

THE ALABAMA MUNICIPAL **JOURNAL**

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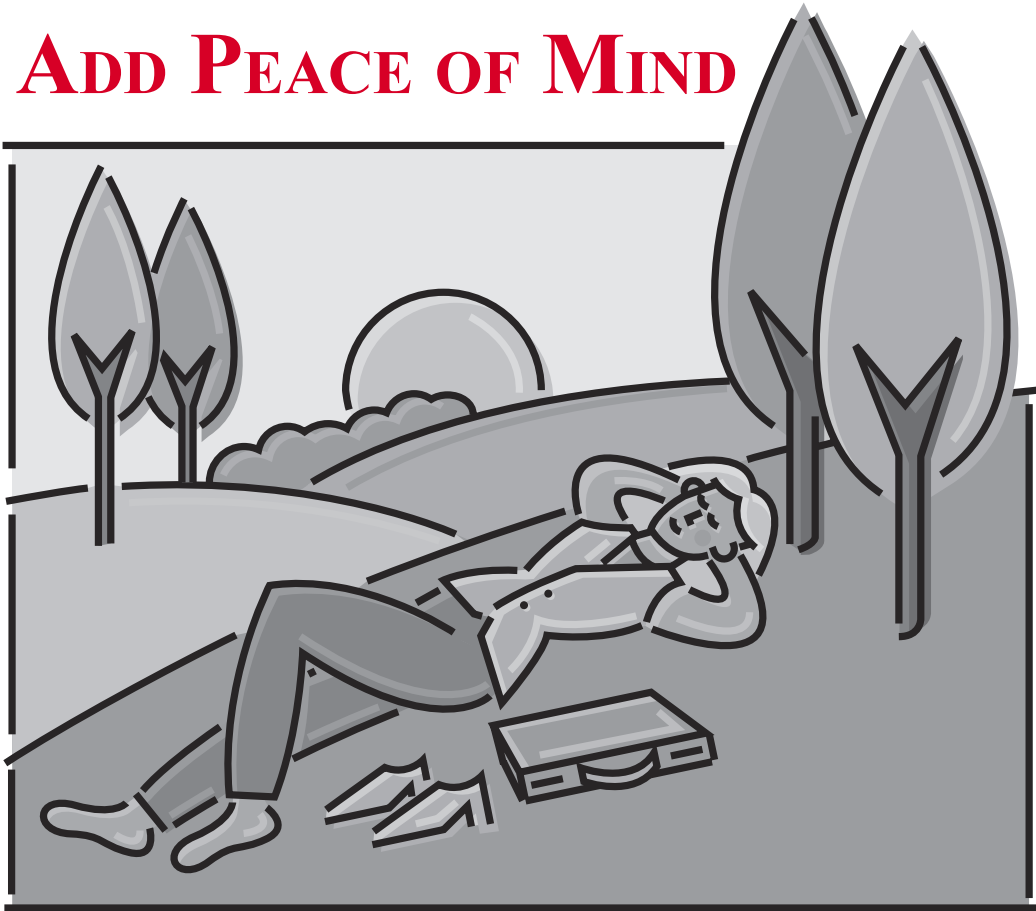
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State Revolving Loan Fund

By Niko Corley

With the amending of the Clean Water Act in 1987 and the Safe Drinking Water Act in 1996, Congress created a new instrument for financing clean water, wastewater and drinking water infrastructure projects in all 50 states. The results of this legislation, the Clean Water State Revolving Fund and the Drinking Water State Revolving Fund, provided a renewable, independent means of updating the nation's tens of thousands of water systems in accordance with the stipulations of each act.

Alabama began its Clean Water State Revolving Fund (CWSRF) in 1989 and its Drinking Water State Revolving Fund (DWSRF) in 1998 following passage of League bills supporting these programs. Problems arose after the passage of the CWSRF, however, because of Congress' requirement that federal funding be matched by a 20 percent grant of state funds. In Alabama, the state's budgetary situation has not been favorable toward the appropriation of these funds. The state had to either devise a plan to make up for the amount it needed to match or face losing a substantial amount of federal funding.

The Alabama Department of Environmental Management, charged with administering the funds to the state's municipalities, contracted the Center for Environmental Research and Service at Troy University to study the situation and look at possible models for a revolving loan fund in order to provide an opinion to ADEM. The center found that to fully capitalize on federal seed money for water projects, ADEM would have to leverage the funds instead of directly loaning money to municipalities.

Michael Mullen, a research coordinator with CERS, explained that leveraging is the most cost-effective method for securing state revolving loan funds and allows Alabama to make the 20 percent match required by the Environmental Protection Agency.

"Instead of loaning out money directly, the money is used to back and secure bonds at a much lower rate. Doing this makes the money go a longer way," Mullen said.

Alabama was one of the first states to utilize leveraging for SRF loans to stretch limited funding resources. The state received national recognition for its efforts, as the EPA declared Alabama's drinking water infrastructure financing system one of the best in the nation in 2003.

"Alabama's leveraging program received recognition for its innovativeness and progressiveness, [and] since then, other states have done this as well," Mullen said.

Once ADEM had developed this system for maximizing the federal funding Alabama would receive, it held seminars to educate municipalities on the programs and let them know what would be expected in order to secure funding. When a municipality decides to apply for an SRF loan, it submits an application to ADEM, which reviews the requests and determines where the greatest needs lie. In addition to receiving requests for funding, ADEM also has personnel working in the field who are able to make recommendations to the department concerning funding.

"Since we regulate many of the fund recipients and their facilities, our inspectors often could witness, first-hand, what municipalities might need infrastructure improvements," Clint Niemeyer, a public affairs official with ADEM, said.

Any projects that strengthen compliance with federal and state regulations or improve protection of public health and the environment are eligible for SRF funding. If a project qualifies for an SRF loan, the costs accrued for engineering, inspection and construction are reimbursable. Across the state, municipalities have been loaned money for water and wastewater treatment projects, sewer rehabilitation projects to replace old piping with new and the improvement of drinking water storage facilities, to name a few.

Municipalities concerned about not being able to receive enough money to complete a project sufficiently need not worry; the only limit that currently exists is a \$300,000 minimum on DWSRF projects. There are currently no maximums for SRF projects in Alabama.

To date, ADEM has administered around 300 combined CWSRF and DWSRF loans, totaling nearly one billion dollars. Besides lower interest rates (which are on average about 1.5 percent to 2 percent lower than current municipal bond rates), SRF loans have a number of other benefits. The already low interest rate on the loan is fixed and comes with a 20-year payback made in semi-annual installments. The money from these repaid loans goes back into the fund, helping to assure Alabama will be able to meet its future water infrastructure needs.

Loan repayment for projects does not begin until construction is completed, and the loan recipient is not required to pay trustee or rebate expenses. Beginning in fiscal year 2005, municipalities will not be required to pay closing costs, further saving them money.

"We work closely with the municipalities to assure that they do not borrow more than they are capable of repaying

continued page 8



The President's Report

Jim Byard, Jr.
Mayor of Prattville

Tis the Season

Have you ever noticed that Christmas follows closely on the heels of the Fourth of July? Just when the last Independence Day firecracker has popped and sputtered, most merchants in Alabama rush to put up Christmas trees, wreaths and ornaments, pushing Labor Day aside and allowing Halloween witches, monsters and goblins to rest on shelves for only a couple of weeks.

Towns and cities find themselves caught up in the same flurry of activity at this time of the year. Football games and homecoming parades have come and gone. Thanksgiving programs have ended and now comes Christmas! From Alabaster to Bay Minette, Demopolis to Prattville, Springville to Tuscaloosa, Wetumpka and York – exciting things are happening all over our State!

During the holiday season we all become involved in many of the same tasks. Our Christmas decorations must be taken from storage; lights checked and bulbs replaced; bows re-tied and refreshed; and ornaments strung across streets and hung from light poles. City employees work diligently to make sure that streets, parks and public spaces sparkle and shine. Neighbors gather to plan their decorations; church choirs rehearse for magnificent cantatas; and children struggle to learn their lines or to stand still while practicing their part in Christmas plays.

Most cities and towns plan special events such as parades, ballets, pageants or even boat parades on nearby waterways. Each is unique and special. Each is designed to appeal to the child that lives in our hearts. It seems as if even the potholes and buildings that really could use a coat of paint and medians that need a bit of landscaping are magically transformed during this special season.

