THE ALABAMA MUNICIPAL
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July 2004 Volume 62, Number 1

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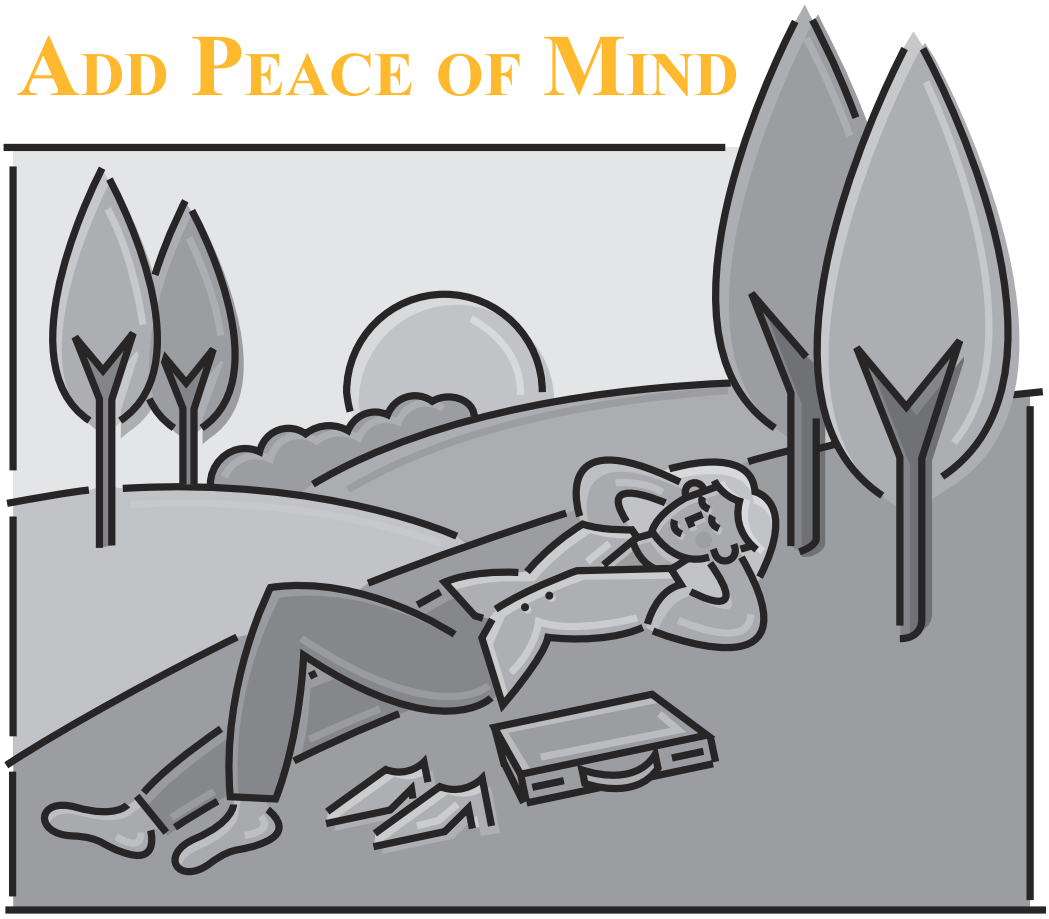

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WIMG Explores Economic Assets of Florence, AL.

by Lita Leo, National League of Cities
***Nation's Cities Weekly*, June 7, 2004**

The recent Women in Municipal Government (WIMG), Summer Conference and Board of Directors meeting in Florence, AL., gave members the opportunity to hear from Alabama's first woman elected lieutenant governor and explore environmental and economic issues as well as the charms of the South. **WIMG President JoAnn Thomas, Florence councilmember**, hosted the conference.

The conference afforded WIMG members the chance to network with host city municipal and academic women leaders, attend informative leadership seminars that showcased economic development models adaptable to other cities and tour the Tennessee Valley Authority (TVA) and the International Fertilizer Development Center, (IFDC) both located in neighboring city of Muscle Shoals.

Participants also toured the historical Frank Lloyd Wright House, a historic preservation in Florence and the only home in Alabama designed by the renowned architect; the University of North Alabama, and the Alabama Music Hall of Fame, which honors great music achievers from the state of Alabama, located in nearby Tuscumbia, AL.

Environmental Preservation and Economic Development Resources

Known as the nation's largest power producer, TVA provides affordable electricity to residents and businesses in the Tennessee Valley region, which includes seven surrounding states. An exploration of TVA's wetlands and Florence's popular Wilson Dam gave participants insight on how TVA works to protect the region's environment and support economic development in the area. Numerous WIMG members indicated that they would work with their contacts to possibly adapt the wetlands program for the benefit of their cities.

Following the mobile tour to TVA, participants met with representatives of the IFDC, a non-profit organization that focuses on contributing economic progress by promoting sustainable agricultural development in developing countries across the world, including Southeast Asia, Malawi and Albania.

Prominent Speakers

A highlight of the conference was a visit from the first woman elected as Alabama's Lieutenant Governor, Lucille Baxley. Baxley briefed conference participants on the experiences and challenges she confronted growing up and in taking office. Baxley said the role of an elected official is very much like one that is geared toward heading a family. "Women in leadership must make the decisions based on what is best for the family. Hearing and caring are important. To hear and care does not mean you have to give in to a specific line of thought. You still ought to apply the good sense of what is best for that person as well as everyone else collectively."

Following the Lt. Governor's remarks, participants had the opportunity to hear from fashion designer Natalie Chanin, head of Project Alabama, an international company that creates fashions from recycled fabric and T-shirts. Chanin's employees consist of former factory workers, retired teachers, widows, stay-at-home moms, and secretaries. Fashions from Project Alabama are sold at Barney's in New York and other high end retailers across the globe.

Other noteworthy speakers at the conference were: Dalinda Thomas, principal consultant, Outcome Measurement Consultants Inc., who discussed grant writing; Lynn Aquadro, Clinical Director, North Alabama Health Association, who spoke about how the volunteer efforts and partnership community have helped the underprivileged receive fine healthcare, and Audrey McDaniel, coordinator, Florence Housing Authority, who talked about affordable housing for women and children.

Conference participants also heard from several other women in leadership roles, including Torri Bailey, Owner, WZZA Radio Station, Sherry Campbell, director of the Culinary Arts Center; Deborah Ford, author; Debbie Wilson, director, Florence-Lauderdale Tourism, and Judy Hood, communications director, International Paper Company.

Board of Directors Meeting

Thomas presided over the Board of Directors Meeting, where members discussed NLC's top advocacy priorities, membership recruitment efforts, upcoming WIMG board vacancies and the discussion about possible future candidates for NLC's 2005 second vice presidency.

During this meeting, WIMG Board members voted to move forward with the development of a WIMG awards program that would honor a woman in municipal government from an NLC member city who has demonstrated outstanding service to her government. The program will be inaugurated at the WIMG luncheon at the Congress of Cities in Charlotte, N.C., in 2005.

NLC members interested in joining WIMG may check off their 2004 WIMG dues and activity fees as part of the NLC Indianapolis Congress of Cities registration fees. For more information about WIMG, visit: www.nlc.org or call NLC's constituency group office at: 202-626-3169. ■

The President's Report

Jim Byard, Jr.
Mayor of Prattville

Reflections on Our Nation's 40th President

Whatever else history may say about me when I'm gone, I hope it will record that I appealed to your best hopes, not your worst fears; to your confidence rather than your doubts. My dream is that you will travel the road ahead with liberty's lamp guiding your steps and opportunity's arm steadying your way.

Former President Ronald Reagan

What a great quote from a great American that we recently laid to rest. President Reagan's quote is really appropriate today as most of us are in the middle of re-election campaigns. While his statement dealt with his presidency, I believe it also applies to municipal officials. We serve, as they say "where the rubber meets the road".

Truly, we each must appeal to our citizen's best hopes while allaying their fears. We, as leaders, are charged to exude confidence, not display doubt. We rely on the lamp of liberty allowing us to capitalize on the opportunities that daily face our cities.

Ronald Reagan was running for re-election in 1984 when I became eligible to vote. He was the first president that I voted for. At this time of municipal campaigning across our State, Reagan's campaigns come to mind. He was a tough campaigner, but he came across as completely genuine to many Americans. He was an eternal optimist, something that appeals to me personally. I have never understood why someone running for office tries to come across negatively, or promote a 'gloom and doom' campaign. That type of campaign is rarely successful.

The President had a great sense of humor – another attribute that helps in the political arena. We would probably all agree that the ability to think quickly on your feet is an asset in politics and governance. This asset is especially important to those of us who serve on the local level. Because we are so close to the people we represent, we often have to answer questions thoroughly and quickly.

Reagan formed a strong camaraderie with the American public. Folks considered him as being 'down-to-earth' and 'one of them'. This was evidenced during his state funeral as hundreds of thousands of Americans from all walks of life stood in line for hours to pass silently by his casket. He was twice elected governor of California, both by landslides. He was elected and re-elected President – again by landslide margins. Those of us facing election next month hope that we have similar results at the polls.

President Reagan had this quote on his desk in the Oval Office which read: "There is no limit to what a man can do, or where he can go, if he doesn't mind who gets the credit." What valuable advice for those that lead the cities and towns of Alabama. ■

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The *Annual Directory & Vendor Yellow Pages* is a 136 page, 8½ x 11 publication with a coil binding that also offers information about the League and our staff and provides contact information for the Alabama House of Representatives, the Alabama Senate, Constitutional officers and important state agencies. Municipal listings for Alabama's more than 400 incorporated cities and towns include the following information:

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Alabama State Flag Act

In 2001, the Legislature passed the Alabama State Flag Act, which requires all municipal buildings that are open to the public and supported in whole or in part by public funds to prominently display the Alabama State Flag three years after August 1, 2001, which is ***August 1, 2004***. See Sections 1-2A-1 through 1-2A-8, Code of Alabama (1975).

