 p.m. **Reception** – Sheraton Birmingham Ballroom
- 7:15 p.m. **President's Banquet** – Sheraton Birmingham Ballroom
- Distinguished Service Awards; CMO Classes of 2004; Installation of officers
- Entertainment** – Humorist, Dr. Charles Petty, BJCC, Ballroom

* Attendance at session will earn credits in the Elected Officials Training Program (basic or advanced) or Continuing Education Credits.

Casual dress is appropriate for all meetings. Business attire is appropriate for the Monday and Tuesday evening banquets.

Municipal Clerks' Program May 24-25

The program for municipal clerks will begin at 8:00 a.m. on Monday, May 24 with the breakfast and business meeting of the Alabama Association of Municipal Clerks and Administrators (AAMCA) in the East Meeting Room O of the Birmingham-Jefferson Convention Complex (BJCC).

At 9:00 a.m., clerks will meet in East Meeting Room N of the BJCC for the remainder of the Monday program. Clerks will meet in East Meeting Rooms D-E-F of the BJCC on Tuesday. Topics will include:

- Legislative and Legal Update
- Poll Workers' School
- Elections 101 (Basic Elections Rules)
- Elections: Panel of City Clerks
- Revenue Sources and Franchise Fee Issues
- Personnel Issues
- Parliamentary Procedure

Association of Public Personnel Administrators' Program May 24

The program for public personnel administrators will begin at 8:00 a.m. on Monday, May 24 in the Birmingham-Jefferson Convention Complex, East Meeting Rooms K-L.

Cami Hacker, Personnel Analyst for the Montgomery City-County Personnel Department will be the instructor for this program. Cami has been involved in governmental personnel work for the past 10 years. She has worked with the State of Alabama Personnel Department conducting job analysis and developing selection instruments. For the past few years, she has been with the Montgomery City-County Personnel Department conducting job analysis for reclassification, classification development, compensation, job description development and test development purposes. Topics for this program will include:

- Job Analysis, Including the Reasons for Job Analysis
- Making Job Analysis Decisions
- Methods of Job Analysis
- Problems Encountered During Job Analysis and Solutions
- Writing Work Function, Task and KSA Statements
- Job Descriptions and Class Specifications
- Using Job Descriptions and Class Specifications to make Human Resource Decisions

Program for Municipal Attorneys

Municipal attorneys are invited to participate in the Annual Municipal Law Conference on Saturday, May 22 in the Birmingham-Jefferson Convention Complex.

8:00	Registration	11:45	AAMA Business Meeting
8:30	Legislative Update – Perry Roquemore, Executive Director, ALM	12:00	Lunch – Provided
9:00	Construction Contracts – Post-Contact Recovery – Jim Archibald, Bradley, Arant, Rose & White, LLP	1:00	Internet Taxation – Where Are We Now and Where Are We Going? – Bettye Griggs, Revenue Officer, Birmingham; Frank Lopez, Revenue Officer, Hoover; Mary Ellen Wyatt Harrison, Staff Attorney, ALM
10:00	Who is the Client? Conflicts of Interest – Tim Nunnally, Assistant City Attorney, Tuscaloosa	2:00	Family Medical Leave Act – Robert Spence, Crownover, Standridge & Spence
10:30	Break	3:00	Abandoned Vehicles – Ed Smelser, Attorney at Law, Mobile
10:45	Hiring Former Employees – Retirement and the Revolving Door – Jim Sumner, Executive Director, Alabama Ethics Commission	3:30	Break
11:15	Exemptions Under the Bid Law – Don Lawley, Attorney at Law, Montgomery	3:45	How to Handle the Notice of a Tort Claim – Lori Lein, League Counsel, ALM
		4:15	Attorney General's Opinion Update – Carol Jean Smith, Assistant Attorney General
		4:45	Adjourn



Lorrie Morgan to Perform Monday

From a demo singer for music publisher Acuff-Rose and a resulting first recording contract with Hickory Records, Lorrie Morgan has blossomed into one of the most successful and consistent female country artists today. As a vocalist, songwriter, musician and performer, she's always fresh, exciting and inspiring.

Morgan quickly became one of country music's most popular and successful female artists charting over a dozen top ten hits including "Five Minutes," "What Part of No," and "I Didn't Know My Own Strength" which all landed at number one. Recognized as a creative force in music videos, Lorrie charted eight number one videos at CMT. Praise from her peers and fans followed, and Morgan earned nine industry awards including four wins as Female Vocalist of the Year (1994, 1996, 1997, 1998). She made her acting debut in the TNN movie *Proudheart* and has made countless appearances on major network television shows including *The Late Show with David Letterman*, *The Tonight Show with Jay Leno*, and *Good Morning America*, among others. ■



Humorist Scheduled for Tuesday

Dr. Charles Petty is a family humorist, speaking to businesses, trade associations, chambers of commerce, volunteer and civic organizations, as well as teachers and educators. He was reared in the farming communities of England and Stuttgart, Arkansas. He has the rare ability to package profound, life-changing truths in humor.

He learned about the importance of family from the school of hard knocks. His parents divorced when he was six. His mother died three years later and he then lived in a blended family. When he was 16 his father and younger brother were killed in a car accident. He lived by himself for a year and then became a foster child.

Dr. Petty has been a counselor, visiting professor, worked for large corporations in Texas and North Carolina, and for seven years was on the senior staff of the North Carolina Governor. He is founder and President of Family Success Unlimited, and since 1985 has been a full-time speaker. He has been inducted into the Speaker Hall of Fame by the National Speakers Association. ■



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The President's Report

Dan Williams
Mayor of Athens

The Sunshine Law

There has been a lot of talk in the newspapers this weekend about the "Sunshine Law." I think someone had designated that this weekend was the right time for editorials about the subject to enlighten an unenlightened public. According to what I've read, the current law was passed by the Legislature in 1915 because of the rising strength of the Ku Klux Klan, and the only exception to the law was a governing body could meet in private to discuss the good name and character of a person. They must have felt that some members of governing bodies could have been members of the Klan and that private meetings would involve more than the good name and character of a person. They were probably correct.

I also read that in the 89-year history of the law there has never been a criminal conviction related to the law. This makes me think that everyone is obeying the law to the fullest – or that they're getting around it in some manner. I doubt that everyone, for 89 years, has been so pure that they've never had a questionable meeting. Surely, somewhere along the line, a Council or Commission was discussing the good name and character of the City or County Clerk, and – while in the meeting – decided to buy a bull dozer or talk about needing to get rid of the Police Chief. According to the current law, that would be illegal and someone could be tried as a criminal for that act.