With all of the focus on the holidays, our most pressing problems seem smaller. And while parties and events pack our schedules, we seem to settle and slow down as the year draws to an end.

I really enjoy this time of the year.

I hope that you will pause amidst all of the hurry, scurry, purchases and preparations to ponder the reason that we

celebrate this joyous season. We are among the most blessed people on earth. We have the privilege of celebrating or not celebrating our beliefs and traditions. We can offer up our hopes and our prayers for our people and our cities and towns. We can work toward the common good of all. We can become the leaders that our citizens want and deserve.

Join with me this Christmas season and in the coming new year to celebrate and be thankful for all that we have; to pray for peace, harmony and understanding; and to strive to make our lives exemplify the teachings of that little babe born so long ago. Merry Christmas and Godspeed to each of you. ■

City and County Managers and Administrators Conference Set for January in Prattville

The Alabama City/County Management Association has scheduled its winter conference for January 12-13, 2005, at The Legends at Capitol Hill in Prattville, Alabama. The two-day conference will be filled with numerous "nuts & bolts" topics and will focus on *The "How-Tos" in Local Government Management*.

Wednesday's opening session will begin at 2:00 p.m. and will feature sessions on **Planning & Zoning** – The Law, Sub-Division Regulations, and Building Inspections; and **Recovering and Rebuilding Following Catastrophes** – The Weather, Economy, and Terrorists. The general session on Thursday will focus on **Improving Capital Planning, Budgeting, and Finance**; and **Controlling the Rising Cost of Health Insurance**. Governor Bob Riley has been invited to be the keynote speaker during the President's luncheon, which will then be followed by the off-site **Local Government at Work** session where sites specifically selected by Prattville's Mayor Byard and Autauga County's Chairman Chambliss will be visited and discussed.

The conference will conclude Thursday evening with a fabulous dinner reception and private tours of the **Alabama Shakespeare Festival** and the **Montgomery Museum of Fine Art**.

For more information about the conference - contact Marcia Collier at (334) 263-7594 or visit the ACCMA's website at www.accma-online.org.

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Municipal Overview

By
PERRY C. ROQUEMORE, JR.
Executive Director

2005 League Legislative Package

The Alabama League of Municipalities Committee on State and Federal Legislation, which is chaired by Mayor Carroll L. Watson of Lincoln, met at League Headquarters on Tuesday, November 9, 2004. 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 (in no particular order of priority) to be introduced during the 2005 Regular Session.

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 is DUI offenses where the fine can be as high as \$5,000. The DUI penalties have been increased as have 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.

Correction 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% of the money in the corrections fund must be expended for municipal court purposes and that the remaining 40% 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.

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.

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 enforceability of subdivision regulations to an area less than the five-mile limit established by law.

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.

Authority to Participate in Reverse Auctions

The League will seek legislation to amend Alabama's municipal procurement laws to permit the use of reverse auction procedures. Reverse auctions would permit municipalities to purchase goods and services from vendors through an on-line real-time bidding process similar to procedures used in many other states. This process allows multiple suppliers, anonymous to each other, to submit bids on the requested services or goods.

Clarification of Mayor's Voting Powers

A recent court decision has created confusion as to the ability of the mayor of a municipality of less than 12,000 inhabitants to vote on all issues coming before the council. The League will offer a bill to amend Section 11-43-160 of the Code of Alabama 1975 to clearly provide that in municipalities with a population of under 12,000, the mayor is a voting member of the council whose vote may be included in the required two-thirds vote of the council needed to discipline or terminate employees.

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State Revolving Loan Fund _____ continued from page 4

... we have never turned a potential borrower away due to lack of money. Thus far, there have been no defaults,” Niemeyer said.

Each state administers its own SRF under the supervision of the EPA – some states more efficiently than others. Alabama has used leveraging to stretch its SRF loans to provide money to municipalities that need it. The effects of this management are, on the whole, statewide compliance with federal and state standards for clean water.

According to “The Year of Clean Water”, a celebration of the 30th Anniversary of the passage of the Clean Water Act, in 2002 the EPA released a report ranking Alabama’s drinking water systems second in the nation for system conformity. Of the 583 community water supply systems in the state, only 23 were found to have violations of a maximum containment level or a treatment technique. Compared to some states reporting that 30 percent of their systems had violations, Alabama’s three percent is remarkable.

Niemeyer believes that Alabama’s coming in second behind Rhode Island, a state with only 83 community watersupply systems, is due, in large part, to the amount of effort ADEM puts into the SRF’s.

“We are ranked quite highly. The reasons for this are simply that we are aggressive in leveraging in order to maximize available funds, we run the SRF’s efficiently [and]

we try not to saddle the programs with administrative expenses.”

The SRF programs were designed to become self-sufficient after a few years, but due to their popularity, Congress has opted to continue funding. Alabama receives \$15 million for the CWSRF and seven million dollars for the DWSRF annually.

The future of Alabama SRF’s looks promising. The programs have grown immensely in popularity since their inception, and with continued low interest rates, long-term loans and the waiving of closing costs, many more of Alabama’s municipalities may find themselves looking into the clean water and drinking water state revolving funds.

“These programs are more bang for the buck than meets the eye—the value and finished product is much more valuable than the money invested, and the return on investment is almost incalculable considering public safety and the environment,” Niemeyer said.

For additional information on Alabama’s SRF or for an application, visit: www.adem.state.al.us/WaterDivision/SRF/SRFMainInfo.htm ■

Niko Corley is a Journalism major at The University of Alabama and is a contributing writer for The Executive and The Great Outdoors of Alabama.



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ENVIRONMENTAL OUTLOOK



By Gregory D. Cochran
Director, Intergovernmental Relations

Federal Funds from Hurricane Ivan Assist Alabama

A little more than \$272 million in aid has been obligated to help Alabama recover from Hurricane Ivan by the Federal Emergency Management Agency. In addition, the U.S. Army Corps of Engineers has overseen the removal of 2 million cubic yards of debris from Mobile, Escambia, Butler, Clarke and Monroe counties, and the cities of Opp and Fort Deposit since September 21. That amount of debris is equivalent to 400 football fields stacked three feet high with debris. And, the corps continues to collect 47,000 cubic yards of debris each day.

FEMA officials do not have a cap for the amount of money that will be spent in Alabama for disaster relief. So far, 139,301 residents have applied for FEMA assistance. The deadline to apply for Hurricane Ivan-related damage assistance has been extended to Monday, January 3.

Federal disaster assistance in Florida, meanwhile, has amounted to \$868 million for four hurricanes plus Tropical Storm Bonnie. The amount for Hurricane Ivan in that state so far totals \$106.5 million.

Other notable statistics from FEMA include: \$128 million has been approved to help individuals and households recover; \$75 million has been approved for temporary housing and for minor repairs to primary residences; \$53 million has been approved for disaster-related needs not covered by insurance or other programs; 38,047 Alabamians have visited disaster recovery centers to receive information on disaster assistance; and 97,477 housing inspections have been completed.

Alabama Receives \$3.2 Million in Hurricane Aid

The U.S. Department of Health and Human Services is providing Alabama with \$3.2 million to help cover the costs of caring for the elderly during and after Hurricane Ivan. The assistant secretary for aging, Josefina Carbonell,

presented a ceremonial check to Gov. Riley this past October in Point Clear. About \$2 million from the federal government will reimburse the state for money it has already spent. Riley said the remainder will be used to help the elderly better deal with future storms.

The goal, Riley said, is to improve senior centers in hurricane-prone areas so that they can deal with special needs during an evacuation. That could include handling people with serious medical conditions. During Hurricane Ivan, the Mobile County Emergency Management Agency opened its first-ever special needs shelter within a larger shelter at Baker High School.

Grand Bay Exploratory Gas Drilling Costly Balancing Act

Alabama Conservation Commissioner Barnett Lawley stated he will not approve exploratory drilling in Grand Bay without more extensive information about the project and guarantees that delicate grass beds in the area will be protected. In early October, Colorado-based Duncan Oil Inc. felt it had received a tentative nod from key officials in the State Lands and Marine Resources divisions, that they were comfortable with proposals to drill in an area described on a federal Web site as one of the most biologically productive estuarine ecosystems in the Gulf of Mexico region. But in November, Commissioner Lawley wanted to know all the particulars about the proposal before he would sign off on it and that the state needed to explore the possibilities for minimizing risk to the area. Grand Bay – dotted with small islands, shell mounds and undersea meadows of water grasses – straddles the Mississippi-Alabama line and is part of a sprawling and interconnected system of tidal marshes, sawgrass plains, gum swamps, pine savannas and pitcher plant bogs. One week after Mississippi

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Job Listings

City Administrator, City of Alabaster

Applicants must have at least five years of managerial experience working for a city with at least 10,000 people. Applicants must be familiar with utility operations as well as the operations of city government. The successful applicant must also possess a four year degree in business, finance, or a related field with a MBA preferred. Applications will be accepted through January 31, 2005. Salary for this position is negotiable based upon experience and qualifications. Interested individuals should respond by sending their resumes to Greg Morris Attorney at Law, Special Counsel for the City of Alabaster, 867 Honeysuckle Drive, Fultondale, AL 35068.