As you are aware, August 1, 2004, is right around the corner, so if your municipality has not met the requirements of this act, please do so before the deadline. Of course, if your municipality has questions regarding this requirement, please feel free to call the League office at any time. The text of Section 1-2A-8, Code of Alabama (1975), which applies to municipal buildings, can be found below.

Section 1-2A-8
Display of Alabama State Flag – Municipal buildings.

(a) Each municipal building located in this state which is open to the general public and supported in whole or in part by public funds, shall prominently display the Alabama State Flag, in accordance with appropriate flag display protocol, on a flag pole or flag poles located near the main entrance of each building.

(b) Unless otherwise acquired pursuant to gift, donation, or other means, the flags and flag poles required by this section shall be purchased by the applicable municipality within three years after August 1, 2001.

(c) Any municipality with a population of 1,000 or less, according to the most recent federal decennial census, shall be exempt from this section unless other flags are being flown in the municipality by the municipality. ***(Act 2001-472, p. 629, §9.)***

Municipal Overview

By
PERRY C. ROQUEMORE, JR.
Executive Director

NLC Offers Youth Action Kit

"Reengaging Disconnected Youth," isn't just the name of NLC's latest action kit – it's what's on the minds and agendas of many municipal officials across the country. Strategies for reaching out to disconnected youth composed a prominent strand of conversation at NLC's 2004 Your City's Families Conference in Portland, Ore. Participants and presenters alike expressed concern about what happens to older youth who have weak or no connections to school, work and the community – and what happens in communities where these young people struggle to survive and thrive.

Whether coming from small towns or large cities, elected officials and youth serving professionals perceive steep challenges as well as clear needs for improved collaboration. Discussion topics during the conference ranged from summer job shortages and high rates of involvement with the criminal justice system, drugs and gangs, to weak services for young adults making the transitions from foster care or incarceration.

New Action Kit

NLC's new action kit on "Reengaging Disconnected Youth," which was released during the conference, is designed to help municipal officials who are struggling with these issues. The kit highlights the many roles that municipal leaders can play in building and strengthening community efforts to reach out to youth who have become disconnected from school, work and the community. It is the seventh in an ongoing series of such action kits.

The Challenge

A staggering 2.8 million Americans between the ages of 16 and 24 are out of school and unemployed. An estimated 20 to 25 percent of today's 14-year-olds will drop out of high school at some point in their careers. Only half of them will eventually return to school to get a diploma or GED. Throughout the conference participants shared examples of their unique local challenges.

• A small community in Washington state spoke of the wave of methamphetamine use sweeping through their town.

• Maggie Donahue of San Francisco's Department of Human Services spoke of her city's collaborative efforts to meet the challenge of 850 youth per year transitioning out of foster care.

• Megan Altorfer, a young mother from Portland, Ore., shared her struggle with becoming a teen mother, dropping out of high school and then finding her way back onto a positive path.

Local Action

The kit's "Getting Started" section helps municipal officials think about ways to lay the foundation for a broad effort, including convening relevant stakeholders, assessing existing community resources and building public support for change. Additional sections propose specific action steps in the areas of education and employment. The publication also discusses the importance of reaching out to young people at critical transition points, such as during patterns of truancy or when exiting the juvenile justice or foster care systems. Specific examples of how municipal officials can work across systems to achieve positive outcomes for these youth include:

• Transitional jobs strategies concentrated on young adults. For example, Virginia Beach, Va., launched a new trades training program for young people returning from incarceration, and Jackson, Miss., recently opened the doors of a program blending GED attainment, technology training and transitional work.

• Creative blending of CDBG and other funds, as described by Karen Belsey of Portland's Bureau of Housing & Community Development and Zeke Smith of Portland's Youth Employment Institute.

Overall, the action kit emphasizes that city government cannot accomplish what needs to be done by working in isolation.

YEF Institute Support

This action kit was produced as part of the YEF Institute's broader efforts, supported by the William and Flora Hewlett Foundation and the Charles Stewart Mott Foundation, to promote municipal leadership on behalf of disconnected youth. An earlier NLC publication, "Connecting Vulnerable Youth: A Municipal Leaders' Guide," lays the foundation for this current work and puts a face to the term "vulnerable" or "disconnected" youth. Municipal officials interested in learning more about promising practices or in networking with others engaged in similar efforts are invited to join the new Network on Municipal Leadership for Disconnected Youth. To register, download a registration form at www.nlc.org/iyef, or request a registration form at **202-626-3014 or iyef@nlc.org**.

The action kit will be mailed to the mayors of NLC direct member cities and to individuals who have registered their specific interest in these issues with the YEF Institute. To be placed on this mailing list or to request a copy of "Reengaging Disconnected Youth," leave a detailed message at **202-626-3014 or iyef@nlc.org**. "Reengaging Disconnected Youth" and "Connecting Vulnerable Youth" may be downloaded at **www.nlc.org/iyef**. ■

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ENVIRONMENTAL OUTLOOK

By Gregory D. Cochran
Director, Intergovernmental Relations

Drinking Water and Infrastructure Needs

In 2001, the Water Infrastructure Network (WIN), which represents a broad spectrum of professional, technical, academic, environmental, labor, and government organizations involved in water infrastructure, released its first report, Clean & Safe Water for the 21st Century. That report documented significant improvements in water quality and public health associated with America's investments in water and wastewater infrastructure. However, it also documented an unprecedented financial problem: over the next 20 years, America's water and wastewater systems will have to invest $23 billion a year more than current investments to meet the national environmental and public health priorities in the Clean Water Act and Safe Drinking Water Act and to replace aging and failing infrastructure. EPA's own data and analyses corroborate the WIN figures. This second WIN report recommends a series of public and private actions that will be needed to meet the challenges for funding water and wastewater infrastructure over the coming decades. As part of this fiscal partnership, WIN recommends increasing the federal role where needs are great, public health or the environment is at risk, or local resources are inadequate. This enhanced federal role should provide for distribution of funds in fiscally responsible and flexible ways, including grants, loans, loan subsidies, and credit assistance.

Investment in Water and Wastewater Will Yield Substantial Returns

On this issue there is little disagreement; investments in water and wastewater systems pay substantial dividends to public health, the environment, and the economy. It is well documented that wastewater treatment plants prevent billions of tons of pollutants each year from reaching America's rivers, lakes, and coastlines. In so doing, they help prevent waterborne disease; make our waters safe for fishing and swimming; and preserve our natural treasures such as the Chesapeake Bay, the Great Lakes, and the Colorado River. Clean water supports a $50 billion a year water-based recreation industry, at least $300 billion a year in coastal tourism, a $45 billion annual commercial fishing and shell fishing industry, and hundreds of billions of dollars a year in basic manufacturing that relies on clean water. Clean rivers, lakes, and coastlines attract investment in local communities and increase land values on or near the water, which in turn, create jobs, add incremental tax base, and increase income and property tax revenue to local, state, and the federal government. Some 54,000 community drinking water systems provide drinking water to more than 250 million Americans. By keeping water supplies free of contaminants that cause disease, our water systems reduce sickness and related health care costs and absenteeism in the workforce. By providing adequate supplies to industry that relies on pure water for processing, cooling, or product manufacturing, America's water systems create direct economic value across nearly every sector of the economy and every region of the country. By reducing illness and absenteeism, America's water systems contribute directly to the productivity of our workforce and continuous growth in Gross Domestic Product. Moreover, adequate water supply capacity to serve a growing industrial base enables expansion of the private economy.

Local, State, and Private Sources Form Part of the Funding Solution

Through water and sewer bills, local citizens and private businesses already pay about $60 billion a year or 90 percent of the total cost to build, operate, and maintain their water and wastewater systems. Increased local fees and taxes undoubtedly will help pay for a fair share of future system requirements, but local fees alone cannot solve all funding problems. Efficiency gains also could pay some of the bill. Future increases in local water and sewer rates could well be reduced as competitive pressures drive utility managers to adopt more efficient organizational structures, work practices, and new technologies. Many publicly owned and operated utilities have demonstrated that operating costs can be reduced by 25 percent or more within a 5 year period.1 But, WIN's estimate of the funding shortfall already deducts this "funding source" from its $23 billion total, so we can not count on operating efficiencies to meet more of our future needs.

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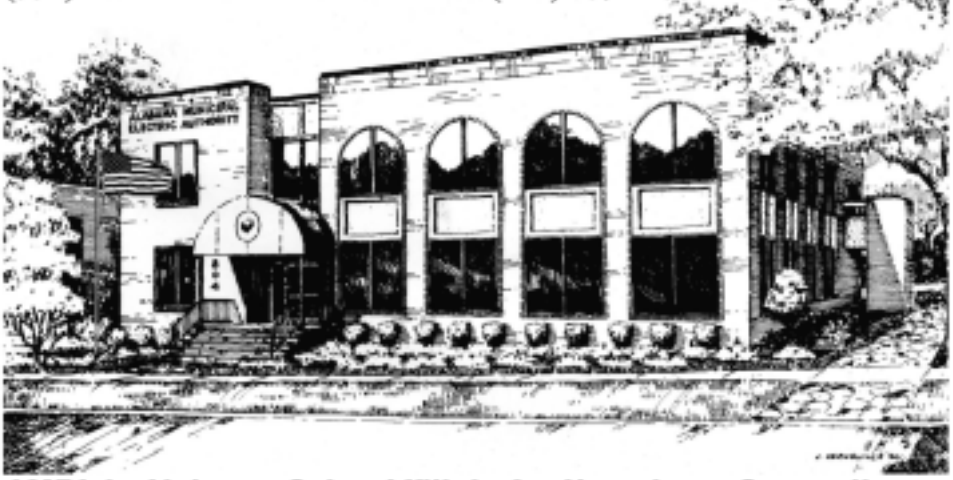

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THE LEGAL VIEWPOINT

By Ken Smith
Deputy Director/Chief Counsel

Control of Solicitors and Peddlers

In 1933, in the case of *Town of Green River v. Fuller Brush Co.,* 65 F. 2d 112 (Wyo. 1933), the U. S. Court of Appeals for the Tenth Circuit upheld the validity of the following ordinance:

> "The practice of going in and upon private residences in the City [Town] of _____ by solicitors, peddlers, hawkers, itinerant merchants or transient vendors of merchandise not having been requested or invited to do so by the owner or owners, occupant or occupants of said private residence for the purpose of soliciting orders for the sale of goods, wares, and merchandise and/or disposing of and/or peddling or hawking the same is declared to be a nuisance and punishable as such nuisance as a misdemeanor."

