

# THE ALABAMA MUNICIPAL JOURNAL

November 2004

Volume 62, Number 5

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from the League Officers and Staff!*



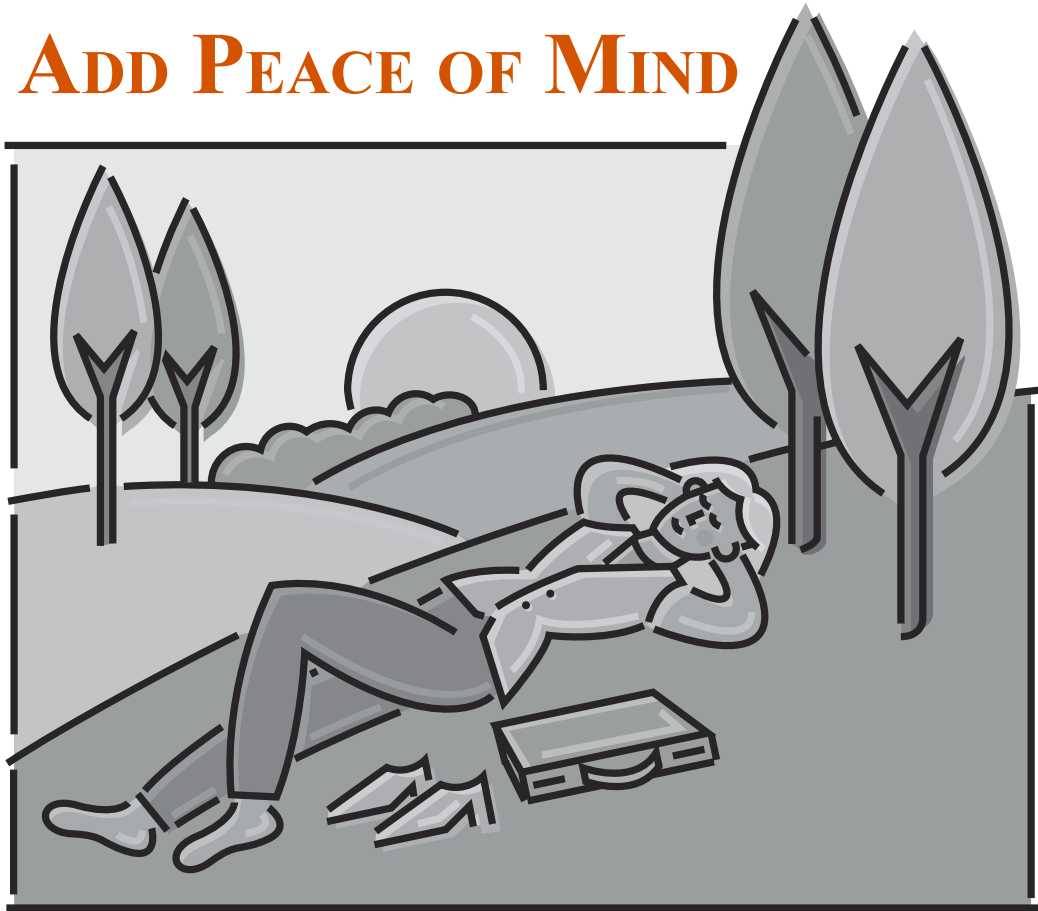
## Inside:

- **City Websites Have Many Advantages**
- **Building A Town from the Ground Up**
- **The League's Legal Department – A User's Guide**

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# THE ALABAMA MUNICIPAL JOURNAL

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CARRIE A. BANKS, Communications Director, carrieb@alalm.org  
GREGORY D. COCHRAN, Director, Intergovernmental Relations, gregc@alalm.org  
EDYE GOERTZ, Member Services Director, edyeg@alalm.org  
LORELEI A. LEIN, Staff Attorney, loril@alalm.org  
MARY ELLEN WYATT HARRISON, Staff Attorney, marye@alalm.org  
TWANNA WALTON, Legal Research, twannak@alalm.org  
SHARON CARR, Administrative Assistant, sharonc@alalm.org  
FAITH ANN GUNN, Accounting Manager, faitha@alalm.org  
THERESA LLOYD, CMO Program Administrator, theresar@alalm.org  
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# Heartfelt Thanks for the Support from our Sister Cities Across the State

On behalf of Escambia County and each of our municipalities, the cities of Atmore and Brewton wish to extend our sincere thanks to each of you that responded with manpower and equipment so very quickly in the aftermath of Hurricane Ivan. Words alone cannot express our true feelings and appreciation. It is always comforting to know we are never alone in our hour of need.