City Administrator, City of Opelika

Accepting resumes for position of City Administrator. Contractual position approved by mayor/confirmation by city council. 390 employees. For complete information on the City of Opelika, visit www.opelika.org. \$53M budget. Starting salary \$70's+ depending on education and experience. Requires BS degree in Business Administration, Public Administration, Urban Planning or an equivalent related field plus 4 years experience in governmental or financial management – or Master's degree in Business Administration, Public Administration, Urban Planning or an equivalent field. Send resumes to: City of Opelika, Human Resources, PO Box 390, Opelika, AL 36803. E-mail: lmcleod@ci.opelika.al.us. EOE M,F,C,D. Position open until filled.

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I N C O R P O R A T E D

P R O F E S S I O N A L T A N K S E R V I C E S



By Ken Smith
Deputy Director/Chief Counsel

THE LEGAL VIEWPOINT

General Powers of Municipalities

The Constitution of Alabama does not recognize any inherent right of local government. Except where restricted by limitations imposed by the state and federal constitutions, the Legislature of Alabama is vested with plenary, or absolute, power. In the exercise of this power, the legislature created, by general statutes, municipal corporations, declared them bodies politic and corporate, and vested them with a delegated portion of the sovereign powers of the state for the welfare and protection of their inhabitants and the general public within their jurisdictional areas. All powers, property, and offices of a municipal corporation constitute a public trust to be administered as such within the intent and purposes of the statutes which created them and within the limitations imposed by the state and federal Constitutions.

The powers of Alabama cities and towns are delegated by the Legislature and are subject to withdrawal and limitation by that body. That does not mean, however, that the powers of municipal corporations are weak, unimportant, or second rate. When the Legislature adopted the Municipal Code, which today is found in Title 11 of the Code of Alabama, a broad array of power was granted to the cities and towns of Alabama. The Legislature has continued to grant new powers that enable municipalities to cope with changing times. The best way to understand the importance of municipal powers is to visualize society without them.

In providing for the organization and administration of mayor-council cities and towns, the Legislature deemed that the legislative functions of a municipality should be vested in the council. Sections 11-43-2 and 11-43-40, Code of Alabama, 1975. Section 11-43-43 of the code states that all legislative powers and other powers granted to cities and towns shall be exercised by the council, except those powers conferred on some officer by law or ordinance. Therefore, the state Legislature has entrusted the municipal council with the duty and responsibility of exercising a wide variety of the sovereign powers of the state which vitally affect the life, liberty and property of citizens within their jurisdictions. The following paragraphs discuss basic rules of construction relating to the powers which mayor-council cities and towns may exercise through their councils.

Sources of Power

The sources of power of a municipal corporation include the constitution, the statutes of the state and special acts of the Legislature, particularly where such acts are in the nature of a charter for specific cities or towns. In an early Alabama case, *Mobile v. Moog*, 53 Ala. 561 (1875), Mr. Justice Manning quoted Judge Dillon from his work on municipal corporations: "It is a general rule, and undisputed proposition of law, that a municipal corporation possesses and can exercise the following powers and no others: first, those granted in express words; second, those necessarily or fairly implied in, or incident to the powers expressly granted; third, those essential to the declared objects and purposes of the corporation – not simply convenient, but indispensable."

McQuillin cites this case as authority in stating that Alabama cities and towns have no inherent powers, but such declaration requires an understanding and agreement on the meaning of the word "inherent." It is true that a city has no authority to confer upon itself power it does not possess. Courts in Alabama follow the Dillon Rule in determining whether or not a city or town is authorized to exercise a particular power. *New Decatur v. Berry*, 90 AL 432, 7 So. 838 (1890); *Best v. Birmingham*, 201 AL 641, 79 So. 113 (1918).

In the case of *Best v. Birmingham*, the Supreme Court of Alabama held that the court of Appeals erred in holding that municipal corporations have no implied powers. In so ruling, the court pointed out that except for the power of taxation (and probably some others not there necessary to mention), municipal corporations are clothed with powers implied or incidental. As a guide, the court noted that these incidental or implied powers must be germane to the purpose for which the corporation was created and cannot be enlarged by construction to the detriment of individual or public rights. The power must relate to some corporate purpose which is germane to the general scope of the object for which the corporation was created or has a legitimate connection with that object. *Harris v. Livingston*, 28 Ala. 577.

Unfortunately, no precise definition distinguishes "indispensable powers" from those which are merely useful or convenient. As a general policy, municipal corporations are held to a reasonably strict observance of their express powers. *Ex*

continued next page

parte Rowe, 4 AL App. 251, 59 So. 69 (1912). The safest rule is that if there is a substantial doubt as to the existence of a particular power, such power will be held by the courts not to exist.

The powers of a municipality may be derived from a single express grant or from a combination of enumerated powers which must be construed together. The purpose of all rules of construction is to arrive at the intent of the Legislature. It follows that if fairly included in or inferable from other powers expressly conferred and consistent with the purposes of the municipal corporation, the exercise of the power should be resolved in favor of the municipality to enable it to perform its proper functions.

Municipalities are but subordinate departments of state government and it is essential to their health, growth and the peace and well being of their inhabitants that the state delegate to them all police powers which are necessary to their orderly existence. *Ex parte Rowe, supra*.

Types of Power

Two basic types of powers are delegated to and exercised by Alabama cities and towns. As a body politic, municipal powers are general in application and public in character. Such powers are exercised by virtue of that part of the sovereign authority of the state delegated to cities and towns for the welfare and protection of the general public. *Bessemer v. Whaley*, 8 AL 523, 62 So. 473 (1913). As a body corporate, a municipality has powers that are proprietary in character, powers exercised for the benefit of the municipality in its corporate or individual capacity. Such powers are for the internal benefit of the municipality as a separate legal entity. *State v. Lane*, 181 AL 648, 62 So. 31 (1913).

As a body politic, a municipal corporation exercises legislative powers of a general and permanent nature which affect the public generally within the territorial jurisdiction of the municipality. In this instance, the council acts very much as an arm of the state Legislature. As a body corporate, a municipality exercises powers of a ministerial nature for the private benefit of the corporation. In this case, a municipality acts in a manner comparable to the board of directors of a private corporation.

The distinction between these two types of powers is important to determine if a council must formally adopt an ordinance to exercise a particular power. If the power exercised requires the action of the council in its legislative capacity, then a formal ordinance is required in the manner prescribed by statute. If the action is of a ministerial nature, then the council may exercise the power by resolution or simple motion set forth in the journal.

The formalities required by statute for the adoption and publication of ordinances of a general and permanent nature are set out in Sections 11-45-2 and 11-45-8, Code of Alabama, 1975, and must be followed closely by the council.

Exercise of Powers

The powers of a municipality, both corporate and legislative, are required to be exercised by the council in legal meetings as prescribed by statute. Action taken by petitioning individual councilmembers will not suffice. The municipal journal is the only evidence acceptable in determining the action which the council took on a particular item of business, and parol evidence will not be received to establish such action. *Penton v. Brown-Crummer*

Inv. Co., 222 AL 155, 131 So. 14 (1930); *Mobile v. Kiernan*, 170 Ala. 449, 54 So. 102 (1910); *Alabama City G. & N. Ry. Co. v. Gadsden*, 185 AL 263, 64 So. 91 (1913).

The method of exercising a power granted by the Legislature is dependent upon whether the statute prescribes the manner of performance or not. The prescribed procedure for adopting ordinances of a general and permanent nature is mandatory. In exercising ministerial powers, it should be noted that sometimes procedures are prescribed by statute. In some cases, courts recognize such procedures as mandatory and in other instances they are declared to be directory only.