The Court held that the municipalities in Wyoming had the power to determine what activities constitute nuisances and to punish perpetrators.

Following this decision, many municipalities around the country, including here in Alabama, adopted Green River type ordinances to regulate solicitors within the municipal limits. Many of these ordinances tended to draw a distinction between commercial and noncommercial speech, though, based on court rulings that noncommercial solicitation generally involved the promotion of religious or political ideas and was therefore protected by the First Amendment to the U.S. Constitution. In some cases, all noncommercial solicitation was allowed, while commercial speech was prohibited.

Commercial speech carried with it the baggage of merely promoting a business objective as opposed to attempting to advance a political or religious purpose. Courts which analyzed commercial speech regulations generally refused to extend First Amendment protection. See, e.g., *Breard v. City of Alexandria*, 341 U.S. 626 (1925). Thus, municipalities enjoyed greater latitude when regulating purely commercial speech, including regulations placed on commercial solicitors.

In recent years, views on the First Amendment and commercial speech have changed, however. See, e.g., *Cincinnati v. Discovery Network Inc.*, 61 LW 4263, 123 LEd. 2d 99 (1993). For example, in *Central Hudson Gas & Electric v. Public Services Commission of New York*, 447 U.S. 557 (1980), the U.S. Supreme Court held that commercial speech is protected by the First Amendment if it concerns lawful activities and is not misleading. To regulate commercial speech, a government must assert a substantial governmental interest in the regulation and show that its regulation materially advances that interest. Some courts have gone even further and held that a municipality must use the least restrictive means of achieving the governmental objective.

But does this mean that solicitation cannot be regulated by a municipality? Transient solicitors often travel in groups under the guidance of a glib leader who is armed with a legal-looking document which says that they are not subject to local regulation. Often these documents quote Supreme Court cases in such a manner as to mislead and confuse the reader. In some cases, local officials are led to believe that they will be subject to civil liability for enforcing any ordinance designed to regulate such activity.

Attempts by solicitors to challenge the right of municipalities to regulate solicitation are misguided, however. All types of solicitation, whether commercial, religious or political, are subject to reasonable regulation by municipalities. *Larsen v. Valente,* 456 U.S. 228 (1982). It is fairly clear, though, that courts now consider any solicitation ordinance as a restriction on First Amendment rights. This means that any regulation must meet certain criteria in order to be valid.

This article examines a number of court decisions regarding solicitation and provides guidance on how to

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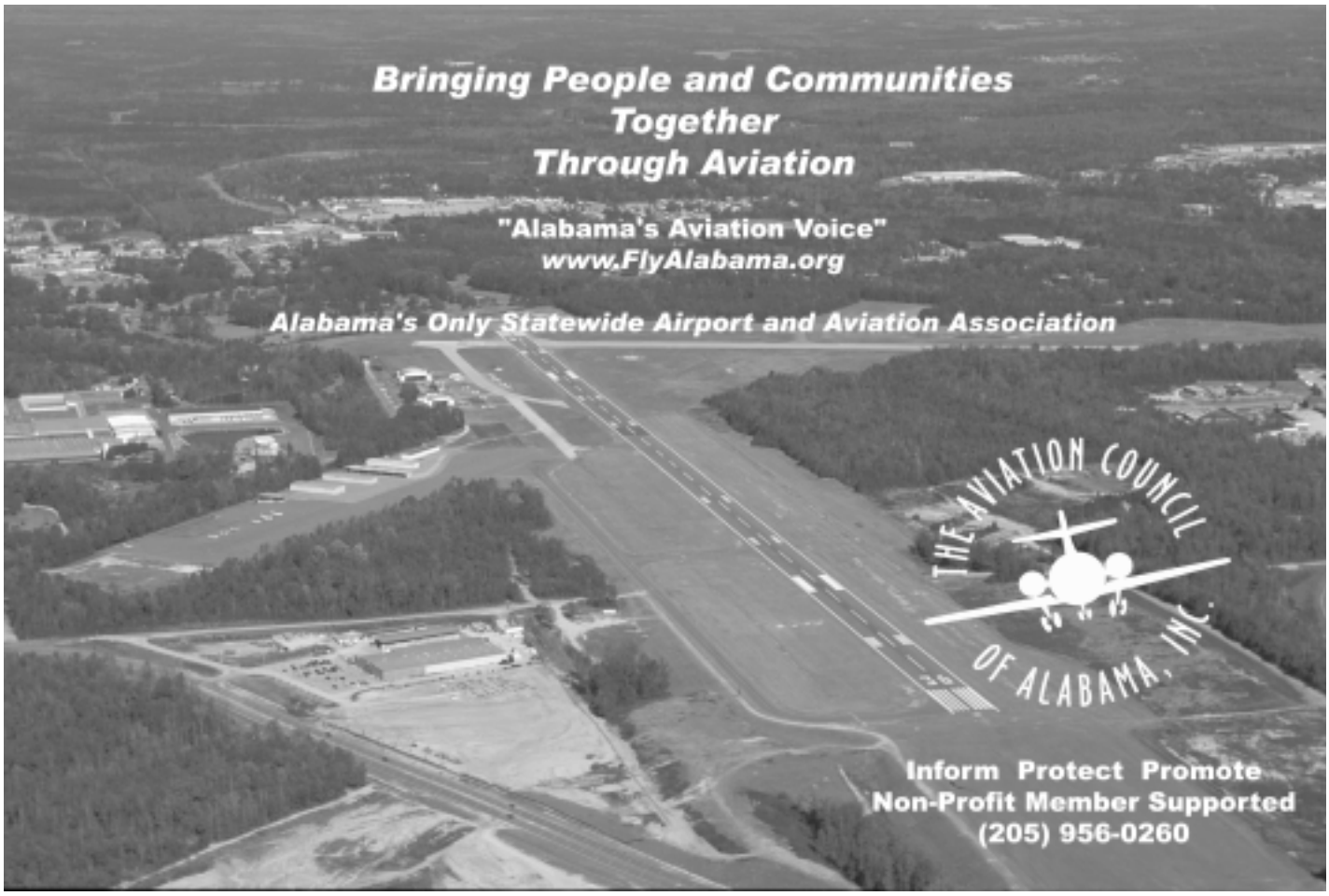

properly draft an ordinance regulating this activity. Recent developments in this area may require officials to re-examine their ordinances and consider amendments in order to bring them into compliance with constitutional requirements.

Legitimate Goals

Although courts have recognized substantial First Amendment protection for door-to-door solicitors, *Martin v. Struthers,* 319 U.S. 1412 (1943), the U.S. Supreme Court has upheld the right of a local jurisdiction to regulate solicitation so long as the regulation is in furtherance of a legitimate municipal objective. *See, e.g., Heffron v. International Society for Krishna Consciousness, Inc.*, 452 U.S. 640 (1981).

Municipal officials should be able to clearly articulate the objective behind the ordinance if it is questioned. Peddling, soliciting and door-to-door canvassing raise legitimate public protection concerns for municipal citizens and officials. In the interest of public protection, municipalities have the power to regulate persons engaged in these activities. To be valid, though, regulations must be substantially related to furthering any legitimate governmental objectives.

The two most frequently cited goals of solicitation ordinances are protecting the privacy of citizens, including the quiet enjoyment of their homes, *Carey v. Brown,* 447 U.S. 455, 471 (1980), and the prevention of crime, *Wisconsin Action Coalition v. City of Kenosha,* 767 F. 2d. 1248 (7th Cir. 1985). In the right circumstances, courts have consistently upheld solicitation ordinances on these grounds. While other legitimate municipal objectives, such as protecting citizens from fraud and other deceptive practices, may well exist, the two mentioned here are perhaps most frequently relied upon by municipal officials seeking to justify a properly drafted solicitation ordinance.

Courts have upheld ordinances requiring solicitors to register with the city, to obtain identification cards, and allowing citizens to forbid solicitation at their residences by posting a sign, at least where the ordinances leave ample alternative channels of communication for solicitors by allowing them to have contact with those residents who want to hear their message. When a city goes beyond this, though, by outlawing noncommercial solicitation altogether or by being overly restrictive in terms of the hours during which solicitation is allowed (e.g., 9 a.m. to 5 p.m.) the courts have invalidated the ordinances. Part of the rationale for overturning these ordinances is that the city has unnecessarily substituted its judgment for that of its citizens. See, *Citizens for a Better Environment v. Village of Olympia Fields,* 511 F. Supp. 104 (N.D. Ill. 1980).

Many of the challenges to municipal solicitation ordinances have come from religious groups claiming their right to freely exercise their religion has been taken away. The general rule is that regulation in this area "must be done, and the restriction applied, in such a manner as not to intrude upon the rights of free speech and free assembly." *Thomas v. Collins*, 323 U.S. 516, 540-541 (1945).

For instance, in *Heffron v. International Society for Krishna Consciousness*, 452 U.S. 640 (1981), the United States Supreme Court was presented with a state statute requiring all groups desiring to solicit or distribute materials at a state fair to do so only from a fixed location. Space at the fairgrounds was rented on a first-come, first-served nondiscriminatory basis. The Krishnas sought to have this ordinance struck down so they could mingle with the crowd at the fair and distribute their literature. The state argued that its interest was in safety and ensuring the orderly movement of patrons at the fair. The Court upheld this statute as a valid time, place and manner regulation because it did not discriminate against the Krishnas. In addition, the Court noted that the statute allowed members of groups to talk with patrons at the fair as long as no funds or literature changed hands.