Sincerely –

Howard Shell  
Mayor, Atmore

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Mayor, Brewton



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# The President's Report

Jim Byard, Jr.  
Mayor of Prattville

## City Websites Have Many Advantages

“We’re on-line!” Those were exciting words for the City of Prattville almost three years ago when **www.prattville.com** put information at the fingertips of our citizens. With the formation of a new Information Technology Department and the introduction of our website to the public, Prattville became able to transmit information immediately.

When Hurricane Ivan roared through our town recently, we were able to give information concerning shelters and emergency numbers, information about FEMA, debris pickup, cancellation of events and any number of other items designed to inform and assist those affected by this terrible natural disaster. During the recent election, voting sites and poll hours were posted on-line. Election results were added almost as soon as the votes were counted.

For towns and small cities with limited access to local newspapers, radio and television, “getting the word out” has been a problem. Metro media cannot always be depended on for news which we need and want. Through education of the public, and with a city website and e-mail, information becomes easily accessible and current. Our website address appears on all communication and brochures from our city.

A city website can be tailored to fit the needs of the community. In Prattville, we have a calendar of events, list of classes available through our Department of Leisure Services, garbage and trash routes, a service request work order system, e-mail access to the mayor, city council members as well as each department. Council and other official board or commission minutes, board appointments,

job listings, ordinances, press releases and other newsworthy information also appear. The webmaster works with the mayor’s office and department heads to keep the information current and up to date.

A new feature available to the public is a bi-weekly E-Newsletter. All city employees receive this newsletter. Those in the public sector who wish to receive it must register. The service is free of charge and the number of subscribers grows daily. Our community newsletter, which is distributed quarterly via the postal service, is also posted on our website.

We are also able to link to other sites which promote Prattville, such as the Chamber of Commerce and Board of Education. Information about our schools, tourist attractions, restaurants and lodging as well as economic development is instantly accessible.

Future plans include registering for programs, filing applications and paying licenses, fines and fees on-line. The possibilities are endless for municipalities striving to be progressive and offer alternative methods to citizens.

Towns and small cities which do not have an Information Technology Department or webmaster have a multitude of choices for contract website developers and hosts. The Alabama League of Municipalities offers assistance with e-mail and internet use policies from municipalities throughout our state. Websites are now a part of our lives. I encourage you to put your city’s best foot forward on the World Wide Web. ■

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# Municipal Overview

By  
PERRY C. ROQUEMORE, JR.  
Executive Director

## NLC Intervenes in Important Eminent Domain Case

Let me again congratulate those municipal officials who took office on October 4. From our surveys, it appears that we have about 40 percent new mayors and 42 percent new councilmembers across the state.

The League held full-day orientation conferences in Montgomery, Dothan, Birmingham and Florence during the month of October. These conferences were attended by more than 900 municipal officials from across the state. I wish to thank our speakers who joined me to conduct these seminars: Mayor Jim Byard, Jr., Prattville, President of the League; Mayor Bobby Hayes, Pelham, Vice President of the League; Jim Sumner, Executive Director of the Alabama Ethics Commission; Sam Austin, Former Finance Director for the City of Montgomery; Jim Porter, Attorney at Law, Birmingham; Gail Busbey, City Clerk, Decatur; Hal Bloom, League Legislative Liaison; and League staff members Carrie Banks, Ken Smith, Lori Lein, and Mary Ellen Harrison.