The newspapers were lamenting the rulings of the State Supreme Court that supposedly tore the guts out of the Sunshine Law. According to them, the governing bodies can now set up committees to do the work of the government – as long as there are less than a quorum of the body that are members of the committee. They call it government by committees in private. They listed the Auburn Board of Trustees as an example of this. From all I've read about my Alma Mater lately, everything should have been private and undisclosed, especially the recruiting trip to Kentucky and the fact that Ed Richardson is still paying the former President his salary to be a consultant. That's so ugly I don't think anybody wants to think about it. I think the newspapers feel City Councils and County Commissions are constantly looking for ways to get around having private meetings.

My City recently adopted a Master Plan after a year of planning and work with a consulting firm. The process provided numerous public meetings for citizens to attend and give input into the process. There were actually a very small number of people who did attend these publicly announced meetings and many of them were people who live outside the City limits. Most of them were opposed to our city having a Master Plan, although we had been operating under a plan developed by our TARCOC Agency in 1977. They attended and protested the Plan at the public hearing held by the Planning Commission and had the County ask for an opinion from the Attorney General about the legality of the Plan. The group had letters in the local newspaper this weekend protesting the plan being developed in private, away from the view of the public. They're saying we developed the Plan through secret meetings and that the public did not have access to them.

It will be interesting to see if the Legislature can come up with a new law that will satisfy the news media and everyone else while including themselves in it. I think the press is the main complainer about the current law. I guess they teach the reporters and people in journalism school that all public officials are crooked and do not want the light of day cast upon their activities.

That is true of some public officials, especially those who try to get our jobs. I always think it's the same thing as reporters making up bad stuff about me and then refusing to reveal their sources. They can and will print anything bad they can come up with, then stand firm on the principal of protecting the identity of the person revealing it to them. I think they ought to have to tell the Judge in private who it was, and then the Judge could ask that person if they told the information to the reporter. If they deny it, then the reporter is in bad trouble for lying. A lie by the media is as bad as governing bodies meeting in private. Neither one needs to engage in it. The media has as much responsibility to the public as an elected official when it comes to telling the truth and obeying the law.

I think, from the attendance of citizens at public meetings, and from the participation of the public in exercising their right to vote, that the public has a vast amount of trust in those elected officials. I think there ought to be a law that people who do not vote will be sentenced to attend every Council, Commission, School Board, Planning Commission and Zoning Commission meeting in their City and County for a six month period – and that they have to sit there for the *entire* meeting. I really believe this would insure that our citizens would never fail to vote in the future, and they would never have a desire to attend another public meeting. In fact, the people would probably rise up in arms and demand that all public meetings be held in private. ■

Municipal Clerks Receive Certification

Congratulations to the following municipal clerks who were awarded the designation of Certified Municipal Clerk (CMO) between August 2003 and January 2004:

- Sue Arnold, Assistant City Clerk, Greenville
- Marinda Gipson, City Clerk, Pell City
- Howard Kelly, City Clerk, Sheffield
- Joy White, City Clerk/Treasurer, Eufaula

These clerks join 141 active municipal clerks in Alabama who currently hold the designation of "Certified Municipal Clerk."

The following clerks advanced to the Master Municipal Clerk Academy Program:

- Patricia Coffee, Town Clerk, Steele
- Sandra Donahoo, City Clerk, Childersburg
- Sheila Hamilton-Burns, City Clerk/Treasurer, Hokes Bluff
- Shirley Henson, City Clerk, Oxford
- Betty Jones, City Clerk/Treasurer, Guntersville
- Jackie Lipscomb, City Clerk, Robertsdale
- Iva Nelson, City Clerk/Treasurer, Gadsden
- Kitty Nix, Town Clerk, Silas
- Marjorie Sheffield, Town Clerk/Treasurer, Pine Hill
- Pam Steele, City Clerk/Treasurer, Andalusia
- Janice Wilhite, City Clerk/Treasurer, Hueytown
- Ethel Wilson, City Clerk, Ashville

The most prestigious of honors goes to the clerk graduating from the Master Academy and receiving her Master Municipal Clerk designation:

- Renee Moore, City Clerk, Gulf Shores

Alabama currently has six Master Academy graduates. Congratulations to these fine professionals. Each has demonstrated and obtained career development goals that will aid in maintaining the quality of excellence that is required of today's public officials.

Vendor Profile

North America Fire Equipment Company, Inc. (NAFECO)

North America Fire Equipment Company, Inc. (NAFECO) was founded by Jerrell Oaks in 1968. NAFECO primarily began as a service type business to facilitate local companies with fire extinguisher maintenance. Through the years, it has grown into a full line distributor of Fire, Police, and EMS apparel and equipment. In addition, NAFECO is a large distributor of KME fire apparatus.

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Vendor Profiles are included in the League's Gold and Platinum advertising packages. For more information on how your company can purchase a package, contact Greg Cochran at 334-262-2566 or gregc@alaim.org.



Municipal Overview

By
PERRY C. ROQUEMORE, JR.
Executive Director

NLC Congressional City Conference, Washington, D.C.

We must have strong cities and towns to have a strong America. This single thread connected the meeting, the messages and visits with members of Congress at the recent NLC Congressional City Conference in Washington, DC, which was attended by over 200 delegates and spouses from Alabama and more than 2,500 city officials from across the country.

This year's Conference framed a powerful agenda that began and ended with meetings and briefings on Capitol Hill. On NLC City Lobby Day, more than 200 meetings began with breakfast sessions with members of Congress and state league delegations at 8:00 a.m. Approximately 175 persons attended a Tuesday morning breakfast hosted by the Alabama League of Municipalities to hear remarks from Alabama Senators Richard Shelby and Jeff Sessions. NLC Second Vice President, Councilmember James C. Hunt of Clarksburg, West Virginia, also took time from his busy schedule to join the Alabama delegation.

On Monday evening, the officials from each of our congressional districts hosted a dinner for their Congressman and key staff persons. All of these dinners were well attended. Individual meetings between members of Congress and city delegations, large and small, were scheduled during the Conference.

More so perhaps than any other in the League's 80 year history, this Conference was carefully designed to help city leaders leverage their expertise and deliver legislative priorities to federal decision-makers.

Well-attended workshops and leadership training sessions leading up to City Lobby Day focused on topics such as understanding the federal budget, building democratic capacity through community problem-solving, economic development and effective lobbying strategies.

Other workshops, meetings and general sessions revolved around the seven priorities:

- Homeland Security
- Public safety,
- Transportation,
- Affordable housing,
- Children and family programs,
- Unfunded mandates, and
- Preemptions of local authority.