When these ordinances have been struck down, they generally censored a group or allowed one person in the government absolute discretion to decide which groups received permits to solicit and which groups did not. *See International Society for Krishna Consciousness of Houston, Inc. v. City of Houston*, 51 LW 2253 (5th Cir. 1982). Even where funds are being solicited for a religious purpose, if the government has a compelling interest in the reasonable regulation of a protected First Amendment activity, the regulation will be upheld. However, not all regulations will be upheld. For example, a resolution of an airport commission banning all First Amendment activities within the airport terminal was held facially unconstitutional in *Board of Airport Commissioners of the City of Los Angeles v. Jews for Jesus, Inc.,* 55 LW 4855 (1987). And, in *International Krishna Consciousness, Inc. v. Lee*, 60 LW 4749 (1992), the U.S. Supreme Court held that a regulation banning repetitive solicitation of funds inside a terminal was reasonable. However, a ban on the distribution of literature inside terminals violated the Free Speech Clause.

Recently, the U.S. Supreme Court re-examined the issue of municipal regulation of solicitation in *Watchtower Bible & Tract Society of New York v. Stratton, Ohio*, 536 U.S. 150 (2002). In this case, the Court struck down a permit requirement for door-to-door solicitation and muddied the waters surrounding this already murky issue. The Court recognized that door-to-door solicitation is entitled to full First Amendment protection and that this type of solicitation

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is important for the dissemination of ideas, especially for those with little or no money. The Court found that to withstand a First Amendment challenge, a solicitation ordinance must find the appropriate balance between the affected speech and the governmental interests that the ordinance purports to serve. The Court held that the ordinance in this case did not further those interests. Here, the government sought to prevent crime and fraud. The Court found that this ordinance did not accomplish these goals, at least so far as noncommercial communication was concerned. The Court also found that the ordinance overly burdened noncommercial communication.

The impact of this case on local governments remains to be seen. While implying that local governments can place more extensive regulation on commercial communication than on communication that is made for political or religious purposes, the Court fell far short of endorsing this concept. How far municipalities can go in regulating any door-to-door solicitation is still unclear. At what point does door-to-door activity rise to the level that would allow the municipality to require a permit? The League will update you as additional litigation occurs.

Time, Place and Manner Restrictions

Under the First Amendment, reasonable time, place and manner restrictions will be upheld as long as the restriction is narrowly tailored to serve a significant government interest and provide alternative channels of communication to exist. *Perry Education Association v. Perry Local Educator's Association*, 460 U.S. 37 (1983).

In order to be valid, a solicitation ordinance must limit itself to placing reasonable time, place and manner restrictions on solicitors. These restrictions must be:

1) content-neutral;
2) serve a legitimate governmental objective;
3) leave open ample alternative channels of communication; and
4) be narrowly tailored to serve the governmental objective.

See, *City of Watseka v. Illinois Public Action Council,* 796 F. 2d 1547, 1552 (7th Cir. 1986), aff'd., 479 U.S. 1048 (1987).

Restrictions on Time

Municipalities often want to restrict the hours when solicitors may be active. Courts, though, disagree on what time restrictions are valid under the First Amendment. This makes drafting a valid ordinance difficult. The federal circuits are divided on even what standard of review to apply to these regulations. On one hand, the Third Circuit held that a town ordinance barring door-to-door canvassing after daylight hours was a reasonable time, place and manner restriction of speech that furthered the town's governmental interests in preventing crime and protecting the privacy of its residents, based on an "ample alternative channels of communication" standard. See, *Pennsylvania Alliance for Jobs & Energy v. Council of Munhall,* 743 F. 2d 182 (3rd Cir. 1984). In contrast, the Eighth Circuit has adopted a "less restrictive means" standard. See, *Association of Community Organization for Reform Now v. City of Frontenac,* 714 F. 2d 813 (8th Cir. 1983). There is also the "least restrictive means" standard, which has been used by the Second Circuit. See, *New York City Unemployed & Welfare Council v. Brezenoff,* 677 F. 2d 232 (2d Cir. 1982).

In *New Jersey Citizen Action v. Edison Township*, 797 F. 2d 1250 (3rd Cir. 1986), the Third Circuit held that the defendant town's failure to show that ordinances barring door-to-door solicitation during evening hours were precisely tailored to serve the town's governmental interests in preventing crime, which precluded a finding that the solicitation ordinances in question were reasonable time, place and manner restrictions.

In *Wisconsin Action Coalition v. City of Kenosha,* cited above, the Seventh Circuit invalidated a city ordinance prohibiting charitable, religious and political solicitation between 8 p.m. and 8 a.m. While the court acknowledged the conflict among the circuits and expressed some preference for the "less restrictive means" standard, it decided that the impugned ordinance failed all of the review standards mentioned and it was not necessary to choose among them.

In *City of Watseka v. Illinois Public Action Council,* cited above, the U.S. Supreme Court affirmed without opinion a Seventh Circuit ruling which held that a city ordinance limiting door-to-door soliciting to the hours between 9 a.m. and 5 p.m., Monday through Saturday, violated the First Amendment. The Seventh Circuit held that the ordinance was not narrowly tailored to achieve a legitimate municipal interest in preventing fraud and protecting the privacy of residents. The court held that the municipality could prevent fraud by licensing solicitors and protect privacy by having homeowners post signs outside their homes stating that they did not wish to be disturbed. Also, the court ruled that the ban on solicitation during the hours from 5 p.m. and 9 p.m., which was the time period requested by the solicitors, was not sufficiently connected to the city's interest in preventing crime.

The court found that by being more restrictive than the legitimate privacy and quiet enjoyment concerns its citizens demanded, the municipality had suppressed the protected speech of the solicitors. Further, the court concluded that the city had subordinated the First Amendment rights of those residents who would be willing recipients of the

solicitors' message during evening hours to the nuisance concerns of residents who did not wish to be disturbed during the same hours. In voiding the ordinance, the court noted that "[e]ven Girl Scouts will have a difficult time selling their cookies by 5 p.m." The court also reasoned that the city failed to offer evidence that its other legitimate objective, crime prevention could not have been satisfactorily served by enforcing laws against trespass, fraud, burglary, etc., or by merely enforcing the registration requirements for solicitors that the city had already adopted.

Ordinances restricting the time solicitors can be active must be supported by compelling evidence that the time restrictions are needed to prevent criminal activity by persons claiming to be solicitors. Officials must be careful to make sure that the time restrictions they place on solicitors are valid under the circumstances. Courts have held that ordinances that fail to permit some evening activity by solicitors are not sufficiently tailored to serve the municipal interests. *Association of Community Organizations for Reform Now v. City of Frontenac, supra.*

Restrictions on Place

In addition to time restrictions, cities may also use their police power to decide where solicitors and peddlers may carry out their activities. Such regulations receive a higher degree of judicial scrutiny if they seek to restrict solicitation or peddling in a public forum than if they attempt to do so in a private forum. For example, a post office sidewalk, although set back from the street and parallel to a municipal sidewalk, is not a traditional public forum. Therefore, a United States Postal Service regulation prohibiting all solicitation on postal premises did not violate the First Amendment when used to bar nondisruptive political solicitation on a post office sidewalk. *United States v. Kokinda,* 497 U.S. 720 (1990).

Thus, a question arises as to which areas are generally considered public forums and which are not. Some courts that have ruled in cases involving canvassers and solicitors have found nonpublic forums to include:

• the doorways to private homes, *Pennsylvania Alliance for Jobs & Energy v. Council of Munhall,* 743 F.2d 182 (3rd cir.1984),

• residential areas of university campuses, *Chapman v. Thomas,* 743 F.2d 1056 (4th Cir. 1984), *cert. denied*. 471 U.S. 1004 (1985), and

• even state-owned sports complexes, *International Soc. For Krishna Consciousness, Inc v. New Jersey Sports & Exposition Authority,* 691 F. 2d 155 (3rd Cir. 1982).

Public forums, on the other hand, have been found in such places as:

• airports, *Fernandes v. Limmer,* 663 F. 2d. 619 (5th Cir. 1981), *rehearing denied,* 669 F. 2d. 729 (5thCir. 1982), *and cert. denied,* 458 U.S. 1124 (1982), and

• the sidewalks or parking lots of hospitals, *Dallas Association of Community Organizations for Reform Now v. Dallas County Hospital Dist.,* 670 F. 2d 629 (5th cir. 1982), *rehearing denied,* 680 f. 2d 1391 (5th Cir. 1982). *and cert. denied,* 459 U.S. 1052(1983).

Ordinances that regulate solicitation on streets, public thoroughfares and certain areas of town will be upheld if they are reasonable. See e.g., *Good Humor Corp. v. Mundelein*, 211 N. E.2d 269 (Ill.1965). Government at various levels can also regulate solicitation on sidewalks, in front of business, in railroad stations, in airports and in other public places so long as such regulations do not unreasonably infringe on First Amendment rights. See *Heffron v. International Society for Krishna Consciousness*, 452 U.S. 640 (1981); *International Society for Krishna Consciousness v. Griffin*, 437 F. Supp.666 (W.D. Pa.1977); *Slater v. El Paso*, 244 S.W. 2d 927 (Tex. Civ App. 1951); *Wade v. San Franciso*, 186 P. 2d 181 (Cal. App.1947). A municipal ordinance banning the sidewalk sale of all merchandise is a valid time, place and manner restriction that is not invalid under the First Amendment. *One World One Family Now v. Honolulu*, 64 LW 2531 (9th Cir. 1996). The Eleventh Circuit Court of Appeals has upheld a municipal ban against tables placed on sidewalks. *International Caucus of Labor Committees v. Montgomery*, Ala., 65 LW 2084 (11th Cir. 1996).

In *Heffron v. International Society for Krishna Consciousness*, the Supreme Court held that a State Fair rule restricting distribution and sale of written materials and solicitation of funds to booths rented on a nondiscriminatory first-come, first-served, basis constituted a permissible time, place and manner restriction on a religious group's First Amendment right to perform ritual distribution of literature and solicitation of contributions.