### NLC Intervenes in Important Eminent Domain Case

The National League of Cities recently announced that the organization will intervene in a U.S. Supreme Court case, *Kelo et. al. v. City of New London, CT*, No. 04-108, cert. granted, Sept. 28, 2004, that could have a significant impact on cities' ability to use eminent domain to acquire private property for economic development purposes.

The court recently agreed to review a case involving New London, Connecticut's use of eminent domain for a redevelopment plan that requires the city to acquire private homes. A group of homeowners filed a suit in December 2000 opposing the plan. On appeal of a state trial court's decision, the Connecticut Supreme Court ruled 4-3 in favor of the city's plan.

At issue is the scope of the Fifth Amendment, which allows governments to take private property for a public use through eminent domain in consideration for giving the

owner "just compensation." Under the proposed redevelopment plan, the City of New London would convey the acquired property to its non-profit, private economic development corporation to implement a comprehensive mixed-use redevelopment plan.

The plan relies on private sector participation and promises not only jobs and new tax revenues for this economically distressed community, but other proposed public benefits including new parking facilities for a state park, expanded retail space, public marinas and a waterfront walkway.

An important influence on the redevelopment plan was the decision by Pfizer Inc., to establish its global research facility, which opened in 2001, beside the proposed redevelopment site. The homeowners asked the court to stop the city from taking their property, arguing that the city had no assurance that the private sector participation would occur and, without it, there was no assurance that the promised public benefits from the redevelopment would materialize.

The Connecticut Supreme Court found that there were sufficient checks in place to assure that the private sector participants would adhere to the plan and supported the city's action.

"This case deals with an essential local government tool for economic development," said NLC Executive Director Donald J. Borut. "While it is one case involving one city, a Supreme Court decision stopping New London from using eminent domain to implement this economic development plan would have major ramifications for every city in America."

Borut asked NLC's Legal Advisory Committee, chaired by S. Ellis Hankins, executive director of the North Carolina League of Municipalities, to review the case. The committee recommended that NLC participate as a "friend of the court" on behalf of the City of New London and its economic development corporation.

He also asked the State and Local Legal Center, which frequently intervenes in Supreme Court cases on behalf of state and local governments, to review the case and consider intervening.

NLC First Vice President Anthony A. Williams, mayor of Washington, D.C., in an October 4 interview with *The Bond Buyer*, cautioned that a reversal in the New London case would lead to "jacking up the cost of economic development in poor neighborhoods dramatically, because then people can just sit, and sit, and sit, and wait, [and] bring their costs up way beyond just compensation." "The way the opponents of eminent domain always want to portray it is, 'Oh, Old Mother Hubbard is getting kicked out of her cupboard by an evil government,'" he said.

*continued next page*

The recent decision by the U.S. Supreme Court to review the case threatens to unravel more than 50 years of constitutional precedent that provides broad judicial latitude to municipalities in carrying out economic development plans.

The case – and the eventual Supreme Court ruling – have far-reaching implications for cities and towns of all sizes throughout the country. It deals with a fundamental economic development tool that must be protected. The ability of local leaders to reenergize communities through economic development demands local and regional self-sufficiency, not naïve reliance on a continuous and sufficient flow of state and federal dollars.

Therefore, it is in the public interest for municipalities to pursue economic development locally and regionally because a healthy economy helps generate the revenue necessary to provide services and infrastructure needs of the public. At times, the ability to provide for the public good requires municipalities to exercise the power of eminent domain granted by state authority.

That authority must be available to be used wisely, with considerable caution and with an eye toward achieving a greater public good that will benefit the entire community and the region. The challenge from private property rights advocates that will play out when the case of *Kelo v. City of New London* comes before the U.S. Supreme Court

puts that tool at risk.

Opposition to eminent domain also has unintended consequences because marketplace uncertainty and increased risk threatens to increase municipal borrowing costs associated with economic development projects. That's why NLC is intervening in the case on behalf of all cities and towns. This case is a perfect example of the important role the National League of Cities plays not only in lobbying Congress and the administration on federal priorities for cities and towns but also in ensuring a local voice on precedent setting court cases.