Generally, where a statutory grant of power provides that a municipality "shall" or "must" perform an act in a prescribed manner, the statute is declared mandatory. Where a statute provides that the municipality "may" perform an act or exercise a power, it is declared to be directory or permissive.

Where performance is left to the discretion of the municipal council, the council must use reasonable methods or procedures within the restrictions of the state and federal constitutions. The general rule is that unless restrained by statute or constitutional provision the council may, in its discretion, determine for itself the means and method of exercising the powers delegated to the municipality. The rule of strict construction, often applied to determine if a municipality has the power to perform a particular function or act, is not generally applied to the method used by a council to exercise a power which is plainly granted.

Discretion Not Reviewable

Where a council has acted within the sphere of powers granted to the municipality, it is well established that courts will not sit in review of the proceedings of municipal officers and departments in the exercise of their legislative discretion. Cases where bad faith, fraud, arbitrary action, or abuse of power are affirmatively shown are exceptions to this rule. *Hamilton v. City of Anniston*, 248 AL 396, 27 So. 2d 857 (1946). Where a power exists, there is a legal presumption that public officials properly and legally executed it in a reasonable manner. It is often stated that if the result of a given action of the council is an economic mistake, an extravagance, or an improper burden on the taxpayers, the answer is at the ballot box rather than a court proceeding. Courts do not inquire into the motives prompting a municipal governing body to exercise a discretionary power, be it legislative or corporate in nature, unless there is a showing of fraud, corruption or oppression. *Pilcher v. Dothan*, 207 Ala. 421, 93 So. 16 (1922). Error or mistake in judgment does not constitute an abuse of discretion.

Non-Delegable Powers

Legislative powers rest with the discretion and judgment of the municipal council. The council cannot delegate or refer such powers to the judgment of a council committee or an administrative officer. There is a distinct difference in delegating the power to make a law, which involves discretion and judgment, and conferring authority or discretion to execute a law pursuant to the directions contained in the law. The council can appoint administrative agents to perform ministerial duties to carry out the legislative will.

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Legal Notes

By Lorelei A. Lein
Staff Attorney

COURT DECISIONS

City's decision to deny property owner's petition to rezone low-density residential property so as to allow property to be used for office space and institutional use was not arbitrary, capricious or unreasonable, even though other property in the area was used for commercial purposes, where the city based its zoning decision on the interests of the neighborhood, and the commercial property that existed in the area had been grandfathered in after the city adopted the current land-use plan that rezoned the area into low-density residential property. *Pollard v. Unus Properties, LLC*, 2004 WL 2487982 (Ala. 2004).

DECISIONS FROM OTHER JURISDICTIONS

Elections: Ohio provisional voting plan that requires poll workers to confirm a voter's residence in a precinct before issuing a provisional ballot violates the requirement of the Help America Vote Act (HAVA) that voters not listed as eligible to vote be allowed to cast a provisional ballot if they affirm in writing that they are duly registered to vote in that precinct. *Sandusky County Democratic Party v. Blackwell*, 387 F.3d 565 (6th Cir. 2004).

Schools-Discrimination: A public school district's use of race as an exclusive determinant in deciding whether to permit student assignment or transfer outside of neighborhood school serves the school district's asserted objective of pursuing educational benefits flowing from diversity but is not narrowly tailored to achieve that end and therefore violates the 14th Amendment's equal protection clause. *Comfort v. Lynn School Committee*, 2004 WL 2348505, (1st Cir. 2004).

First Amendment: A city policy requiring all persons wishing to participate in a protest near a military base to submit to a mass metal detector screening at a checkpoint blocks away from the actual protest site violates the protestor's right to be

free from unreasonable searches and seizures under the Fourth Amendment and their First Amendment free speech rights. *Bourgeois v. Peters*, 2004 WL 2320265 (11th Cir. 2004).

ATTORNEY GENERAL OPINIONS

Licenses and Business Regulations: A water and sewer board incorporated pursuant to Sections 11-50-310 to 11-50-324 of the Code of Alabama 1975 is not exempt from a business license fee imposed by a municipality on water works companies operating within the city. 2005-001.

Appropriations: The sponsorship of a golf tournament by a state university does not violate Section 94 of the Alabama Constitution of 1901 as long as the university determines that the expenditure of funds for the tournament is beneficial to the interests of the university or that the expenditure to develop support for the universities athletic department serves a public purpose. 2005-004.

Ordinances: Municipalities that have properly passed a Flood Damage Prevention Ordinance containing references to the Code of Federal Regulations (CFR) and any supporting data as required in the relevant CFR provisions, such as maps, etc., and have included an automatic adoption provision in such ordinance for any revisions to the CFR and supporting data, are not required to initiate a new ordinance each time the relevant CFR provisions or supporting data are revised. 2005-005.

Elections: The term of a newly elected county commissioner commences at 12:01 a.m. on the first Tuesday following their election and the newly elected commissioner may take the oath of office and assume office before the county election canvassing board certifies the election results. However, the commissioner should consider abstaining from acting on official business until the canvassing board certifies the results of the election. 2005-014.



Federal Legislative and Regulatory Issues

Mary Ellen Wyatt Harrison
Staff Attorney

Preparing a Grant Proposal

Note: This article is reprinted with permission from the Alabama Department of Economic and Community Affairs Grant Resources Online.

The successful grant proposal is well prepared, well planned, and well packaged. In order to be fully prepared, become familiar with all of the pertinent program criteria related to the program from which assistance is sought. To obtain information such as whether funding is available, when applicable deadlines occur and the processes used by the grantor agency, contact the person listed in the program description, and/or if there is a web address be sure to visit there first, most questions can be answered there. Applicants should remember that the basic requirements, application forms, information and procedures vary with the granting agency. Individuals without prior grant proposal writing experience may find it useful to attend a grantsmanship workshop. A workshop can amplify the basic information presented here, provide useful contacts and can help generate ideas for grant proposals.

INITIAL PROPOSAL DEVELOPMENT

Be Innovative When Developing an Idea When developing an idea for a proposal it is important to determine if the idea has been considered in the applicant's locality or State, and to determine if there is a need for the proposed idea. Checking with elected officials, community leaders, and community organizations to determine if similar work is being conducted. If a similar program already exists, the applicant may need to reconsider submitting the proposed project, particularly if duplication of effort is perceived. If significant differences or improvements in the proposed project's goals can be clearly established, it may be worthwhile to pursue the assistance. Also, if similar projects are discovered, perhaps a consortium or partnership can be developed to improve upon an existing project.

Seek Support. Gaining outside support is essential for a winning proposal. Once proposal summary is developed, look for individuals or groups representing academic, political, professional, and lay organizations, which may be willing to

support the proposal in writing. The type and caliber of community support is critical in the initial and subsequent review phases. Numerous letters of support can be persuasive to a grantor agency. Do not overlook support from local government agencies and public officials. Letters of endorsement detailing exact areas of project agreement and commitment are often requested as part of a proposal to granting agencies. Many agencies require, in writing, affiliation agreements (a mutual agreement to share services between agencies) and building space commitments prior to either grant approval or award. A useful method of generating community support may be to hold meetings with the top decision-makers in the community. The forum for discussion may include the merits of the proposal, development of a contract of support for the proposal, generation of data in support of the proposal, or development of a strategy to create proposal support from a large number of community groups.

Identify Eligible Funding. Resources A review of the Objectives and Uses and Use Restrictions sections of the program description can point out which programs might provide funding for an idea. Do not overlook the related programs as potential resources. Both the applicant and the grantor agency should have the same interests, intentions, and needs if a proposal is to be considered an acceptable candidate for funding. Once a potential grantor agency is identified, call the contact telephone number identified in Information Contacts and ask for a grant application kit. Later, get to know some of the grantor agency personnel. Ask for suggestions, criticisms, and advice about the proposed project. In many cases, the more agency personnel know about the proposal, the better the chance of support and of an eventual favorable decision. Sometimes it is useful to send the proposal summary to a specific agency official in a separate cover letter, and ask for review and comment at the earliest possible convenience. Always check with the granting agency to determine its preference if this approach is under consideration. If the review is unfavorable and differences cannot be resolved, ask the examining agency (official) to suggest another department or agency which may be interested in the proposal. The applicant should carefully study

the eligibility requirements for each program under consideration (see the Applicant Eligibility section of the program description). The applicant may learn that he or she is required to provide services otherwise unintended such as a service to particular client groups, or involvement of specific institutions. It may necessitate the modification of the original concept in order for the project to be eligible for funding. Questions about eligibility should be discussed with the appropriate program officer. Deadlines for submitting applications are often not negotiable. They are usually associated with strict timetables for agency review. Some programs have more than one application deadline during the fiscal year. Applicants should plan proposal development around the established deadlines.