It was gratifying to see the mayors, councilmembers, aldermen and selectmen describe the local importance of the priority programs to their members of Congress, putting a hometown face and facts on these federal issues.

More than 400 NLC delegates lobbied their Senators and members of Congress, and thousands attended the workshops, meetings and training at the conference site.

Our consistent messages were affirmed throughout the corridors on Capitol Hill and also through the national media, notably on National Public Radio and C-SPAN and in dozens of carefully selected local media markets throughout the U.S.

However, the Congressional City Conference is just the beginning. We must follow up and follow through on each of our priorities.

Transportation reauthorization; the No Child Left Behind act; and the internet tax moratorium are three critical and immediate issues that need your attention right now. Watch the NLC website, www.nlc.org, and the League website, www.alalm.org, for further details. And keep the momentum rolling. Let your members of Congress know what type of partnership we need to keep our cities and towns strong, and keep America strong.

Prominent speakers delivering addresses on NLC issues at the Conference included NLC President, Selectman Charles Lyons of Arlington, Massachusetts; Senate Majority Leader Bill Frist of Tennessee; Mayor Bertrand Delano of Paris, France; Senate Judiciary Committee Chairman, Sen. Orrin Hatch of Utah; Transportation Secretary Norman Y. Mineta; Senate Governmental Affairs Committee Chair, Sen. Susan Collins of Maine; and syndicated columnist Mark Shields.

Several Alabama municipal officials hold key positions in NLC leadership. Council Member Cynthia McCollum of Madison and Mayor Ted Jennings of Brewton sit on the NLC Board of Directors. Mayor Al DuPont of Tuscaloosa and Mayor Leon Smith of Oxford sit on the NLC Advisory Council. Council Member JoAnn S. Thomas of Florence is President of NLC's Women in Municipal Government. Numerous other Alabama municipal officials represented us well on various NLC Policy and Steering committees. ■

Muscle Shoals Dedicates New City Hall



The City of Muscle Shoals completed its new City Hall in December 2003. A community open house was held on March 14, 2004. The facility is 17,000 square feet and cost approximately \$2.4 million. It incorporates many of the features of the original 1923 city hall and houses the mayor, city clerk, court, building, license and zoning offices. Located on 7.5 acres in the heart of town, the facility has plenty of room to expand for future generations. It houses an area dedicated to the history of Muscle Shoals with four columns from the original 1923 city hall serving as focal points in the new lobby. The new facility replaces a 1965 structure of 7,500 square feet which is set to be renovated as new space for the police department.



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ENVIRONMENTAL OUTLOOK

By Gregory D. Cochran
Director, Intergovernmental Relations

ADECA Offers Zero Interest Energy Loans for Local Governments

The Science, Technology and Energy (STE) Division of the Alabama Department of Economic and Community Affairs (ADECA) has established a zero interest energy loan program for rural local governments and school systems in an effort to promote energy efficiency. The loan program is based on the concept that the local government or school system will be able to repay the loan from fuel cost savings. This makes these loans an attractive option for rural government entities and school systems that do not have funds available for building improvements and equipment replacement.

The program provides loan funds to upgrade equipment and buildings to an energy-efficient level. This program is specifically targeted to towns and cities with a maximum population of 20,000 and counties with a maximum population of 50,000. In addition to city, county and public school buildings, energy-efficiency improvements to water and waste water systems are also eligible. Buildings must have been constructed before May 1, 1989 and must include heating and/or cooling systems.

The Local Government Energy Loan Program provides an opportunity to analyze older government buildings to identify the potential for using new energy-efficient technologies. Each project is required to complete an energy audit of the building, building complex, water or waste water system under consideration. The audit identifies and estimates the energy savings and the related cost savings that can result from acquiring and installing one or more energy-efficiency measures. A utility company representative, an engineer or a person with training and experience in conducting commercial energy audits may conduct the energy audit.

Examples of eligible projects include: replacement of incandescent lighting with fluorescent lighting; installation of energy-efficient heating; ventilation and air conditioning equipment; building shell energy improvements; installation of heat recovery systems; energy management systems; and renewable energy systems.

The energy loan program has funded seven energy-efficient projects with total estimated energy savings of over \$1 million. The City of Andalusia was able to replace old heating and air conditioning equipment and duct work in the

city hall with a more efficient system, saving the city \$8,000 annually on their utility bills. The City of Brent was able to upgrade lighting and install an energy-efficient heating and air conditioning system, which saves the city \$2,800 annually. The Greene County Board of Education used loan funds for energy-efficient lighting in four buildings with estimated annual savings of \$22,000 in fuel costs.

The Chilton County Board of Education recognized the potential for an energy loan to assist them in providing the students of Chilton County an environment that was more efficient and comfortable. Twelve locations within the authority of the Board of Education – including elementary, middle and high schools – were the recipient of energy-efficient lighting improvements. These lighting improvements have made the Chilton County School System one of the most energy efficient in the state and one that is saving tremendously on energy costs. The project saves an estimated \$109,000 in utility costs each year.

The maximum amount of a loan is \$150,000 for each local government or school campus. Each school system may apply for a maximum of \$300,000. The loan funds may be used to pay for the energy audit; the project engineering and design; and the energy efficiency improvements. The loan program is operated in partnership with PowerSouth, a wholly-owned subsidiary of the Alabama Electric Cooperative in Andalusia. The loan program requires a Letter of Credit from a commercial bank or other form of security that is acceptable to ADECA. A three (3) percent origination fee is assessed to cover the cost of the loan closing and the management of the loan repayment. The loan interest rate is zero percent and the loan term is a maximum of 10 years.

The Local Government Energy Loan Program is promoted in partnership with PowerSouth and the United States Department of Agriculture Office of Rural Development. For more information and to request a loan application, contact the ADECA program manager, Ms. Renee Fuller, by email at ReneeF@adeca.state.al.us or call the STE Division of ADECA toll free at 1-800-392-8098. ■

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By Ken Smith
Deputy Director/Chief Counsel

THE LEGAL VIEWPOINT



What Every Candidate Should Know About Municipal Government

This article is not intended as a guide for qualifying and running for municipal office. The League publishes a manual called *Procedures for Holding Elections in Mayor-Council Municipalities* which covers issues related to campaigning and holding the election. Rather, the goal of this article is to inform potential candidates as to the structure of municipal governments in Alabama as well as to the limitations and restrictions on municipal power. An understanding of these rules can prevent future embarrassment from discovering that a campaign promise can't be fulfilled and helps potential candidates know more about the governments they want to serve.