Solicitation may be restricted on the premises of schools and colleges, because there is no absolute right to use all parts of the school building or its immediate environs for an unlimited expressive purpose. *Grayned v. City of Rockford*, 408 U.S. 104 (1972); *Healy v. James*, 408 U.S. 169 (1972). Also, in a case upholding a ban imposed by a state university on commercial solicitation in dormitory rooms, the Supreme Court found that governmental restrictions upon commercial speech need not be the absolute least restrictive means available to achieve the desired end. *Board of Trustees of State University of New York v. Fox*, 492 U.S. 469 (1989). Rather, the restrictions require only a reasonable "fit" between the government's ends and the means chosen to accomplish those ends.

And, in *ISKCON Miami, Inc. v. Metropolitan Dade County*, 67 LW 1074 (11th Cir. 1998), the Eleventh Circuit Court of Appeals held that Miami regulations banning the

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sale of literature and solicitation of money inside and outside of its terminal facilities did not violate the First Amendment. The Eleventh Circuit Court of Appeals has also upheld a municipal ordinance banning tables from public sidewalks as a narrowly-tailored, content neutral regulation. *International Caucus of Labor Committees v. Montgomery, Ala.*, 65 LW 2730 (11th Cir. 1997).

Restrictions on the Manner of Soliciting and Licensing

Municipalities may also place some restrictions on the manner in which soliciting activities are conducted. This is frequently done through licensing requirements. A city's authority to require persons to register with the local police and obtain a permit or license before engaging in business activities within local jurisdiction can be applied to solicitors and peddlers. However, as with other licensing regulations, any ordinance adopted pursuant to that authority must be reasonable. *Collingswood v. Ringgold*, 331 A.2d 262 (N.J. 1975), *cert. denied*, 426 U.S. 901 (1976). Additionally, in the *Watchtower Bible* case noted above, the U.S. Supreme Court indicated that in some instances, these type restrictions may impermissibly infringe on protected First Amendment activities, especially where noncommercial solicitation is involved.

A solicitation ordinance that has been drafted so as to allow a city to use its licensing power to prohibit certain solicitors based upon the content of their message would violate the First Amendment. *Carey v. Brown*, 447 U.S. 455 (1980). However, a city may require persons representing organizations seeking charitable contributions to register with the city and provide certain membership and financial information if the city issues the licenses in a nondiscretionary fashion. *International Society for Krishna Consciousness of Houston, Inc. v. City of Houston*, 689 F. 2d 541 (5th Cir. 1982).

Ordinances cannot vest overly broad discretion in licensing officials to issue or deny a solicitation permit. *Schneider v. State*, 308 U.S. 147 (1939). An administrative official may not be empowered with unbridled discretion to determine, for example, the validity of a solicitor's message and use that determination as a basis for exercising prior restraint on the solicitation by arbitrarily denying a permit. See, generally *Largent v. Texas*, 318 U.S. 418; *Cantell v. Connecticut*, 310 U.S. 296 (1940). But, an ordinance requiring the filing of a registration statement containing objective information that identifies groups or individuals and makes the issuance of a permit mandatory where the information is furnished is not facially invalid as a restraint on First Amendment freedoms. *Secretary of State of Maryland v. Munson*, 467 U.S. 947 (1984).

The issue of unguided direction is not the only relevant consideration for the drafter in putting together the licensing provisions of a solicitation ordinance. Other significant items to consider are:

1) **License Fees -** Local governments have been given broad discretion in imposing license fees on solicitors and peddlers. These fees, however, cannot be excessive. Fees charged cannot be prohibitive or confiscatory. Also, the fees cannot place an undue burden on interstate commerce. See *Moyant v. Borough of Paramus*, 154 A. 2d 9 (N.J. 1959); *Shapiro v. City of Newark*, 130 A. 2d 907 (N.J. Super.1957). A New York court has ruled that a municipal tax on transient retailers who operate at temporary business sites in the municipality improperly discriminates against interstate business in favor of local businesses. *Homier Distributing Co. v. Albany, NY*, 65 LW 2773 (NY CtApp. 1997).

2) **Use of Funds** - Courts generally disfavor ordinances that specify the uses of solicited funds as a condition for granting a permit. In *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620 (1980), the Supreme Court struck down an ordinance requiring that at least 75 percent of the receipts from charitable solicitations be used only for charitable purposes. The Court held that less restrictive alternatives could be used to achieve the government's legitimate interest in preventing fraud and other deceptive practices.

3) **Bond requirements** - Some cities require commercial solicitors and peddlers to provide a bond to the city. Like any other provision in a solicitation ordinance, bonding requirements must be reasonable and comply with state law. See *Citizens For a Better Environment v. City Chicago Heights*, 480 F. Supp. 188 (N.D. ill. 1979); *Holy Spirit Assn. For the Unification of World Christianity v. Hodge*, 582 F. Supp. 592 (N.D. Tex. 1984). In a New Jersey case, for example, an ordinance requiring a surety bond in the amount of $1,000 was found to bear no reasonable relation to the amount of business done. *Moyant v. Borough of Paramus*. The court decided that the requirement was unduly oppressive and held that it was an unreasonable exercise of police power.

4) **Exemptions -** Finally, many ordinances contain provisions exempting certain types of solicitors from licensing requirements altogether. In some earlier rulings these exemptions survived constitutional scrutiny. For instance, in *Cancilla v. Gehlhar*, 27 P.2d 179 (Ore. 1933), the Oregon Supreme Court upheld an exemption that applied to farmers who sold products from their own farms. However, in later decisions various sorts of exemption clauses were found unconstitutional. The Washington Supreme Court, in *Larson v. City of Shelton*, 224 P.2d 1067 (Wash. 1950), struck down a licensing exemption for honorably discharged war veterans as a violation of the Equal Protection Clause of the Fourteenth Amendment. That court also viewed the

exemption as a grant of special privileges and immunities. Every drafter of a solicitation ordinance should consider the possibility that selecting a particular type of solicitor for exemption, while perhaps allowable in an extremely limited number of instances, may subject the municipality to Equal Protection, First Amendment and other types of constitutional challenges. Uninvited door-to-door solicitation by one person invades the privacy and repose of the home just as much as by another. However, the *Watchtower Bible* case does seem to permit more restriction on commercial speech, at least if the entity can demonstrate how the restrictions further a legitimate governmental interest.

Regulating Commercial Solicitation

Although the Supreme Court now acknowledges that commercial speech enjoys First Amendment protection, it is protected to a lesser extent than noncommercial speech. This means that commercial speech is subject to greater regulation than is permissible in the noncommercial realm. *Ohralik v. Ohio State Bar Assn*., 436 U.S. 447, 448 (1978).

In *Central Hudson Gas & Electric Corp v. Public Service Comm.,* 447 U.S. 557 (1980), the Supreme Court set out a four-part test for sustaining a government restriction on commercial speech. Under the *Central Hudson* analysis, commercial speech is entitled to First Amendment protection only if it concerns lawful activity and is not misleading. Under this standard, a restriction will be upheld if it meets the following requirements: the governmental interest cited as the basis for the restriction is substantial; the regulation directly advances the governmental interest asserted; and the regulation is not more extensive than is necessary to serve that interest.

Making door-to-door sales through in-person solicitation, assuming the absence of unlawful activity or misleading information, has been found to include a sufficient element of commercial speech to qualify for First Amendment protection under the first part of the *Central Hudson* standard. See *Project 80's Inc. v. City of Pocatello*, 876 F. 2d 711 (9th Cir. 1988). Also, where local governments have asserted an interest in protecting the privacy of citizens, or crime prevention, as the reasons for enacting restrictions, the federal courts have had little difficulty in accepting these as substantial state interests, at least where evidence of a problem exists. See *Frisby v. Schultz*, 487 U.S. 474 (1988); *Carey v. Brown*, 447 U.S. 455 (1980); *Watchtower Bible*. As a result, most municipal ordinances that regulate commercial solicitors could satisfy this second part, regardless of the specific wording of the ordinance.

The difficulties that commercial solicitation ordinances have encountered, particularly when they are too broadly worded, have occurred when the courts have applied the third part of the *Central Hudson* test. Ordinances that attempt to ban all uninvited peddling or solicitation in the name of privacy protection and crime prevention become particularly vulnerable when the courts begin to assess the extent to which these permissible governmental interests are directly advanced by such restrictions. A good example is the *Project 80's* case, where the Ninth Circuit noted that "privacy is an inherently individual matter" and it is therefore difficult to violate a person's privacy unless the person wishes to be left alone. The court went on to criticize the ordinances of Pocatello and Idaho Falls, Idaho, for seeking to make the choice for the resident regarding whether to receive uninvited solicitors by imposing a complete ban on uninvited peddling. The court ruled the ordinances did not protect privacy when applied to residences whose occupants welcome uninvited commercial solicitors. The court did, however, acknowledge at least a marginal relationship between the cities' interest in reducing crime and the act of prohibiting strangers from summoning residents to their doors.

Some solicitation ordinances that have cleared this third hurdle by convincing the court that privacy and crime prevention were directly served by the ordinance's restrictions, have nonetheless been declared invalid because the restrictions went further than necessary to accomplish those ends. The socalled "least restrictive alternative" requirement, the last part of the *Central Hudson* test, has also been used to strike down ordinances that prohibit all uninvited solicitation. In *Project 80's*, the court noted that residents who want privacy can post a notice to that effect and that crime can be prevented by requiring solicitors to register with the city. The court concluded that less restrictive means were clearly available to the cities and that both cities' ordinances had swept too broadly in attempting to protect privacy for either one to satisfy the fourth requirement under *Central Hudson*.

The U.S. Supreme Court made a similar point in *Watchtower Bible*, noting the governmental interest in privacy could just as easily have been served by less restrictive means such as requiring citizens not wishing to be disturbed to post "no soliciting" signs on their front doors.