Preparing to Write the Proposal. The gathering of documents such as articles of incorporation, tax exemption certificates, and bylaws should be completed, if possible, before the writing begins. Throughout the proposal writing stage keep a notebook handy to write down ideas. Periodically, try to connect ideas by reviewing the notebook. Never throw away written ideas during the grant writing stage. Maintain a file labeled "Ideas" or by some other convenient title and review the ideas from time to time. The file should be easily accessible.

THINGS TO CONSIDER

At some point, perhaps after the first or second draft is completed, seek out a neutral third party to review the proposal working draft for continuity, clarity and reasoning. Ask for constructive criticism at this point, rather than wait for the grantor agency to volunteer this information during the review cycle. For example, has the writer made unsupported assumptions or used jargon or excessive language in the proposal?

Most proposals are made to institutions rather than individuals. Often signatures of chief administrative officials are required. Check to make sure they are included in the proposal where appropriate. Proposals should be typed, collated, copied, and packaged correctly and neatly (according to agency instructions, if any). Each package should be inspected to ensure uniformity from cover to cover. Binding may require either clamps or hard covers. Check with the Federal agency to determine its preference. A neat, organized, and attractive proposal package can leave a positive impression with the reader about the proposal contents.

A cover letter should always accompany a proposal. Standard U.S. Postal Service requirements apply unless otherwise indicated by the Federal agency. Make sure there is enough time for the proposals to reach their destinations. Otherwise, special arrangements may be necessary. Always coordinate such arrangements with the Federal grantor agency project office (the agency which will ultimately have the responsibility for the project), the grant office (the agency

which will coordinate the grant review), and the contract office (the agency responsible for disbursement and grant award notices), if necessary.

WRITING THE GRANT PROPOSAL

The Basic Components of a Proposal There are eight basic components to creating a solid proposal package:

(1) The Proposal Summary: Outline of Project Goals.

The proposal summary outlines the proposed project and should appear at the beginning of the proposal. It can be in the form of a cover letter or a separate page, but should definitely be brief — no longer than two or three paragraphs. The summary would be most useful if it were prepared after the proposal has been developed in order to encompass all the key summary points necessary to communicate the objectives of the project. It is this document that becomes the cornerstone of your proposal, and the initial impression it gives will be critical to the success of your venture. In many cases, the summary will be the first part of the proposal package seen by agency officials and very possibly could be the only part of the package that is carefully reviewed before the decision is made to consider the project any further. The applicant must select a fundable project which can be supported in view of the local need. Alternatives, in the absence of Federal support, should be pointed out. The influence of the project both during and after the project period should be explained. The consequences of the project as a result of funding should be highlighted.

(2) Introduction: Presenting a Credible Applicant or Organization.

The applicant should gather data about its organization from all available sources. Most proposals require a description of an applicant's organization to describe its past and present operations. Some features to consider are:

1. A brief biography of board members and key staff members.
2. The organization's goals, philosophy, track record with other grantors, and any success stories.
3. The data should be relevant to the goals of the Federal grantor agency and should establish the applicant's credibility.

(3) The Problem Statement: Stating the Purpose at Hand.

The problem statement (or needs assessment) is a key element of a proposal that makes a clear, concise, and well-supported statement of the problem to be addressed. The best way to collect information about the problem is to conduct and document both a formal and informal needs assessment for a program in the target or service area. The information provided should be both factual and directly related to the problem addressed by the proposal. Areas to document are:

1. The purpose for developing the proposal.
2. The beneficiaries — who are they and how will they benefit.
3. The social and economic costs to be affected.
4. The nature of the problem (provide as much hard evidence as possible).
5. How the

continued next page

applicant organization came to realize the problem exists, and what is currently being done about the problem. 6. The remaining alternatives available when funding has been exhausted. Explain what will happen to the project and the impending implications.

Most importantly, the specific manner through which problems might be solved. Review the resources needed, considering how they will be used and to what end. There is a considerable body of literature on the exact assessment techniques to be used. Any local, regional or State government planning office, or local university offering course work in planning and evaluation techniques should be able to provide excellent background references. Types of data that may be collected include: historical, geographic, quantitative, factual, statistical and philosophical information, as well as studies completed by colleges, and literature searches from public or university libraries. Local colleges or universities which have a department or section related to the proposal topic may help determine if there is interest in developing a student or faculty project to conduct a needs assessment. It may be helpful to include examples of the findings for highlighting in the proposal.

(4) Project Objectives: Goals and Desired Outcome Program objectives refer to specific activities in a proposal. It is necessary to identify all objectives related to the goals to be reached, and the methods to be employed to achieve the stated objectives. Consider quantities or things measurable and refer to a problem statement and the outcome of proposed activities when developing a well-stated objective. The figures used should be verifiable. Remember, if the proposal is funded, the stated objectives will probably be used to evaluate program progress, so be realistic. There is literature available to help identify and write program objectives.

(5) Program Methods and Program Design: A Plan of Action. The program design refers to how the project is expected to work and solve the stated problem. Sketch out the following:

- The activities to occur along with the related resources and staff needed to operate the project (inputs).
- A flow chart of the organizational features of the project. Describe how the parts interrelate, where personnel will be needed, and what they are expected to do. Identify the kinds of facilities, transportation, and support services required (throughputs).
- Explain what will be achieved through 1 and 2 above (outputs); i.e., plan for measurable results. Project staff may be required to produce evidence of program performance through an examination of stated objectives during either a site visit by the Federal grantor agency and or grant reviews which may involve peer review committees.

- It may be useful to devise a diagram of the program design. For example, draw a three column block. Each column is headed by one of the parts (inputs, throughputs and outputs), and on the left (next to the first column) specific program features should be identified (i.e., implementation, staffing, procurement, and systems development). In the grid, specify something about the program design, for example, assume the first column is labeled inputs and the first row is labeled staff. On the grid one might specify under inputs five nurses to operate a child care unit. The throughput might be to maintain charts, counsel the children, and set up a daily routine; outputs might be to discharge 25 healthy children per week. This type of procedure will help to conceptualize both the scope and detail of the project.

- Wherever possible, justify in the narrative the course of action taken. The most economical method should be used that does not compromise or sacrifice project quality. The financial expenses associated with performance of the project will later become points of negotiation with the Federal program staff. If everything is not carefully justified in writing in the proposal, after negotiation with the Federal grantor agencies, the approved project may resemble less of the original concept. Carefully consider the pressures of the proposed implementation, that is, the time and money needed to acquire each part of the plan. A Program Evaluation and Review Technique (PERT) chart could be useful and supportive in justifying some proposals.

- Highlight the innovative features of the proposal which could be considered distinct from other proposals under consideration.

- Whenever possible, use appendices to provide details, supplementary data, references, and information requiring in-depth analysis. These types of data, although supportive of the proposal, if included in the body of the design, could detract from its readability. Appendices provide the proposal reader with immediate access to details if and when clarification of an idea, sequence or conclusion is required. Time tables, work plans, schedules, activities, methodologies, legal papers, personal vitae, letters of support, and endorsements are examples of appendices.

(6) Evaluation: Product and Process Analysis
The evaluation component is two-fold:

- Product evaluation Product evaluation addresses results that can be attributed to the project, as well as the extent to which the project has satisfied its desired objectives.
- Process evaluation. Process evaluation addresses how the project was conducted, in terms of consistency with the stated plan of action and the effectiveness of the various activities within the plan. Most Federal agencies now require some form of program evaluation among grantees. The

requirements of the proposed project should be explored carefully. Evaluations may be conducted by an internal staff member, an evaluation firm or both. The applicant should state the amount of time needed to evaluate, how the feedback will be distributed among the proposed staff, and a schedule for review and comment for this type of communication. Evaluation designs may start at the beginning, middle or end of a project, but the applicant should specify a start-up time. It is practical to submit an evaluation design at the start of a project for two reasons:

- Convincing evaluations require the collection of appropriate data before and during program operations; and,

- If the evaluation design cannot be prepared at the outset then a critical review of the program design may be advisable. Even if the evaluation design has to be revised as the project progresses, it is much easier and cheaper to modify a good design. If the problem is not well defined and carefully analyzed for cause and effect relationships then a good evaluation design may be difficult to achieve. Sometimes a pilot study is needed to begin the identification of facts and relationships. Often a thorough literature search may be sufficient. Evaluation requires both coordination and agreement among program decision makers (if known). Above all, the Federal grantor agency's requirements should be highlighted in the evaluation design. Also, Federal grantor agencies may require specific evaluation techniques such as designated data formats (an existing information collection system) or they may offer financial inducements for voluntary participation in a national evaluation study. The applicant should ask specifically about these points. Also, consult the Criteria For Selecting Proposals section of the Catalog program description to determine the exact evaluation methods to be required for the program if funded.