Potential municipal candidates must be aware of the laws governing the municipality in which they choose to run for office. The provisions discussed in this article apply generally to any municipality with a mayor/council form of government. Many state laws, however, apply to only certain municipalities. It is up to the candidate to be sure that the rules and regulations set out in this article govern their municipality.

What is a Municipality?

Throughout history, all governments have been created for a combination of two reasons: protection and convenience. Originally, of course, individuals banded together to protect themselves from invading armies and bands of marauders. Today, governments provide other forms of protection: job rights, a cleaner environment and other safeguards which are deemed important to a better life-style.

They provide an element of convenience by performing many services which individuals themselves may not be willing to perform, such as construction and maintenance of roads, disposal of garbage and promotion of the arts. Additionally, governments help groups of people which may be forced to live in close proximity to each other for work purposes coexist more peacefully and with less risk.

Local governments provide a means for citizens to

have a direct say in which services are needed and how those services should be provided through the process of electing representatives. Representatives, who are chosen from the pool of willing citizens, meet and discuss how the municipality can best meet the needs and desires of their citizens.

When these elected officials meet, however, it is important for all parties to understand that in Alabama, all municipal powers flow directly from the state legislature. Alabama operates under what is known as the Dillon rule. This rule provides that municipalities have no powers beyond those that are given to them by the state. The authorization must be either explicit or clearly implied from the language of a state statute or constitutional provision.

Briefly, Alabama is governed by a document that was first passed in 1901, although it has been amended many times since. This is the Alabama Constitution. Laws in the Constitution are passed by the legislature, but only become effective following a vote of the public. The Constitution provides a framework for the adoption of laws by the legislature. Legislative acts cannot conflict with constitutional provisions. If there is a conflict, a new constitutional amendment must be adopted and approved by a vote of the people.

In addition to the Constitution, the legislature meets at least annually – more often if special sessions are needed – to pass general and local laws. Many of these laws apply directly to the operation of municipal governments. Any action taken by a municipal government cannot conflict with these legislative actions. Beyond that rule, however, is a further limitation. Not only do municipal actions have to comply with these statutes and the Alabama Constitution, under the Dillon rule, there must be legislative authority for the municipality to take the specific action in question.

So, when a potential candidate decides that some action needs to be taken, he or she must examine the laws to ensure

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that the municipality has the power to act in the way desired. If not, the municipal official may first have to obtain legislative authority, which may require the adoption of a constitutional amendment.

The Extent of Municipal Power

Municipalities are established by incorporation through the procedures set out in the Code. Municipalities grow through annexations. The methods of annexing property are also provided for in the Code.

Municipalities are divided into cities and towns on the basis of population. If the municipality has less than 2,000 citizens, it is a town. Once the population reaches 2,000, however, the municipality is defined as a city.

Municipalities may exercise two types of power: legislative and corporate. Legislative powers affect the public generally. In exercising these powers, the municipality acts very much as an arm of the state. Corporate powers are more comparable to those of a private corporation and are exercised to benefit the municipality in its proprietary capacity.

Municipalities also have authority to exercise certain powers within their police jurisdictions. The police jurisdiction is a legislatively created area outside the corporate limits of a municipality. The size of the police jurisdiction is either a mile-and-a-half, or three miles, depending on the population of the municipality. It ensures orderly development beyond the municipal limits and allows the municipality to protect persons who live within these areas.

Municipalities can levy certain types of taxes in the police jurisdiction in order to pay for services which are provided in the area. Additionally, municipalities can enforce criminal ordinances in the police jurisdiction. Construction and development can be regulated through the application of municipal building codes and subdivision regulations. Municipalities can also provide a wide range of services to citizens within the police jurisdiction.

Appropriations

A common area of contention between municipal officials and their constituents concerns appropriations. Many taxpayers, understandably, want to have a direct say in how their tax money is spent. However, citizens must understand that municipal expenditures are limited by state law.

Perhaps the most common barrier to municipal spending is Section 94 of the Alabama Constitution of 1901. This Section is commonly referred to simply as Section 94. It prohibits municipalities from giving anything of value to any private individual or group of individuals. The prohibition also bars donations to private, nonprofit corporations, even if these organizations benefit the public. Section 94 is the reason municipalities cannot pave driveways or parking lots on private property. The rule is also why government property cannot

be given away.

Section 94 is a frequent source of friction for elected officials, especially for those who are new to the operations of public entities. This is because often the groups requesting financial help from the municipality do provide a valid community service, and there is an inherent desire to assist them. Many are charitable organizations. For the purposes of Section 94, though, it is crucial to distinguish between the public and private nature of the group, and many traditional entities are considered private, not public. It doesn't matter under Section 94 that the group is non-profit. If it is private (which generally means that it was not directly created by a public organization), the municipality may not donate funds to it, unless there is a public purpose for the expenditure, which means that the funds must confer "a direct public benefit of a reasonably general character, that is to say, to a significant part of the public, as distinguished from a remote and theoretical benefit." *Slawson v. Alabama Forestry Commission*, 631 So. 2d 953 (Ala. 1994). Determining what constitutes a public purpose is rarely easy, and a complete discussion of this topic is beyond the scope of this article, but potential candidates must be aware that public funds should only be used to benefit the public and not a private group or individual.

Section 94, though, does not prohibit municipalities from contracting with private companies and individuals for services. For example, although a municipality cannot give money to the Girl Scouts of America, the municipality may compensate the Girl Scouts for legitimate services they perform for the municipality. Bear in mind that the service being performed generally must be a service that the municipality could perform itself.

Similarly, Section 94 does not ban appropriations to public organizations which serve the municipality. For instance, municipalities may contribute funds to public schools their citizens attend. However, municipalities may not make donations to band booster clubs or other private clubs organized by students or parents because these are private groups.

Municipalities must also comply with the State bid law. The bid law prohibits expenditures (with certain exceptions which are listed in the Code) of more than \$7,500.00 (\$50,000 for public works contracts) without first soliciting competitive bids. However, cities and towns may contract with other public agencies or purchase items through a state contract without first obtaining bids.

There are, of course, other provisions governing municipal expenditures that are too numerous to discuss here. What is important is for potential candidates to understand that they must examine expenditures to ensure that what he or she wants to do is legal.

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Citizen Petitions

Citizens often draft and circulate petitions to be presented to the municipal governing body. What is the legal effect of these petitions?

Of course, in some cases the Code requires the council to act on petitions which contain a certain percentage of citizen signatures. In these cases, the council must follow through on all statutory requirements. These situations, though, are rare. Usually, the council is not required to act on, or even debate, requests submitted by petition. At best, a petition serves as a means of bringing the issue before the council.