More than a year ago, NLC expanded its legal advocacy work by creating a special fund and establishing a Legal Advisory Committee to decide when and how NLC will intervene in court cases. One fundamental criterion for intervening is the importance of the case to the interests of local government. This eminent domain case clearly meets that standard, and NLC wants to make sure that the local message is heard and considered.

Beyond the New London case, NLC is already advocating on behalf of municipalities before the judicial and legislative branches to protect the ability of state and local governments to conduct economic development that is necessary to promote economic growth, including job retention and creation. The Supreme Court will review the case early in 2005. ■



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# ENVIRONMENTAL OUTLOOK

By Gregory D. Cochran  
Director, Intergovernmental Relations

## Building a Town From the Ground Up

It is often said that USDA Rural Development is the only agency of government that literally can build a town from the ground up. USDA Rural Development's mission is to increase economic opportunity and improve the quality of life for rural Americans. And that's just what's happening in Alabama. According to Steve Pelham, state director of USDA Rural Development in Alabama, through the agency's programs a record number of tax dollars were returned to Alabama last fiscal year – \$266 million was invested, which provided homeownership opportunities, business development and community infrastructure in rural Alabama.

During the Bush Administration, more than \$50 billion has been invested through USDA Rural Development programs to support home ownership, business and community development in rural America. More than 170,000 rural families have realized their dream of home ownership through USDA Rural Development. More than 800,000 jobs have been created or saved. USDA Rural Development invested over \$190 million in a variety of renewable energy ventures that will inspire innovation while leveraging the strong entrepreneurial spirit of America. Through USDA Rural Development \$3.3 billion has been invested in building the infrastructure to support broadband technology. In fact, over one million families now have access to broadband, and USDA continues to work every day to meet the President's 2007 goal of universal access. The agency's Distance Learning and Telemedicine programs provided over \$115 million in grants and over \$62 million in loans for educational and healthcare opportunities in rural towns and communities. More than 1.2 million new customers benefited from an \$11.2 billion investment in electric infrastructure, and \$6.4 billion in water and wastewater systems benefited more than 2.7 million people.

Through USDA Rural Development's First Responder Initiative the Bush Administration has provided funding to purchase 600 fire trucks and 150 police cars and funding to construct or renovate nearly 100 medical facilities.

Whether it's home financing, clean, safe drinking water from a public system, a fire truck – ready to assist when needed, a community center, or financing to start a small business – these are a few of the assets USDA Rural Development can offer to residents and communities in Alabama. Through USDA Rural Development's community and infrastructure programs, loans and grants are available to non-profits and public bodies to construct, extend or improve water and waste disposal systems in rural areas and towns, as well as to assist with projects such as health care, public safety, and public services. Examples include hospitals, clinics, nursing homes, police and fire stations/vehicles/equipment, adult and child care centers, courthouse, airports, schools, community centers, etc. Homeownership financing is available to eligible individuals/families to purchase or construct a home. Working with the private sector and community-based organizations, USDA Rural Development can provide financial assistance to rural businesses creating or preserving jobs in rural areas.

2004 was a banner year for USDA Rural Development investments in Alabama – which contributed significantly to improving the quality of life for thousands of Alabamians, several of which were projects involving Alabama League of Municipalities members. Steve Pelham, state director, said that USDA Rural Development truly appreciates the partnerships with the ALM and its members, and looks forward to working together in the future to make Alabama a better place to raise a family, invest money to create jobs, and own a home. Information on all USDA Rural Development programs is available on the web at [www.rurdev.usda.gov/al](http://www.rurdev.usda.gov/al), or (334) 279-3400. ■

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## Former Mayor Thanks the League

Dear Mayor Byard and Executive Committee:

Thank you very much for the resolution referring to my 19 years of service as mayor of Demopolis and as a member of several League Committees. Truly, this was the most memorable time of my life. To say that there were no problems would not be accurate, but with the League's help and other individuals, these were overcome.