Green River Ordinances

This analysis brings us back to the Green River ordinances. Green River ordinances typically declare uninvited door-to-door canvassing to be a nuisance punishable by fine or imprisonment. The Supreme Court upheld this type of ordinance in *Beard v. Alexandria*, 341 U.S. 622 (1951), finding that a municipality's police power permits reasonable regulation of door-to-door solicitation for purposes of public safety.

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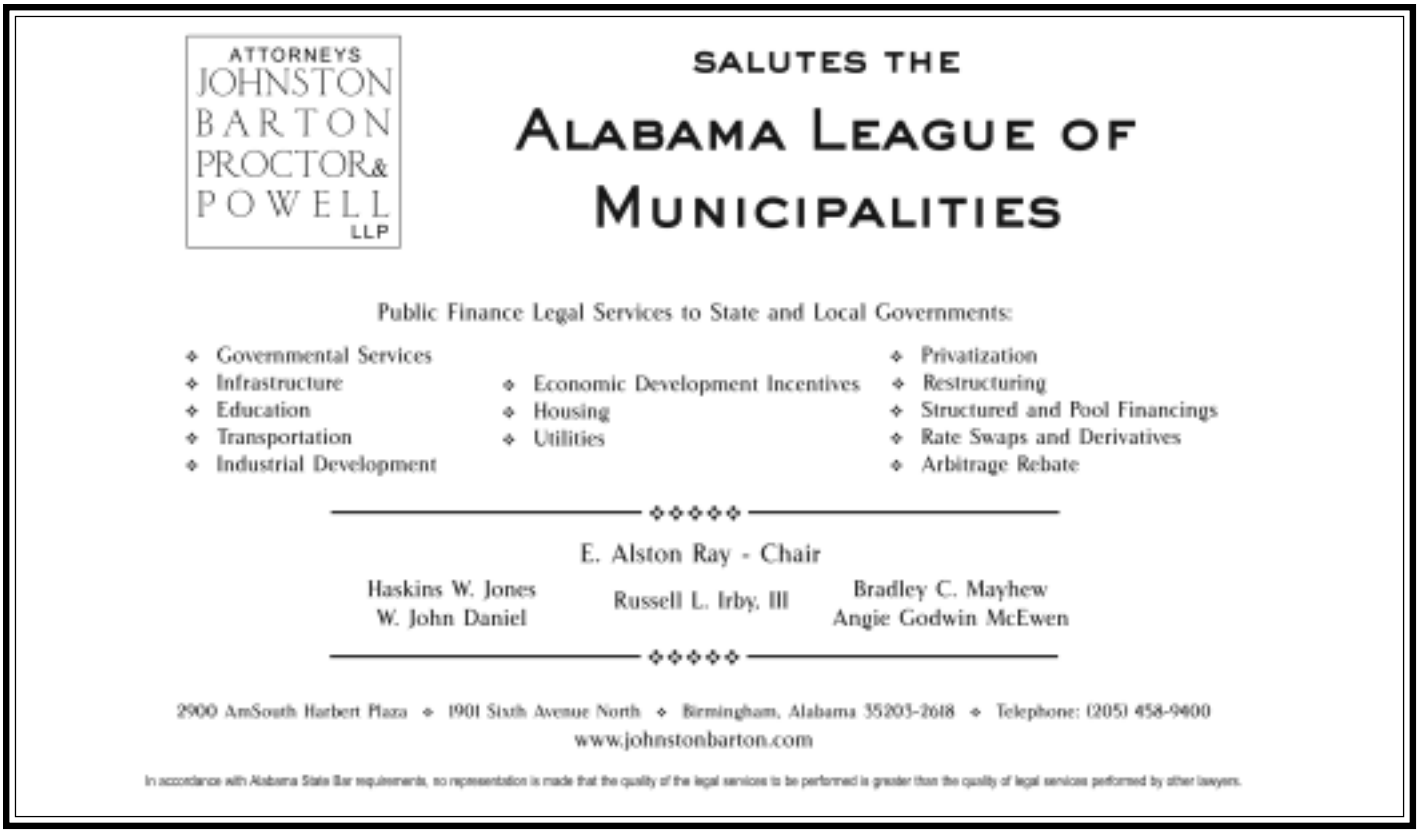
Despite the *Beard* ruling, some state courts have invalidated Green River ordinances on state constitutional grounds. For instance, in *City of Hillsboro v. Purcell*, 761 P. 2d 510 (1988), the Oregon Supreme Court struck down on state constitutional grounds an ordinance banning uninvited residential door-to-door solicitation by merchandise peddlers. Also, the Ninth Circuit struck down the two Idaho ordinances mentioned above which banned uninvited solicitation at residences by merchandise peddlers, on the grounds that the ordinances were neither the least restrictive alternative available to further governmental interests in protecting residential privacy and preventing crime nor were they valid time, place and manner restrictions. It is worth noting, however, that this judgment was vacated and remanded without opinion by the Supreme Court. *City of Idaho Falls v. Project 80's Inc*., 493 U.S. 1013 (1990). Additionally, some courts have held that the least restrictive alternative standard applies only where there is a contentbased attempt to regulate solicitation. *Pennsylvania Alliance for Jobs & Energy v. Council of Munhall, supra.* The *Munhall* case required that there be ample means of communication available to solicitors.

Green River ordinances have come under increasing attack. Therefore, a solicitation ordinance drafter should exercise a degree of caution when including a Green River provision in a solicitation ordinance. It is important to remember that commercial door-to-door solicitation or peddling is a lawful business rather than an inherent nuisance. Like any other business that is not considered a nuisance under state law, solicitation does not become a public nuisance merely because the municipality declares it to be so and acts to restrict it accordingly. *McQuillian Mun. Corp*., Section 24.378 (3rd Ed. Revised 1997).

Roadway Solicitation

Solicitation along a roadway or highway is prohibited by state law unless the municipality or county with jurisdiction over the roadway or highway grants a permit allowing the solicitation in question. Attorney General's Opinion 95-00308. Section 32-5A-216(b), Code of Alabama, 1975, as amended, states that no person shall stand on a highway to solicit employment, business or contributions from the occupant of any vehicle, nor for the purpose of distributing any article, unless otherwise authorized by official permit of the governing body of the city or county having jurisdiction over the highway.

The Attorney General advised Hon. Al Shumaker on July 6, 1983, that this statute does not give a municipal governing body the authority to allow charitable solicitation on state highways. Many municipalities have adopted ordinances prohibiting charitable solicitation on all streets and roads within the municipality. Obstructions of public highways in order to solicit donations from motorists are prohibited by Section 32-5A-216 of the Code, unless a permit for such solicitation is granted by the local governing body. Mayor Jerry C. Pow, February 3, 1981. At least one court, the 9th Circuit in *ACORN v. City of Pheonix*, 798 F. 2d 1260 (9th Cir. 1986), has upheld a municipal ordinance prohibiting persons from standing on the street to solicit contributions from occupants of motor vehicles. ■



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Legal Notes

By Lorelei A. Lein
Staff Attorney

COURT DECISIONS

Arbitration: A contract between a city and a contractor for the upgrade of a sewage system does not contain an arbitration clause despite a provision providing that "the Engineer shall decide any and all questions which arise" because such a provision would vest the Engineer with the authority to finally arbitrate all legal claims and as such would effectively invalidate all other contractual provisions. *Board of Water Com'rs of the City of Mobile v. Harbert Construction Co.,* 870 So.2d 699 (Ala. 2003).

UNITED STATES SUPREME COURT DECISIONS

First Amendment: The First Amendment of the United States Constitution requires that a licensing scheme for adult businesses provide applicants challenging a denial of a license with a "prompt judicial determination" of the constitutionality of the denial, as opposed to mere prompt access to judicial review. *Littleton, Colo. v. Z.J. Gifts D-4, LLC.,* —U.S.—, 204 WL 1237360 (2004).

ELEVENTH CIRCUIT COURT DECISIONS

Zoning: County land use code provision of general applicability barring the use of land by a religious organization in a particular zoning classification, except when a special exception is granted, does not violate the Religious Land Use and Institutionalized Persons Act (RLUIPA) when it is used to force a rabbi to discontinue holding religious services in his residence. *Konikov v. Orange Co., Fla*, 302 F.Supp.2d 1328 (M.D. Fla. 2004).

Zoning: A municipal zoning ordinance that permits private clubs, but not churches or synagogues, to locate within a classified business district despite a private clubs' failure to serve the business district's asserted economic and commercial criteria violates the Religious Land Use and Institutionalized Persons Act (RLUIPA) by treating religious institutions "on less than equal terms" with non-religious institutions. *Midrash Sephardi, Inc. v. Surfside, Fla.*, 366 F.3d 1214 (11th Cir. 2004).

First Amendment: A municipal ordinance prohibiting political demonstrations by five or more persons without a permit and requiring permit applicants to furnish indemnification in a form satisfactory to the municipal attorney violates the First Amendment to the United States Constitution both as a content based speech restriction that is not narrowly tailored to advance a legitimate interest and as a measure that confers standardless discretion on the municipal attorney to accept or reject indemnification agreements. *Burk v. Augusta-Richmond Co., Ga.*, 365 F.3d 1247 (11th Cir. 2004).

ATTORNEY GENERAL OPINIONS

Utilities: Nothing under Alabama Law prohibits a water board organized pursuant to Section 11-50-310 et seq. of the Code of Alabama 1975 from installing a water line across a county road that already contains a water line from an adjoining municipality. 2004-132.

Appropriations: Discretionary funds are encumbered and do not lapse under Section 11-43C-59 of the Code of Alabama 1975, if a council member, before the end of the fiscal year, has entered into a specific legal or contractual obligation to spend the funds, even if the project the funds will be used for does not begin before the end of the fiscal year. 2004-133. **NOTE:** This opinion only applies to those municipalities operating pursuant to Section 43C of Title 11 of the Code of Alabama 1975.