(7) Future Funding: Long-Term Project Planning

Describe a plan for continuation beyond the grant period, and/or the availability of other resources necessary to implement the grant. Discuss maintenance and future program funding if program is for construction activity. Account for other needed expenditures if program includes purchase of equipment.

(8) The Proposal Budget: Planning the Budget

Funding levels in Federal assistance programs change yearly. It is useful to review the appropriations over the past several years to try to project future funding levels (see Financial Information section of the Catalog program description). However, it is safer to never anticipate that the income from the grant will be the sole support for the project. This consideration should be given to the overall budget requirements, and in particular, to budget line items most subject to inflationary pressures. Restraint is important in determining inflationary cost projections (avoid padding budget line items), but attempt to anticipate possible future increases.

Some vulnerable budget areas are: utilities, rental of buildings and equipment, salary increases, food, telephones, insurance, and transportation. Budget adjustments are sometimes made after the grant award, but this can be a lengthy process. Be certain that implementation, continuation and phase-down costs can be met. Consider costs associated with leases, evaluation systems, hard/soft match requirements, audits, development, implementation and maintenance of information and accounting systems, and other long-term financial commitments. A well-prepared budget justifies all expenses and is consistent with the proposal narrative. Some areas in need of an evaluation for consistency are: the salaries in the proposal in relation to those of the applicant organization should be similar; if new staff persons are being hired, additional space and equipment should be considered, as necessary; if the budget calls for an equipment purchase, it should be the type allowed by the grantor agency; if additional space is rented, the increase in insurance should be supported; if an indirect cost rate applies to the proposal, the division between direct and indirect costs should not be in conflict, and the aggregate budget totals should refer directly to the approved formula; and if matching costs are required, the contributions to the matching fund should be taken out of the budget unless otherwise specified in the application instructions.

It is very important to become familiar with Government-wide circular requirements. The Catalog identifies in the program description section (as information is provided from the agencies) the particular circulars applicable to a Federal program, and summarizes coordination of Executive Order 12372, "Intergovernmental Review of Programs" requirements in Appendix I. The applicant should thoroughly review the appropriate circulars since they are essential in determining items such as cost principles and conforming with Government guidelines for Federal domestic assistance.

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An ordinance fixing no guide or rule for the exercise of administrative discretion, leaving the whole matter to be determined by the officer, is an unwarranted delegation of legislative power. Such ordinances are universally held unreasonable, arbitrary or oppressive. When adopting ordinances, a council should provide standards and guides to be used by officers responsible for administration of the ordinances.

The council may appoint investigative committees to study and report facts, but final discretion as to any action required must be made by the council.

The council may authorize the mayor to make a particular contract which the council alone is authorized to make, and subsequently ratify such contract and take action pursuant thereto. Here the ratification constitutes the performance of the duty imposed on the council.

The council cannot, by agreement, bind its successors to forgo or exercise their legislative powers. Attorney General's Opinion 97-00118.

Necessity for Council Action

In some instances, statutes relating to municipal powers are self-executing. However, in most instances, the grants of power are not effective until the council takes legislative action to set them in motion. The authority to levy a tax or impose a license, for example, must be put in motion by affirmative action by the council before such powers can actually be administered. In other words, the Legislature generally places municipal powers at the discretion of the municipal council or governing body, to be exercised or not, according to the judgment of the council. Such action is taken by the adoption of an ordinance, resolution or motion as the granting authority may require.

Extraterritorial Powers

It is a general rule of law that the powers granted to cities and towns can be exercised only within their territorial limits, unless specifically provided otherwise by statute. Fortunately, Alabama cities and towns have been expressly granted a host of extraterritorial powers. Section 11-40-10, Code of Alabama, 1975, provides that the ordinances of a municipality enforcing police or sanitary regulations and prescribing fines and penalties for violations shall have force and effect within the corporate limits, in the police jurisdiction thereof and on any property or rights of way belonging to the municipality.

This section states that the police jurisdiction of cities and towns of less than 6,000 in population shall extend for a distance of 1.5 miles beyond the corporate limits. In cities of more than 6,000 in population, this jurisdiction extends for a distance of three miles beyond the corporate limits. Municipal police officers are authorized to make arrests for violations of municipal ordinances within the municipal police jurisdiction, and county lines are no barrier to the exercise of this power. One exception exists, however. Municipal police officers may not enforce speed limits outside their corporate limits. Section 32-5A-171, Code of Alabama, 1975.

In addition to this statute creating a police jurisdiction, a number of statutes authorize cities and towns to exercise particular powers inside and outside the corporate limits, in the surrounding territory, or within a specified territorial radius beyond the police jurisdiction. See the article titled *The Municipal Police Jurisdiction* in this publication.

Legislative and Executive

Alabama municipal corporations are vested with legislative and executive powers. Legislative power is the authority to make laws and is vested in the council. Executive powers are generally vested in the mayor and heads of departments. The crucial test to determine the difference between legislative powers and executive or administrative powers is whether an ordinance makes a new law or executes a law already in existence.

The question of whether an act is legislative or executive often arises in connection with the power of the courts to interfere with the exercise thereof. Courts will not review proceedings of municipal officials which involve legislative discretion except in cases of fraud and arbitrary or capricious action.

The legislative powers of the council are not to be confused with the power to administer or execute the laws of the municipality. It is the responsibility of the mayor to see that the officers and employees of the municipality faithfully execute the laws and policies established by the council.

This centralization of administrative and executive power in the mayor was established by statute in the *Municipal Code of 1907* after the Legislature witnessed the waste, inefficiency and confusion which resulted under prior laws which established no centralized administrative authority. While it is certainly within the province of a council to determine if the ordinances of the municipality are being administered properly, it is not the intent of the law for the council to step out of its legislative role to personally direct officers and employees of the municipality.

Impressive Powers

While it is not within the scope or intent of this discussion to list the powers entrusted to the discretion of a municipal council, the following examples provide an impressive idea of the power of a council: (1) to levy taxes on real property; (2) to establish privilege licenses; (3) to adopt police regulations for the safety, health and welfare of the community; (4) to punish by fine and imprisonment; (5) to condemn property; (6) to sue and be sued as a corporate entity; (7) to borrow money by general obligation bonds, warrants and negotiable notes; (8) to acquire property by purchase or lease; (9) to sell or lease municipal property no longer needed for municipal or public purposes; (10) to pledge municipal revenues to the payment of municipal obligations; (11) to assess property for public improvements; (12) to grant franchises for the use of municipal streets; (13) to regulate the use of streets and prohibit selling in the streets; (14) to acquire, own and operate water, gas, sewer and electric utilities; (15) to manage and control municipal finances and property; (16) adopt building laws; (17) abate nuisances; (18) adopt zoning regulations; (19) enter into

contracts; (20) establish and maintain municipal buildings, hospitals, jails, magazines, museums, art galleries, and recreational facilities; (21) to acquire and regulate cemeteries; (22) to require witnesses to appear before the council or a council committee and punish for contempt for failure to do so; (23) to provide for the health and sanitation of the community; (24) to promote the industrial development of the community and to advertise for such purposes; (25) to establish numerous separately incorporated boards to promote particular municipal projects and appoint directors of the boards; (26) to vacate streets; (27) to enter into written contracts with counties to perform any services common to all contracting entities.

In exercising these and other powers, the governing body of a municipality sets the pace and determines the course of the municipality.

Federal or State Grants

Municipalities have broad authority to receive federal or state money and to comply with the conditions placed upon these funds by the grantor. Section 11-64-2, et seq., Code of Alabama, 1975.

Principal Constitutional Provisions Relating to Municipalities

Section 68 – Prohibits municipalities from granting extra compensation after a service has been rendered.

Section 77 – Authorizes Legislature to empower municipalities to measure and inspect merchandise.