Certainly, citizens have the right to make requests of the governing body. And, just as clearly, the number of signatures on a petition has a practical political effect. In most cases, however, a council may deny a petitioner's request, or refuse to even consider it.

Even where a municipal council considers a citizen petition, it is important that candidates realize that they cannot delegate the authority to make legislative decisions to the citizens themselves. Frequently, elected officials want to allow citizens to vote on issues. The legislative power of a municipality, though, cannot be delegated to the citizens. For instance, in Opinion No. 91-00262, the Attorney General held that a city council may not make zoning in a particular district subject to a referendum of the residents. In fact, a city may not sponsor and hold a non-binding referendum using city employees and officials to work on the election, even if the cost of the referendum is paid for with private funds. 94-00001. But, a private group may conduct a non-binding referendum for a municipality, although the municipality may not participate other than as private citizens and the council cannot agree to be bound by the referendum. 97-00257. Of course, under state law the municipality must submit some questions to the voters to make the final decision. A candidate must be sure whether a referendum is required, or even allowed, prior to agreeing to allow the public to vote on specific issues.

The Division of Duties Between Elected Officials

One of the most misunderstood aspects of municipal government is the separation of powers between the mayor and the council. Like government on the state and federal levels, municipal government is divided into three separate but equal branches: executive, legislative and judicial. Each of these branches has distinct duties, powers and restrictions on how far it can intrude into the affairs of the other branches.

At the municipal level, the mayor serves as the head of the executive branch. As such, the mayor is responsible for overseeing the day-to-day operations of the municipality. He or she oversees municipal employees, makes sure that bills are paid on time, executes municipal contracts and, in general, performs many of the same functions as a C.E.O. of

a private corporation.

In municipalities of less than 12,000 inhabitants, the mayor also presides over council meetings and serves as a member of the council. In these cities and towns, the mayor may vote on any issue before the council, introduce measures and participate in debates to the same extent as members of the council.

In cities with populations of more than 12,000, the mayor is not a member of the council. However, he or she has a veto over any permanent action taken by the council. The council can override the veto by a two-thirds votes.

The council is the legislative branch. Candidates must understand that individual councilmembers, acting alone, have no greater power or authority than any other citizen of the municipality. Individual councilmembers cannot order employees to perform specific functions nor do they have any greater access to municipal records. The council's power exists only when they act as a body at a legally convened meeting.

The council has authority over the finances and property of the municipality. The council establishes policies, passes ordinances, sets tax levels, determines what sorts of services the municipality will offer and has authority over all other legislative aspects of municipal government.

Council Meetings

Problems frequently arise over public participation in council meetings. This is probably due to the misconception of a council meeting as a public hearing. It is not. A council meeting is intended as a gathering of elected officials brought together to conduct the affairs of the municipality. The meeting is open to the public not so much to obtain citizen input, but to allow the public to observe the affairs of government to ensure appropriate and legal representation by their elected officials. Citizens have no right to speak at a council meeting, although most councils do set aside a time for public comment. The Sunshine Law grants citizens the right to be present at public meetings, but does not grant them an absolute right to express their views at the meeting. A public body may establish reasonable guidelines governing public participation in the meeting. 98-00134.

There are three different types of council meetings. The time of regular meetings – which are held once or twice monthly, again depending on the population of the municipality – is established by the council at its organization meeting and is usually set out in the council's rules of procedure. Adjourned meetings are merely continuations of earlier deliberations which were delayed until a later time.

Most controversies concern special meetings. Special meetings are called pursuant to a procedure set out in the Alabama Code. The controversy usually arises over the type

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Legal Notes

COURT DECISIONS FROM OTHER JURISDICTIONS

First Amendment: A city's sale of a Ten Commandments monument and small plot of park land beneath the monument to a private organization that originally donated the monument to the city violates the First Amendment's establishment clause by giving the Judeo-Christian message preferred access to the surrounding public park and by forgoing the option of moving the monument to another location as suggested by the donor. *Mercier v. LaCrosse, Wis.*, — F.Supp.2d —, 2004WL199287 (W.D. Wis. 2004).

Drug Testing: The Arizona Supreme Court has held that random, suspicionless drug testing of firefighters, based upon a city's generalized and unsubstantiated concern with deterring and detecting alcohol and drug use, unreasonably intrudes upon the privacy interests of firefighters in violation of the Fourth Amendment. *Peterson v. Mesa, AZ*, 83 P.2d 35 (Ariz. 2004).

First Amendment: A municipal Police Officer's sale of a videotape of himself stripping off a generic police uniform and performing sexual acts upon himself is expressive conduct occurring off-duty and away from the workplace, is directed to a segment of the general public, and is unrelated to unprotected workplace grievances, and thus constitutes speech on a matter of public concern subject to the First Amendment balancing test. *Roe v. San Diego*, 356 F.3d 1108 (9th Cir. 2004).

First Amendment: A city's placement in a public park of a Ten Commandments monument donated by a private group has the religious purpose of adopting the group's goal of spreading its version of sacred text and the primary effect of endorsing Judeo-Christian religion in absence of any secularizing context, and thus violates the establishment

clause of the First Amendment. *ACLU Nebraska Foundation v. Plattsmouth, Neb.*, 358 F.3d 1020 (8th Cir. 2004).

ATTORNEY GENERAL OPINIONS

Police Jurisdiction: Municipal law enforcement officers may cite drivers in a municipal police jurisdiction for violating Section 32-5A-170 of the Code of Alabama 1975 ("Reasonable and Prudent Speed") but they must specify the hazardous conditions present in the "Facts Relating to the Offense" box on the Uniform Traffic Ticket and Complaint (UTTC) to distinguish the charge from the provisions specified in Section 32-5A-171 of the Code of Alabama 1975. 2004-061. NOTE: Municipalities are specifically prohibited from enforcing Section 32-5A-171 within the police jurisdiction.

Eminent Domain: If a municipality will use the public streets and public places within another municipality to operate its utility system, and has been given a franchise to use the streets and public places within the other municipality for that purpose, the municipality may acquire, by eminent domain, property located in the corporate limits of the other municipality for its sewer system. The municipality, in which the property is located, is not required to give additional consent to the eminent domain proceedings. 2004-063.

Appropriations: A municipality may contract with the Chamber of Commerce to collect contributions on behalf of the Chamber in exchange for services that benefit the city and the public. Further, a city may collect contributions and donate those contributions to an Industrial Development Board so long as the board uses the funds for purposes that are consistent with the statutory authority granted to the board. 2004-067.