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Federal Legislative and Regulatory Issues

Mary Ellen Wyatt Harrison
Staff Attorney

Transportation Bill Bottleneck

Whether Congress and the President will ultimately agree on a transportation bill continues to remain a mystery. Earlier this year the Senate passed a $318 billion version of the transportation bill, followed by the House's approval of a $275 billion transportation bill. President Bush has promised to veto a transportation bill that exceeds $256 billion. The make up of a conference committee has caused further delays. The House unanimously agreed on June 3 to appoint a 52-member delegation to the committee, allowing the House and Senate to begin formal negotiations to complete the bill. The appointment of House and Senate conferees is the first step in a potentially lengthy process to complete a bill. For example, during negotiations on TEA-21, nine months passed between conferee appointments until TEA-21 became law. June 30 is the next major deadline for reauthorization because that is the expiration date for the current TEA-21 extension.

Homeland Security Task Force Releases Report

The National League of Cities Task Force on State and Local Homeland Security Funding made up of governors, city and county officials, and tribal leaders issued a report with recommendations designed to break the bottleneck in getting federal homeland security funds into the hands of first responders. Tom Ridge, the Department of Homeland Security Secretary challenged the group to examine the funding process related to first responders, identify best practices and develop findings and recommendations to expedite the flow of homeland security dollars to the front lines that are responsible for preventing and responding to acts of terrorism. Among the key finding and recommendations:

• Ordinary procurement and cash management processes cannot be relied upon in extraordinary times. Federal, state and local governments must use their emergency powers to make administrative changes necessary to expedite homeland security purchases.

• For certain FY'05 grants only, Congress should provide a one-year relief to allow states and local governments to draw down grant money from the U.S. Treasury within 120 days before spending it, as opposed to the three to five days currently allowed.

• The Department of Homeland Security, in conjunction with state and local governments, should establish national standards to guide the distribution, tracking and oversight of homeland security-related grant funds.

• While development of program guidelines and long-term operational plans is important, there are urgent security needs that must be addressed now, such as certain overtime reimbursement and risk-based funding.

• There is a need to balance funding between response and prevention efforts.

The findings and recommendations of the Task Force's report were drawn, in part, from a survey of 17 cities, none of which were located in Alabama, that assessed the allocation of reimbursement funds for homeland security.

Apply Now for Grant to Spark Rural Entrepreneurship Development

There are up to $8 million in grants available from the W.K. Kellogg Foundation to foster entrepreneurship across rural America. Four grants of up to $2 million each will be awarded to four rural regional entrepreneurship development systems. The Kellogg Foundation is seeking applicants that will form a collaborative of groups (private, governmental and nonprofit) to provide a full range of entrepreneurship development services for their region – be it a city, county, group of cities, reservation or state. Each collaborative must include a lead organization, such as a university, community college, community development financial institution and/or other established private, nonprofit or public entity to manage the grant. The Corporation for Enterprise Development (CFED) will assist the Foundation in identifying states and regions in rural America that demonstrate the capability of creating effective Entrepreneurial Development Systems. The application deadline is August 13, 2004. Final awards will be announced in March 2005. More detailed application information can be found on the Kellogg Foundation's Web site at **http://www.wkkf.org/ruralentrepreneurs** or CFED's website at **www.eshipsystems.org**. For additional questions, please contact CFED at 202-408-9788, ext 261, or at **eshipsystems@cfed.org**.

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House Democrats Unveil Education Funding Bill

Democrats in the House of Representatives have crafted legislation that would provide significant additional resources to the nation's 15,000 school districts than the Bush Administration's proposed FY 2005 budget. The "Educational Opportunity For The 21st Century Act" (H.R. 4473) provides for an additional $14 billion in education funds for fiscal year 2005. The Democratic education bill fully funds No Child Left Behind (NCLB) by providing $34.4 billion for programs included in the law. This is $9.5 billion above the funding level requested in the Bush Administration education budget. If H.R. 4473 is adopted, 2.4 million low-income students will have access to the basic academic skills they need to pass the rigorous tests required by NCLB.

Title I grants to high poverty school districts will be fully funded at $20.5 billion, the largest, single increase in the program's 40-year history. Last year Title I was funded at $12.5 billion. The authors of the No Child Left Behind Act specifically provided this robust investment in Title I to enable school districts to meet the added demands of NCLB. Afterschool programs will be fully funded at $2 billion under H.R. 4473 and Teacher Quality State Grants receive an additional $245 million. An extra $490 million is provided to all 50 states to assist in the development of the reading and math assessments required under NLCB. Democrats specifically address the special education funding dilemma in their legislation.

The Individuals with Disabilities Education Act would receive a 22 percent increase in funding, putting IDEA on a path to full funding in 6 years. IDEA would be funded at $12.3 billion in FY 2005, $1.2 billion above the President's proposal. President Bush has proposed a $1 billion increase for IDEA in FY 2005. Prospects for passage of H.R. 4473 remain unclear. There are no Republican co-sponsors of the bill, which makes passage more challenging.

Office of Community Services Supports Education for Needy Families

With the goal of helping more Americans become economically self-sufficient, the Office of Community Services (OCS) plans to distribute $18 million to community programs that work to improve the financial knowledge base of low-income families. State, local and tribal governments, nonprofit organizations and private institutions of higher education are eligible for Assets for Independence (AFI) Demonstration Program funds, which can be used to educate clients about economic and consumer issues and special matched savings accounts — or Individual Development Accounts (IDAs). IDAs help individuals save their earned income for a first home, new business venture or higher education.

The goal of OCS is to award 55 applicants. Grants of up to $1 million are available for a period of five years. Typically, awards average about $350,000 each. Grantees are obligated to provide a match of at least 50 percent of the total cost of the project. Funds may be used to offer AFI project participants: financial education on issues such as owning and managing a bank account or a credit card; credit counseling and credit repair services; guidance in accessing refundable tax credits including the federal and state Earned Income Tax Credit (EITC) and the child tax credit; and specialized training on owning a home, starting a business or attending postsecondary school.

Proposals for first-time AFI projects will be favored in fiscal year 2004, as will those that involve households in which a child is living with his or her biological or adoptive parents or legal guardian; individuals who reside in areas with high poverty and unemployment rates; and commitments from the private sector to help support the project. However, funds also will be awarded to existing AFI projects Projects that focus on at least one of the following also will be given priority consideration: communities and groups that are less represented among the current AFI projects, including rural and Native American communities; providing services to youth who are saving to attend higher education through partnerships with schools, colleges or universities; providing services to the employees of area businesses that the applicant has partnered with; local agencies that manage the Temporary Assistance for Needy Families program, other employment education and training offices, and child support enforcement agencies; serving target populations of a region, state, city or other geographic area through a cost-effective, efficient consortium of organizations and service providers; and strengthening local families and promoting healthy marriages through partnerships with local family formation projects and coalitions.

In reviewing proposals, OCS will look for projects that have a small number of clear objectives, including plans to increase the percentage of project participants who own homes, obtain postsecondary educations, and create or expand micro-enterprises.Additional guidance on designing and implementing a project is available through the "AFI Project Builder: Guide to Planning an Assets for Independence Project," which can be downloaded from **http://www.acf.hhs.gov/assetbuilding/guidesec1.html**.

The deadline to apply is July 27, 2004. Applications can be obtained online at **http://www.acf.hhs.gov/grants/open/HHS-2004-ACF-OCS-EI-0027.html**, or from the Office of Community Services Operations Center, (800) 281-9519; e-mail, ocs@lcgnet.com.

Family Planning Research Grants Available

The Department of Health and Human Services (HHS) seeks applications for cooperative agreements for research on family planning. Public and nonprofit private entities are eligible for $150,000 to $250,000 each to conduct data analyses and related research in the family planning field. The deadline for the grant is Aug. 9, 2004. For more information, please contact Eugenia Eckard, (301) 594-4001; **eeckard@osophs.dhhs.gov**. Information on the grant can be found at *Fed. Reg.*, June 10, 2004, pages 32555-32558.

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Private firms in the water and wastewater business also can play a key role. Their pressure to keep markets competitive will result in reduced costs of services overall. In addition, these companies can help finance new investments. But in the end, whether financing comes from local governments or private firms, local citizens and businesses will still have to pay the bills.

The Federal Share in the 21st Century Will Be Critical

Local solutions, like increased water and wastewater rates or operating efficiencies, can address only a portion of this problem. Financing the full $23 billion a year need with utility rate increases would result in a doubling of rates, on average, across the nation. If this were to happen, at least a third of the population of the U.S. would face economic hardship using EPA's conventional criterion for affordability. In small, rural, low-income, or older shrinking urban communities, economic hardships would be significantly more acute than the average. Protecting the nation's waterways from pollution and our drinking water from contamination will grow increasingly unaffordable if local communities are asked to pay the entire bill.

In some locations, much of the shortfall in infrastructure finance is due to simple demographics. Over the next several decades, many cities will need to replace water and wastewater facilities and pipes that were installed in response to population growth and demographic shifts in the late 1800s and early 1900s. The next wave of infrastructure investment responded to postwar demographic changes in the 1920s and 1950s. Since the economic lives of materials shortened with each new investment cycle, many local utilities will face unprecedented funding hurdles as multiple generations of infrastructure wear out, more or less at the same time, over the next two decades.

The Case for Federal Investment

The case for federal investment is compelling. Needs are large and unprecedented; in many locations, local sources cannot be expected to meet this challenge alone; and because waters are shared across local and state boundaries, the benefits of federal help will accrue to the entire nation. Clean and safe water is no less a national priority than are national defense, an adequate system of interstate highways, or a safe and efficient aviation system. These latter infrastructure programs enjoy sustainable, long-term federal grant programs; under current policy, water and wastewater infrastructure do not. Equally compelling is the case for flexibility in the forms of federal investment including grants, loans, and other forms of assistance. Grants will be needed for many communities that simply cannot afford to meet public health, environmental, and/or service-level requirements. Loans and credit enhancements may be sufficient for other types of communities with greater economies of scale, wealthier populations, and/or fewer assets per capita to replace.