Section 89 – Prohibits municipalities from adopting ordinances inconsistent with general laws of state.

Section 91 – Prohibits legislature from taxing property of municipal corporation.

Section 94 – Prohibits municipality from lending its credit to private persons or corporations.

Section 190 – Requires uniform statewide election laws.

Section 211 – Requires all property to be assessed in exact proportion to its value. (Exemption and reasonable classification allowed.)

Section 212 – Power to levy taxes not to be delegated.

Section 216 – All municipalities authorized to levy five mill ad valorem tax on property as assessed for state taxation without an election. Certain cities specifically authorized to levy higher millage than five mills.

Section 217 – Requires uniformity of tax rates on all properties. This has been construed to require uniform assessments.

Section 218 – Prohibits Legislature from requiring municipalities to pay charges presently payable out of state treasury (when Constitution was ratified).

Section 220 – No person, association, or corporation shall be authorized or permitted to use the streets, avenues, alleys or public places of any city, town or village for the construction or operation of any public utility or private enterprise, without first obtaining the consent of the proper authorities of such city, town or village.

Section 221 – The Legislature shall not enact any law which will permit any person, firm, corporation or association to pay a privilege, license or other tax to the state of Alabama and relieve him of it from the payment of all other privilege and license taxes in the state.

Section 222 – Authorizes Legislature to empower municipalities to issue bonds. Election required.

Section 223 – Restricts municipal public improvement assessments to increased value of abutting property by reason of special benefits derived from improvements.

Section 225 – Municipal debt limit amended by Amendment 268 to 20 percent of total assessed value of properties located therein.

Section 227 – Subjects utilities operating on streets to costs of damages to abutting property.

Section 228 – Prohibits municipalities over 6,000 population from granting franchises in excess of 30 years.

Section 235 – Subjects municipalities to compensatory damages for taking property for public use and for consequential damages requiring bond in double amount of damages assessed on appeal.

Section 280 – Prohibits persons from holding two offices of profit at same time.

Section 281 – Prohibits increase of compensation of officer during term for which he has been elected or appointed.

Amendment 8 – Increases tax millage authorized for specified cities and towns to 15 mills. Election on amount over last five mills.

Amendment 13 – Increases tax millage authorized for specified cities and towns to 10 mills. No election required.

Amendment 17 – Increased tax rate for specified cities and towns to 15 mills.

Amendment 31 – Increased tax rate for city of Attalla – 10 mills.

Amendment 54 – Increases Haleyville's rate of taxation to 10 mills.

Amendment 56 – Authorizes all cities and towns to levy up to 12.5 mills. Election required on all rates over five mills

Amendment 80 – Special Huntsville school tax of five mills.

Amendment 84 – Industrial development powers for municipalities in Marion County. Up to 20 mills taxing power without election. [Unique].

Amendment 94 – Industrial development powers to municipalities in Fayette County. Election required.

Amendment 95 – Economic development in Blount County.

Amendment 104 – Industrial development powers to cities of Haleyville and Double Springs. Election required.

Amendment 107 – Authority for municipal revenue bonds without involving debt limit.

Amendment 108 – Declaring debts of utility corporations created by cities and towns separate from such municipalities even though municipality transferred property to such corporation.

Amendment 112 – Amendment to Section 94.

Amendment 126 – Debt limit limitations in municipalities of less than 6,000 population.

Amendment 133 – Taxes on wages or salaries by municipalities in Walker County.

Amendment 144 – Form of government of Colbert County municipalities.

Amendment 147 – Special school tax for Opelika.

Amendment 148 – Special school tax for Auburn.

continued next page

Amendment 155 – Industrial development powers to Uniontown.

Amendment 170 – Educational tax in Tuscumbia.

Amendment 171 – Special school tax for Sheffield.

Amendment 172 – Special school tax for Muscle Shoals.

Amendment 178 – Special school tax for Florence.

Amendment 183 – Industrial development authority for municipalities in Autauga County.

Amendment 186 – Industrial development authority for municipalities in Franklin County.

Amendment 188 – Industrial development authority for Greene County.

Amendment 189 – Industrial development authority for municipalities in Lamar County.

Amendment 190 – Industrial development authority for municipalities in Lawrence County.

Amendment 191 – Industrial development authority for Huntsville.

Amendment 192 – Pensions to former public officers in Mobile County.

Amendment 197 – Industrial development authority for municipalities in St. Clair County.

Amendment 209 – Additional tax in city of Mountain Brook.

Amendment 217 – Industrial development authority for municipalities in Clarke County.

Amendment 218 – Special school tax for Huntsville.

Amendment 219 – Requiring election before municipalities in Mobile County may levy income or occupational license tax.

Amendment 220 – Industrial development authority for Bayou La Batre.

Amendment 221 – Industrial development authority for York.

Amendment 228 – Ratifying power of municipalities to issue revenue bonds for industrial development to acquire and expand such projects.

Amendment 232 – Special school tax authority for Anniston.

Amendment 233 – Special school tax for Fort Payne.

Amendment 240 – Special property tax for Birmingham for bonds.

Amendment 242 – Special property tax for Auburn for recreation.

Amendment 244 – Economic development authority for Town of Lester.

Amendment 245 – Amending Huntsville's industrial development powers.

Amendment 246 – Refunding of securities by municipalities in Marion County.

Amendment 248 – Amendment to Mobile County municipalities taxing powers.

Amendment 251 – Industrial development powers of Livingston.

Amendment 253 – Special school tax authority for Jasper.

Amendment 256 – Industrial development authority for Lynn and Addison.

Amendment 259 – Industrial development authority for Evergreen.

Amendment 261 – Industrial development authority for Bayou La Batre.

Amendment 263 – Industrial development authority for municipalities in Geneva County.

Amendment 268 – Increasing municipal debt limit to 20 percent of assessed valuation for state taxes.

Amendment 269 – Authority for municipalities to levy special tax for library purposes.

Amendment 277 – Industrial development powers for Carbon Hill.

Amendment 279 – Special school tax power for Fort Payne.

Amendment 295 – Special school tax power for Ozark.

Amendment 299 – Special school tax power for Oneonta.

Amendment 302 – Industrial development powers to municipalities in Pickens County.

Amendment 303 – Industrial development powers to Hartselle and Decatur.

Amendment 305 – Special school tax power to Huntsville.

Amendment 312 – Industrial development powers to municipalities in Bibb County.

Amendment 313 – Industrial development powers to municipalities in Hale County.

Amendment 316 – Special school tax power for Mountain Brook.

Amendment 319 – Authority for municipalities in Baldwin County to levy a special property tax for library purposes.

Amendment 325 – Relating to ad valorem taxes.

Amendment 336 – Additional tax for city of Mountain Brook.

Amendment 350 – Education tax in Anniston.

Amendment 352 – Additional property tax in city of Vestavia Hills.

Amendment 373 – Amendment to Section 110 relating to adoption of "general laws."

Amendment 376 – Development of parks in Anniston.

Amendment 385 – Demopolis five mill ad valorem tax for schools.

Amendment 389 – Validation of certain population-based acts.

Amendment 407 – City of Huntsville school tax.

Amendment 409 – City of Alabaster ad valorem tax.

Amendment 415 – Industrial park projects and industrial sites in Calhoun County.

Amendment 425 – Adoption of proposed constitutional amendments affecting only one county.

Amendment 429 – Economic development authority for certain counties and the municipalities therein.

Amendment 435 – Annual license taxes, registration, etc., on trucks, trailers, etc., in Conecuh County.

Amendment 450 – Alabama Trust Fund.

Amendment 456 – Hartselle city school taxes.

Amendment 462 – Ozark school tax.

Amendment 468 – Marengo County industrial development.

Amendment 469 – Annexation in Marshall County.

Amendment 475 – Tax increment districts in counties and municipalities.

Amendment 477 – City of Jackson port authority.

Amendment 488 – Investment of capital and income from Alabama Heritage Trust Fund or Alabama Trust Fund.

Amendment 491 – Effectiveness of laws providing for expenditure of municipal funds.

Amendment 499 – Municipal police jurisdiction in Limestone County.

Amendment 500 – Investment of municipal funds and county funds by Mobile County.

Amendment 514 – Appropriations to certain nonprofit organizations by city of Huntsville.

Amendment 531 – Municipal jurisdiction in Madison County.

Amendment 535 – Election of board of education of city of Tallassee.