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notice the Code requires in order to conduct a special meeting.

All elected officials must receive notice of the meeting and have the opportunity to attend. This guarantees all citizens the right to participate in the affairs of the government through their representatives. Additionally, in *Slawson v. Alabama Forestry Commission*, 631 So. 2d 953 (Ala. 1994), the Alabama Supreme Court held that the Alabama Sunshine Law requires that reasonable notice be given to the public of special meetings, unless an emergency exists.

The Sunshine Law also prohibits councils from meeting secretly, or in an executive session, except for certain narrow instances. A council can meet in executive session to discuss the good name or character of a person or to obtain advice from the municipal attorney concerning litigation matters. Other than in these cases, council meetings must be open to the public.

Similar problems arise over public records. Clearly, most records maintained by a municipality are public. However, controversies over what this means are common. Everyone is not entitled to see public records any time they wish. The municipality is entitled to establish reasonable procedures governing access to public records. Citizens who wish to view public records must follow these procedures. The custodian of records may ask for a reason for viewing the records, and must be convinced that the reason is legitimate. Also, the municipality may charge for making copies.

Additionally, not all records are public. Some records, such as on-going police investigation files, some material in personnel records and similar records which contain information not for public consumption, are not open to the public. Further, individual councilmembers have no greater right to inspect municipal records than do any other members of the public.

Relationships with Boards

Not all municipal services are provided by the municipality itself. Many are provided by municipal boards. Some of these boards are separately incorporated, while others are not. Municipalities have the authority to create a broad range of boards to control particular functions. Perhaps utility boards provide the most common example.

Boards are usually created when the governing body takes on the duty of performing so many functions that its needs to give the responsibility to another entity so that it can adequately provide for the other needs of the citizens. Once a board is created, its powers are specified by the statute under which it was organized. The council may not change the duties of the board from those set out in the statute. Nor can a council create boards that are not authorized by the legislature. Although a council may create an advisory board, it cannot delegate power over any municipal function in its control unless

the legislature has given them that authority. An advisory board can only make recommendations to the council, which it must enact itself.

Frequently, municipal officials are asked to remove board members or to order the board to take certain actions. Municipal citizens must understand that once a board is created, it has the sole power to act and the council has no power to make demands on the members of the board. Members of these boards are appointed for terms and generally they cannot be removed until their terms expire. This is especially true for separately incorporated boards.

It is important to understand the difference between an incorporated and an unincorporated board. Incorporated boards usually cannot be dissolved until some event defined in the Code occurs. Frequently this is the payment of the debts of the board. Therefore, members of incorporated boards are totally independent from council members. Unincorporated boards may be dissolved by a governing body although the council may not change the duties of the board from those set out in the Code.

Conclusion

This article does not answer every conceivable question regarding municipal government, nor could it. Municipal government is multifaceted. It is difficult to even list all the functions performed by municipalities, and even harder to explain the laws which govern their operation. Multi-volume sets of books have been written which provide only a brief overview.

However, what is often overlooked is the community nature of a municipality. Although municipal governments are legally recognized entities with a certain amount of control over the affairs of their citizens, municipalities are still communities. They are organized by citizens who feel a need for the services and protection the government provides. In order to make the government effective, elected officials, and the citizens they represent, must work together in a spirit of cooperation, cooperation based on an understanding of what the municipality is permitted to do under state law. The League hopes this article will help foster this spirit of cooperation. ■



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Federal Legislative and Regulatory Issues

Mary Ellen Wyatt Harrison
Staff Attorney

2005 Budget Resolution Approved by Senate

The Senate fiscal 2005 Budget resolution establishes spending caps for the Appropriations Subcommittees. This year consideration of the resolution resulted in mixed results for municipalities. Homeland security scored a victory when the Senate approved an amendment by Sen. Susan Collings (R-Maine.) and Carl Levin (D-Mich.) to add \$1.7 billion to the homeland security budget. Water infrastructure financing scored a victory as well. The Senate approved an amendment by Sen. Michael Crap (R-Idaho) that allocates \$5.2 billion to the clean water and drinking water state revolving funds. The amendment authorizes a \$3 billion increase over current funding levels for the two state revolving loan funds and would allocate \$3.2 billion for the CWSRF and \$2 billion for the DWSRF. Senator Richard Shelby and Senator Jeff Sessions voted to approve the resolution. At print time, House action on their version of the FY 2005 budget resolution was currently being debated on the House floor.

Task Force Hopes to Speed Homeland Security Funding

President Bush recently pledged to “unstick” federal homeland security funds for cities and towns. In response to this pledge, Secretary of Homeland Security Tom Ridge appointed a panel to help expedite the flow of funds from Washington to local communities. The new Homeland Security Funding Task Force will look at the funding process and identify steps to ensure efficient distribution of funding from the Department of Homeland Security to first responders. They are expected to report their findings within the next two months. The Task Force includes representatives from city, county, state and tribal governments, including Anthony A. Williams, mayor of Washington, D.C. Governor of Massachusetts Mitt Romney will chair the Task Force and Akron, Ohio Mayor Donald Plusquellic will serve as vice chair. Other members include Portland, Maine, Mayor Nathan Smith, Hempstead, N.Y. Mayor James Garner, Long Beach, Calif., Mayor Beverly

O’Neill, Montgomery County, Md., Executive Doug Duncan as well as Govs. Dirk Kempthorne of Idaho, Mark Warner of Virginia, and Ruth Ann Minner of Delaware. The Task Force falls under the Homeland Security Advisory Council and the State and Local Officials and Emergency Response Senior Advisory Committees. The Department of Homeland Security has established a website, www.dhs.gov/grants, as a resource for information and applications for all-hazards grants and homeland security grants from other federal departments.

Cities Can File Claims for Alert Costs

The Department of Homeland Security will still accept reimbursement requests from local governments and states for heightened security expenses incurred during the recent Orange Alert period, which began on Dec. 21, 2003, and ended on Jan. 9, 2004. Approximately \$160 million is currently available to help cities and states pay for expenses — including overtime costs — for securing critical infrastructure, according to the Department’s Office of State and Local Government Coordination. Although the February 23 deadline has passed for reimbursement requests, the Department will continue to accept expense reports.

Cities and towns are encouraged to submit a report of their expenses for Orange Alerts as soon as possible to their respective Office for Domestic Preparedness State Administrative Agency (SAA), to seek reimbursement from funds provided through the Urban Area Security Initiative (UASI) or Operation Liberty Shield Critical Infrastructure Protection Fund. According to the Office of State and Local Coordination, the state administrative agencies do not have to wait for a complete list of costs from all of their local jurisdictions to seek reimbursement. In determining eligible expenses, states and local governments should generally consider security costs for critical infrastructure to include any system or asset that, if attacked, would result in

continued next page

catastrophic loss of life and/or catastrophic economic loss, according to the Department.