WIN Recommendations

The Water Infrastructure Network recommends that Congress pass and the President sign a budget for new legislation to finance clean and safe water for America that: creates a long-term, sustainable, and reliable source of federal funding for clean and safe water; authorizes capitalization of the next generation of state financing authorities to distribute funds in fiscally responsible and flexible ways, including grants, loans, loan subsidies, and credit assistance; focuses on critical "core" water and wastewater infrastructure needs and non-point source pollution; streamlines federal administration of the funding program and encourages continuous improvement in program administration at both the federal and state levels; adequately finances strong state programs to implement the Clean Water Act and the Safe Drinking Water Act; establishes a new program for clean and safe water technology and management innovation to reduce infrastructure costs, prolong the life of America's water and wastewater assets, and improve the productivity of utility enterprises; and provides expanded, targeted technical assistance to communities most in need.

WIN recognizes that no single solution addresses the full range of water and wastewater infrastructure and related challenges. All levels of government and the private sector must share responsibility for effective, efficient, and fair solutions. Each of these provisions is discussed subsequently.

Long-Term, Sustainable, and Reliable Funding for Clean and Safe Water

The importance of water and wastewater infrastructure was highlighted in the 1960s as the nation watched the quality of its waters decline precipitously and chose in the 1972 Clean Water Act to spend significant federal tax dollars to reverse this trend. Despite growing threats to public health, despite increasing federal mandates for cleaner water and safer drinking water, despite shifts in population that strand water and wastewater assets in urban core cities with few ways to pay for needed improvements, and despite the nearly universal need to replace hundreds of billions of dollars in aging and failing water distribution and wastewater collection systems, the federal contribution to water and wastewater continues to decline.

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Legal Notes

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Cemeteries: Chapter 11 of Title 34 of the Code of Alabama 1975 requires that the surveying of burial places, graveyards, and cemeteries, as set forth in Chapter 17 of Title 11 of the Code of Alabama 1975, be performed by or under the direct supervision of a licensed professional land surveyor. 2004-134.

Boards: If a member of a city board of education becomes a non-resident of the city, the member is disqualified from serving on the board. In this event, the member may resign or be removed by quo warranto action. 2004-136.

Elections: A proposed procedure to block the name of an otherwise disqualified candidate from absentee ballots mailed after the individual became disqualified, complies with Alabama law. Alabama law does not provide a procedure for casting a new or revised absentee ballot for those voters who have cast a ballot for a deceased, disqualified, or otherwise ineligible person. 2004-138.

Streets and Roads: A city may pave a roadway adjacent to a public street if the city acquires the adjacent roadway for a public purpose by, for example, a dedication, transfer of deed, or acquisition by prescription. 2004-143.

Business Regulations: A city may not require a performance bond in addition to the bond required in the Alabama Heating and Air Conditioning Act because such a requirement would violate Section 34-31-28(d) of the Code of Alabama 1975. 2004-146.

Appropriations: If a city determines that an expenditure of municipal funds serves a public purpose, the city may expend municipal funds for the benefit of a nonprofit corporation formed for the purpose of developing, promoting, and protecting the property rights of city citizens, businesses, and other property owners. 2004-147.

Conflicts of Interest: In the absence of a separate nepotism prohibition promulgated by a local governing board, the employment of relatives, in certain circumstances, would be permissible because the hiring would not violate the nepotism law pertaining to state service. 2004-149.

Sunshine Law: When a closed meeting is held to discuss the character of an individual by a city, county, or school board, etc., the names of the members present at that meeting should be disclosed. 2004-151.

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Interestingly, this is not the case in other basic infrastructure systems such as highways, airports, transit systems, harbors, or waterways, for which Congress has continued to provide substantial federal funding. The rationale is simple: these basic infrastructure systems underpin the U.S. economy broadly and their benefits accrue widely to users without geographic limitations imposed by local political boundaries. Moreover, these infrastructure systems have network benefits that are felt only after all, or substantial portions, of the network is complete and functional, affording Americans anywhere in the country access to minimum levels of services. Water and wastewater infrastructure provide comparable economic and societal benefits.

Accordingly, WIN recommends that Congress renew its commitment to America's water resources with $57 billion in new authorizations and funding to capitalize state-administered grant and loan programs through Water and Wastewater Infrastructure Financing Authorities (WWIFAs) WIN recommends that appropriations ramp up over a five-year period to address, in a manageable fashion, the $23 billion annual shortfall in funding these critical infrastructure systems.

The state match is simply 20 percent of federal capitalization grants. While it is difficult to predict exactly, actual state contributions could be significantly higher than amounts shown here since many states contribute more than 20 percent through overmatching and leveraging federal capitalization grants in the bond market.

Consistent with the proportions of unmet needs identified in the April 2000 WIN Report, Clean and Safe Water for the 21st Century, WIN recommends that half the federal capitalization grant be reserved for investments in drinking water systems and half for wastewater systems. WIN recommends that states retain the flexibility to shift the use of their capitalization grant funds from water to wastewater or vice versa, with two conditions. First, neither water nor wastewater allocations in any year could drop below 35 percent of that state's annual capitalization grant as a result of such a transfer. Second, no funds could be transferred from water to wastewater (or vice versa) if such a transfer resulted in not funding a water project on the state priority list that was otherwise "ready to go," and vice versa.

WIN recommends further that Congress continue funding in years beyond 2007 to help meet the $23 billion annual shortfall identified in Clean & Safe Water for the 21st Century. In that regard, WIN notes that in July 2000 the U.S. Congressional Budget Office estimated that the federal budget would generate a surplus of $4.6 trillion between 2001 and 2010.

In 2003, at the outset of WIN's recommended federal funding initiative, Congress should establish a formal process to evaluate alternatives for, and recommend the structure of, a longer-term and sustainable financing approach to meet America's water and wastewater infrastructure needs.

State Water and Wastewater Infrastructure Financing Authorities

WIN recommends that federal funding be administered through flexible statewide water and wastewater banking institutions. These water and wastewater infrastructure financing authorities, or WWIFAs, would have broad latitude to meet needs within their states using appropriate combinations of grants, loans, and other financial assistance instruments.

WIN contemplates that WWIFAs would be the next generation of today's state revolving funds. As such, they would have broad authorities to create affordable financial solutions to meet the investment needs of water and wastewater systems. They would handle the banking aspects of state water and wastewater infrastructure, working closely with state clean and drinking water programs that would translate program priorities to meet the mandates of the Clean Water Act and Safe Drinking Water Act into sequenced WWIFA funding needs. Sequencing would help ensure that the most critical public health needs were addressed first. WWIFAs would have broad latitude to meet all funding needs with packages of grants, loans, and other forms of assistance (see below) that met sequencing requirements and resulted in local water and sewer fees that were affordable according to state financial hardship guidelines

Just as EPA's water and wastewater program offices would interact on programmatic issues with their state counterparts, WWIFAs would interact on banking issues with EPA's new Office of Water and Wastewater Financing. This would effectively create separate, parallel funding and technical program delivery capabilities at both the federal and state levels. To learn more on this topic, vist **www.amsa-cleanwater.org/**. ■

Obituaries

Willie James Moncrease

Willie James Moncrease, former councilmember of Castleberry, died in early April 2004.

Moncrease was self-employed in the pulpwood business and later worked for Branco, where he eventually retired. He spent 24 years serving on the town council. He supported youth activities, which included managing a softball team and contributing to the Castleberry Community Development Center.

He is survived by two daughters, one son, six grandchildren and 13 great-grandchildren. ■

Clarence H. Cole

Clarence H. Cole, former mayor of Millport died April 10, 2004. He was 92.

Cole was a retired merchant and lifelong resident of Millport. He owned and operated Cole Brothers Grocery with his brother, Noble, for over 50 years. He was the chairman of the Millport Housing Authority and served as mayor of Millport for 2 -1/2 terms. He was a member of Propst Memorial Methodist Church and a Master Mason for 50 years.

He is survived by his daughter, two grandchildren and one great-grandchild. ■

Claude F. Dear, Jr.

Claude F. Dear, Jr., former mayor of Anniston, died April 19, 2004. He was 82.

Dear led Anniston through the Civil Rights Era. Many credit him for easing much of the turmoil in the area during the 1960s when he served as mayor from 1962 to 1969. Before then, the retail grocer and family man served as finance commissioner. Following his time in office, Dear operated Midway Pawn Shop and offered advice to generations of area politicians. An Army veteran, Dear fought in World War II at Normandy and the Battle of the Bulge. He received the Purple Heart.

He is survived by his wife, three daughters, five grandchildren and one great-grandchild. ■

Robert Louis Whitaker

Robert Louis Whitaker, former councilmember of Valley, died April 20, 2004.

Whitaker had four years of service with the U.S. Marine Corps and then retired from Randolph County Hospital in Roanoke. He was active in the community where he served in various capacities including, first black patrolman with the Valley Police Department; city councilmember from 1992-1999; founder for the Chambers County Veterans Association; and past worshipful master, Shawmut Lodge No. 165.

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

Carl Prichard

Carl Prichard, former mayor of Calera, died April 22, 2004. He was 73.

Prichard served as mayor from 1980 to 1984, giving half of his monthly mayoral stipend to Calera High School and the other half to Calera Elementary School. Before becoming mayor, he served as a trustee for Calera High School. Trustees were advisors to the Shelby County Board of Education. He also served as president of the Calera Chamber of Commerce and the Civitan Club.

He is survived by his wife, two sons, and a daughter. ■

Dorothy James Mancil

Dorothy James Mancil, former mayor of Riverview, died May 20, 2004. She was 87.

Mancil served as mayor from 1980 to 1995. She was an active member of Pilgrim's Chapel Pentecostal Holiness Church. She also had a love for antique collecting, crafts and working in her yard.

She is survived by her husband, two sons, one daughter, seven grandchildren and 10 great-grandchildren. ■

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