Amendment 536 – Distribution of oil and gas revenues by Escambia County Commission.

Amendment 537 – Election of board of education in city of Attalla.

Amendment 539 – Business license taxes in Jefferson County.

Amendment 541 – Investments of assets of Class 2 municipalities police and firefighter pension plans.

Amendment 544 – Election of board of education for Pell City.

Amendment 548 – Election of Talladega City Board of Education.

Amendment 550 – Bingo games in city of Jasper.

Amendment 552 – Election of Dothan City Board of Education.

Amendment 553 – Election of Decatur City Board of Education.

Amendment 555 – Amending Amendment 425.

Amendment 558 – Amending Section 94.

Amendment 566 – Election of members of Cullman City Board of Education.

Amendment 568 – Incorporation of regional airport authority by city of Red Bay.

Amendment 570 – Police jurisdiction and planning and zoning authority of municipalities of Lee County.

Amendment 574 – Hartselle ad valorem tax.

Amendment 575 – Decatur ad valorem tax.

Amendment 591 – Tuskegee electric utility.

Amendment 621 – Unfunded mandates on local governments.

Amendment 622 – Alabama Religious Freedom Amendment.

Amendment 623 – Trust funds for long-term benefit of Cities.

Amendment 627 – Baldwin County annexations.

Amendment 642 – Lee County and city of Opelika economic and industrial development.

Amendment 643 – Limits on planning and zoning in Limestone County.

Amendment 659 – Election of city board of education.

Amendment 664 – Election on Anniston City Board of Education.

Amendment 665 – City board of education to be elected when population exceeds 125,000.

Amendment 666 – County and Municipal Government Capital Improvement Trust Fund and Alabama Capital Improvement Trust Fund.

Amendment 668 – Income distribution to counties and municipalities from Alabama Trust Fund.

Amendment 674 – Bingo in White Hall.

Amendment 677 – Anniston Water and Sewer Board directors.

Amendment 732 – Bingo in White Hall.

Amendment 738 – Talladega council-manager form of government.



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Status of Employees of Separately Incorporated Entities

The League will actively pursue legislation to further clarify that employees of separately incorporated municipal boards are not employees of the city in which the board is incorporated.

Municipality Authority to Give Clear Title When Selling Abandoned Vehicles

The League will offer a bill to amend Section 32-13-3 of the Code of Alabama 1975 to clearly provide that municipalities have the ability to sell abandoned motor vehicles at public auction pursuant to the Abandoned Motor Vehicle Act. In the alternative, the bill will provide that Section 11-47-116 of the Code of Alabama 1975, relating to the sale of abandoned and stolen property by municipalities, be amended to clearly provide that municipalities have the authority to sell abandoned motor vehicles free and clear of any liens and encumbrances.

Applicability of Municipal Building Code to State and County Buildings

The Attorney General recently issued an opinion that state and county buildings do not have to comply with city building codes. Municipal officials feel that schools and other public buildings depending upon municipal fire protection should be subject to such inspections as a matter of public safety. Legislation will be introduced to provide that state and county buildings must meet municipal code requirements. This legislation would not require the payment of any fees.

Clarification of Tort Liability Laws

Section 11-47-190 of the Code of Alabama 1975, limiting a city's aggregate liability to \$300,000 on any combination of judgments arising from a single occurrence, should be amended to clearly provide that this limit on liability applies to property damage claims in addition to personal injury claims. This League will introduce a bill for this purpose.

City School Systems

Current law provides that a city of 5,000 or more population can establish a city school system. The League will introduce legislation to provide that two or more municipalities can join together to form a school system if the collective population of all participating entities is more than 5,000 inhabitants.

Wet-Dry Referendum

This League bill would authorize any municipality with a full time police department, upon presentation of a qualified petition from the electorate, to hold a municipal wet-dry referendum. The bill would also authorize any city or town where the sale of alcoholic beverages is authorized by law to hold a referendum on the issue of Sunday sales of alcoholic beverages.

Fire Insurance Ratings

The Insurance Services Office rates fire departments on a scale from 1 – 10. For many years, these ratings have played an important role in establishing fire insurance rates within an area. Many municipalities have spent huge sums to improve their local fire ratings. The League will urge the Alabama Legislature to require the use of ISO ratings by insurance companies where appropriate.

Conclusion

The Committee on State and Federal Legislation has adopted an ambitious Legislative Package for 2005. All municipal officials are urged to get behind this package and push for its passage during the session.

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formally protected its half of Grand Bay from any future oil exploration, Alabama leased most of its half of Grand Bay to Duncan Oil. The company has proposed a drilling site for an exploratory well in water less than 6 feet deep, about 1,500 feet from the nearest island and 2,000 feet from Mississippi's part of Grand Bay, which is now a federally protected bioserve.

The drill site lies inside a several-miles-long sandbar – the Grand Batture Shoal – that stretches across the mouth of Grand Bay and is covered with an extensive bed of aquatic plants. The proposal submitted by the company requires bringing a drilling barge through a narrow channel on the far east side of Grand Bay, then turning west and running parallel to the sandbar for several miles to the drill site, located offshore of a small piece of muddy, marshy land called Long Island. That island, like most of the islands in the upper part of Grand Bay, is surrounded by beds of widgeon grass, an important food source for migratory ducks.

Some biologists and federal grass bed specialists are alarmed by the proposal because of the shallow depths and high-quality habitat in the area. Years ago, both sides of the bay were described with expansive beds that stretched hundreds of feet offshore and were miles long. Mississippi Sound has been similarly altered. In both areas, rapid coastal development and an associated decline in water quality are blamed for the losses. The grass beds in Grand Bay are frequently described as the largest and most robust in all of Alabama's coastal waters. In June, the state permanently banned shrimpers from Grand Bay to protect the grasses. Several shrimpers are upset that the state would lock them out of the area and then turn around and consider allowing gas drilling.

Nearshore seagrass beds are considered the nursery grounds for most of the commercially important species in the Gulf, including red snapper, redfish, blue crabs, shrimp and flounder. Young, vulnerable creatures hide in the grasses, seeking protection from predators and a ready supply of food. Grand Bay's grass beds, are home to juvenile speckled trout, jack crevalle, flounder, mullet, blowfish, pipefish, white trout, croaker and grunt, among other species.

Biologists worry that drilling activities in the shallow estuary – especially hauling the drill barge in with a tugboat and keeping it supplied with drilling pipe, drilling fluids, diesel fuel and other supplies – could stir up bottom sediments for several weeks and either bury grasses or block the sunlight they need to live. Seagrasses depend upon clear waters so

light can penetrate and they can perform photosynthesis. Bringing in equipment, pushing barges or dredging increases turbidity. Any time sediments and turbidity are increased, a risk of causing problems arises. Too much time lapses without sunlight, grasses will die.

In Louisiana, the state requires oil companies to pay for extensive surveys by independent scientists of proposed drilling sites and access routes near oyster habitat or seagrass beds. The state has a list of 16 specially certified biologists who are experts in protecting oyster habitat from drilling impacts. Numerous wells in the Mississippi Sound and Mobile Bay have been drilled using a multilateral technique known as directional drilling. Various multilateral techniques are commonly used in the Gulf, Alaska, the Rocky Mountains and Louisiana's coastal marshes.

Companies are able to drill up, down, left, right or even horizontally to avoid obstacles such as homes, wetlands or shipping lanes. Requiring a company to use such techniques in Grand Bay would raise costs but ensure protection of sensitive areas. To use multilateral techniques in Grand Bay – with the rig situated in the deeper area outside of Grand Bay – a company would have to drill roughly 6,500 feet. This adds to the cost of the operation and new evaluation to the financial benefits of the exploratory drilling. ■

Obituaries

Joe Langan

Joe Langan, former mayor of Mobile, died November 2, 2004. He was 92. Langan served as a Mobile city commissioner from 1953 to 1969, including several tenures as mayor at a time when the city had a three-member commission form of government. He was also a former president of the Alabama League of Municipalities. He is survived by his wife and his brother. ■

Ernest "Rainy" Collins

Ernest "Rainy" Collins, former mayor of Tuscaloosa, died November 7, 2004. He was 92. Langan served as a mayor from 1976 to 1981, and rose to prominence in Tuscaloosa through his work with the National Guard. He was active in the Guard for 38 years and served in World War II. He served as president and also on the board of directors of the Tuscaloosa County Boys Club, and he was president of the Tuscaloosa Exchange Club. ■

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