Senate Approves Transportation Reauthorization

The Senate approved a six-year reauthorization of federal highway, transit and traffic safety programs that would exceed the president's request by \$62 billion and current spending levels for such programs by approximately 47 percent. The vote passed 76-21. Senator Richard Shelby voted "yea" for the reauthorization, and Senator Jeff Sessions voted "nay" for the reauthorization. The Safe, Accountable, Flexible and Efficient Transportation Equity Act (SAFETEA), S.1072, would provide a total of \$418 billion for surface transportation activities through fiscal year 2009. The Senate bill would authorize \$262 billion for highway and safety initiatives, and \$56 billion for transit programs. The Bush administration has urged Congress to stick to the funding level it has requested, which is a total of \$256 billion. The Administration has also threatened to veto anything in excess of this figure; however, the threat seems to have been weakened with 76 senators on board.

At print, the House version of the bill, the Transportation Equity Act: A Legacy for Users (TEA-LU), H.R. 3550, was still pending the House. TEA-LU would provide \$57 billion more than the funding level approved by the Senate.

Document Provided to Aid First Responders in Preparing for Terrorist Incidents

The Federal Emergency Management Agency (FEMA), in conjunction with the U.S. Fire Administration (USFA), has announced the availability of a document to help emergency response workers identify possible terrorist incidents or incidents involving weapons of mass destruction. The document is entitled *Emergency Response to Terrorism Job Aid*. It addresses both tactical and strategic issues that can assist all first responders with implementing initial responses and recovery actions after terrorist events. According to FEMA, *Emergency Response to Terrorism Job Aid*, should not be used as a training manual; rather, the document should serve as a reminder for those who have already completed the appropriate level of tactical and strategic training. For a complete copy of the *Emergency Response to Terrorism Aid*, visit <http://www.usfa.fema.gov/fire-service/e-terror/download-jobaid.shtm>.

Housing for AIDS Patients and HUD

The Department of Housing and Urban Development (HUD) has awarded more than \$31 million through its Housing Opportunities for Persons with AIDS (HOPWA) program. HOPWA funds assist local housing programs

across the country to better serve persons with HIV/AIDS and their families, and are part of a comprehensive system of care for those living with HIV/AIDS. These grants will provide stable home environments for low-income persons managing complex drug therapies and the potential side effects from their treatments. More than \$14 million will be awarded to 14 existing HOPWA grantees who anticipate they will be able to assist 2,400 persons maintain stable housing. Technical assistance grants in the amount of \$1.5 million will be awarded to four organizations to help local projects administer effective programs and weather financial hardships. The Centers for Disease Control and Prevention was awarded \$3.5 million for a study involving the cities of Los Angeles, Chicago and Baltimore. HOPWA grants are distributed based on a formula to cities and states based on the number of AIDS cases reported to the Centers for Disease Control and Prevention. For more information, visit: <http://www.hud.gov/offices/cpd/aidshousing/programs/competitive/grants/fy03/index.cfm>.

For additional information on State and Federal legislation, visit us on the web at www.alalm.org.

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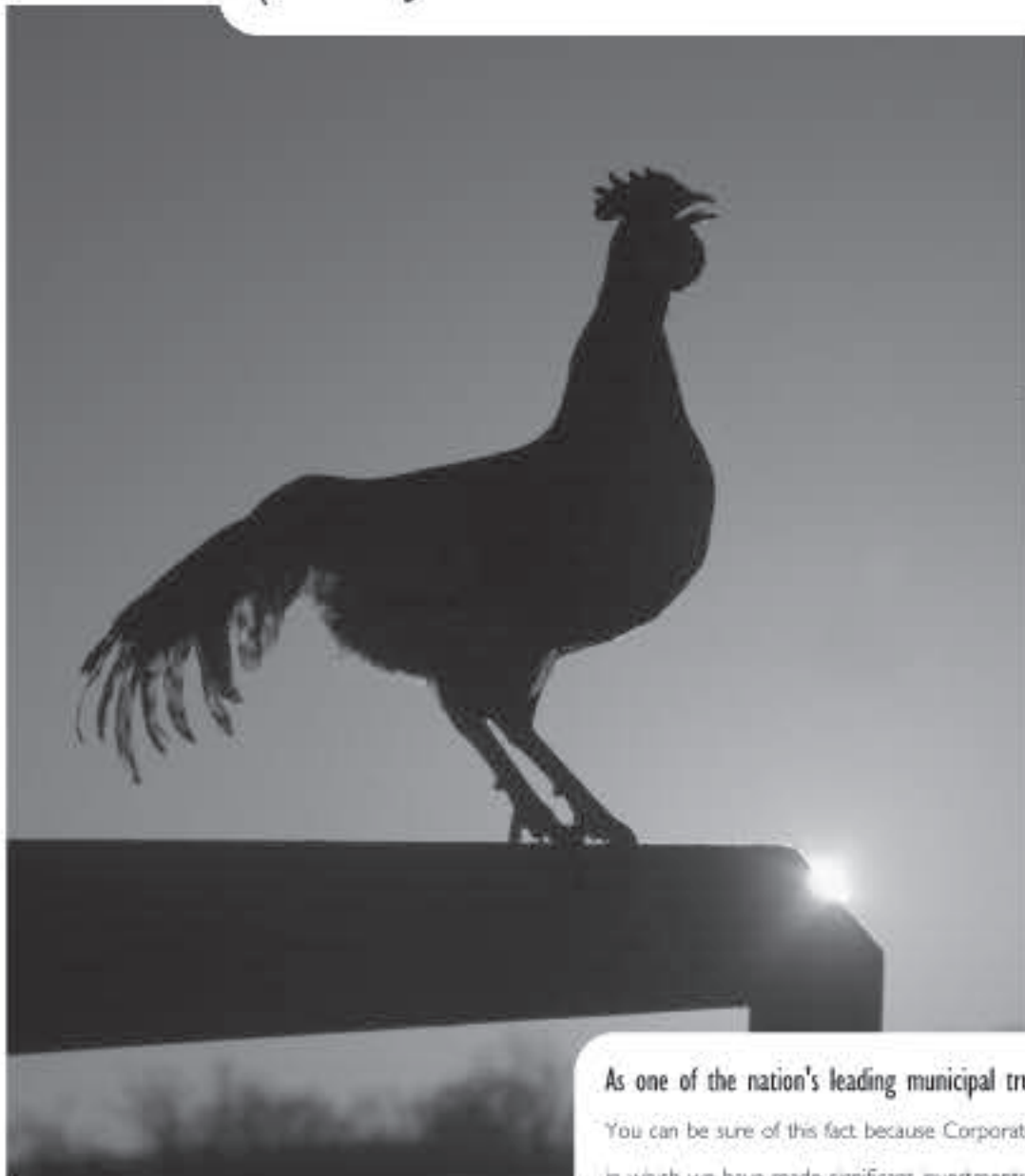
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Annexation: The planning for possible annexation of property by a municipality in its master plan does not constitute an exercise of the municipality's planning commission regulations and therefore does not violate Amendment 643. Further "long lasso" annexations are invalid and property is considered contiguous for purposes of annexation only if it touches at some point or if the property lies directly across a public roadway or waterway from the municipal corporate limits. 2004-073. NOTE: Amendment 643 applies specifically to Limestone County and provides that a municipality within Limestone County may not exercise any planning or zoning regulations outside its corporate limits).

Ad Valorem Taxes: Under Alabama Law, ad valorem taxes are assessed on year in arrears as of October 1 of each year. Therefore, the additional ad valorem taxes that were added by way of Act 2003-426 will not become assessable until October 1, 2004 and will therefore not become due and payable until October 1, 2005. NOTE: Act 2003-426 is a local annexation law relating to the City of Atmore.

Appropriations: If a municipality determines that a public purpose will be served, the municipality may transfer municipal property and adjoining land to a private historical preservation organization by following Section 11-47-20 of the Code of Alabama 1975, relating to the disposition of real property owned by a municipality. 2004-078

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Speaking of Retirement

Termination of Service

If I am ineligible for retirement, what options do I have with regards to my retirement account?

Once you terminate employment prior to retirement eligibility, you have three options:

1. If you are vested (have at least 10 years of creditable service), retirement contributions may be left in the system until age 60 (age 52 for State Police). You may apply for service retirement to be effective the first of the month after reaching age 60 (52 for State Police).

2. With less than 10 years of service (not vested), you may leave contributions in the system for up to five years. If you have not returned to employment as a participating member, the account will be terminated and contributions plus any refundable accrued interest will be payable to you.

3. You may withdraw all retirement contributions and refundable interest. Your contributions are only refunded at your request upon termination of employment and application for refund.

If you think there is a chance you will be rehired or go to work for another participating agency, it is **strongly** recommended to leave your retirement contributions in your retirement account.

If you do withdraw your contributions and return to work with a participating agency, you may restore your previously canceled service credit after completing two years of contributing service. The cost to purchase the withdrawn service is the amount previously withdrawn plus 8% interest compounded from the date of withdrawal to the date of payment.

How do I go about requesting a refund?

To request a refund, contact the ERS or your payroll/personnel officer and request a FORM 7, NOTICE OF FINAL DEPOSIT AND REQUEST FOR REFUND. Instructions for completing the form are located on the reverse side of the form. You must read the SPECIAL TAX NOTICE REGARDING PLAN PAYMENTS which accompanies this Form 7. The taxable portion of the refund is subject to federal income tax withholding at the rate of 20% unless the taxable amount of the refund is transferred directly (rolled-over) from the

RSA to the trustee of an Individual Retirement Account (IRA), Annuity, or Qualified Retirement Plan.

If you elect to receive the refund directly, you will be refunded 80% of the taxable amount of the retirement contributions and refundable interest, if any. The taxable portion of the refund may also be subject to a 10% additional tax if the member is less than 59 1/2 years old. No portion of the refund is subject to state of Alabama income tax.

In January following the calendar year in which a taxable refund is made, a 1099-R will be issued to the member who has directly received the refund, regardless of whether the individual rolled-over the refund to a qualified plan within 60 days of the date of withdrawal.

May I receive a partial refund and how much interest will I receive?

There are no partial refunds; all contributions are refunded. Interest on the account is only refunded if you have at least three years of service. The employee is not entitled to the total interest credited to the account.

Table of Refunds

Years of Service	Amount of Interest Refunded	Contributions Refunded
Less than 3	None	All
3, but less than 16	50%	All
16, but less than 21	60%	All
21, but less than 26	70%	All
26 or more	80%	All

By law, interest is credited on the previous year's average balance at the rate of four percent per annum. Refunds may be subject to a federal tax penalty.

continued next page

Speaking of Retirement continued from page 29

What are the consequences of having my retirement account refunded to me?

Upon withdrawal, all service credit established with the ERS is canceled. For vested members, the right to lifetime monthly retirement benefits at age 60 (52 for State Police) is forfeited. See pages 9 and 10 in your Member Handbook for information about termination of service.

If I am eligible for retirement, what procedures must I follow to start receiving my retirement benefit?

If you have 25 years of service (30 years of service if your employer has not elected 25-year retirement eligibility) or age 60 (52 for State Police) with at least 10 years of service credit, you are eligible to receive a lifetime retirement benefit upon termination of service. Information about retirement procedures and the options you have at retirement is listed on pages 16 - 26 in your ERS Member Handbook.

You must submit your Retirement Application to the ERS no less than 30 days nor more than 90 days prior to your effective retirement date.

Any member eligible for disability retirement must file their Disability Retirement Application with the ERS before termination of employment.

If I have elected to participate in DROP and am involuntarily terminated, what must I do to begin receiving my DROP payment?

You must submit Form ERS 10D-E, Request for Early Termination of DROP, to the ERS.

Please contact the ERS directly with specific questions you have about your retirement account and what options you have at termination of service.

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.

Obituaries

Voncile Sansom Bell

Voncile Sansom Bell, councilmember for the City of Luverne, died February 2, 2004.

The lone female on the Luverne City Council, Bell took office in 1996, winning the bid in the General Election for District 5, which grew to the largest of five districts. This summer, she would have been running for her third term of office. One of her charges as a councilmember was the Luverne Public Library.

Bell is survived by her husband, two children and two grandchildren. ■

Buford Biggs

Buford Biggs, councilmember for the City of Bay Minette, died February 27, 2004. He was 67.

Biggs was serving his first term on the five-member council and had a history of public service in the north Baldwin area. His term was due to end late this year. A founding member of the North Baldwin Sheriff's Search and Rescue squad, he served more than 40 years with the group. Following his retirement from Kaiser Aluminum, he worked as a dispatcher for the May Minette Police Department for 10 years.

He is survived by his wife, one son, two daughters and four grandchildren. ■

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