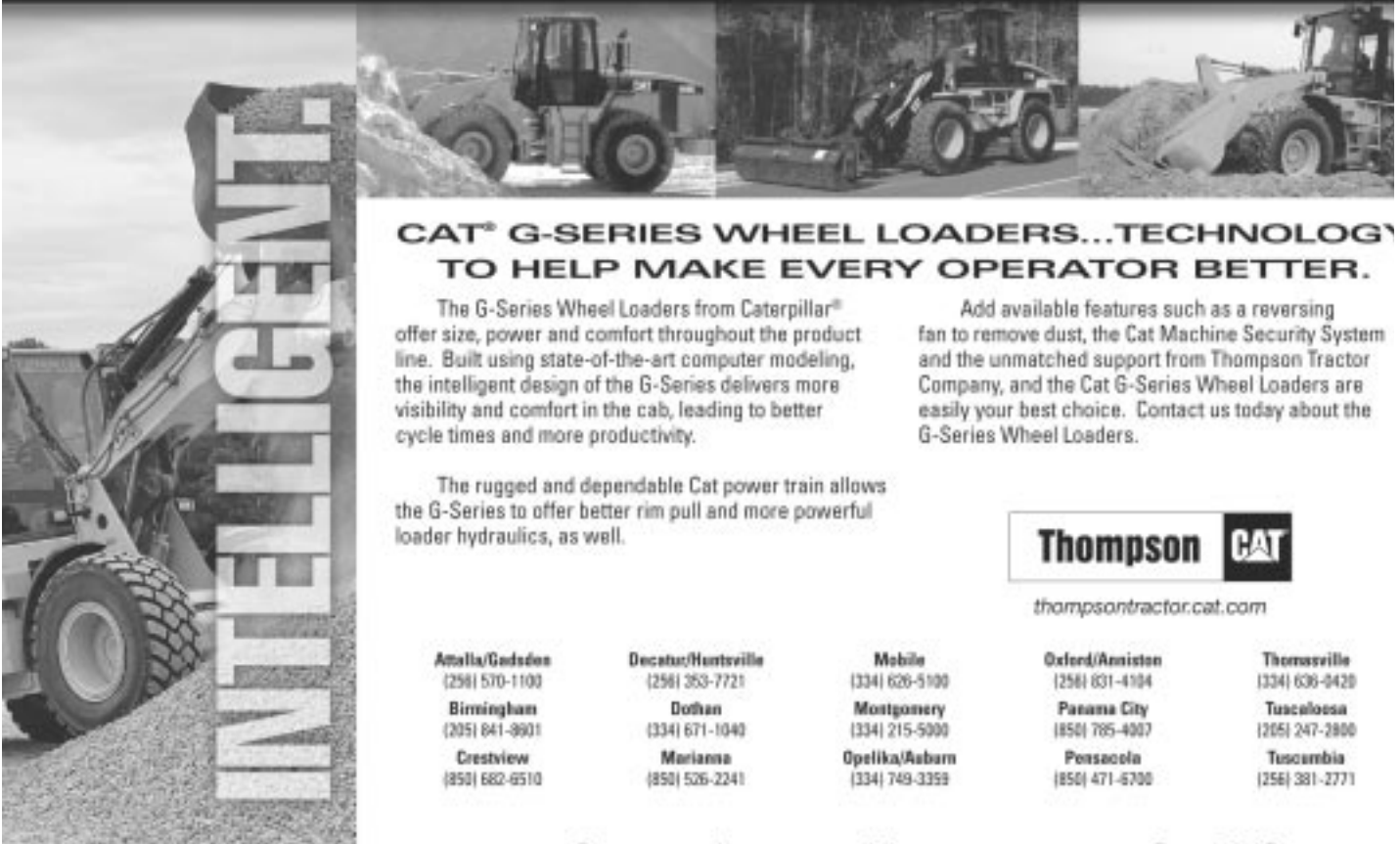
The Alabama League of Municipalities is truly the one organization that Alabama municipal officials could not do without. Perry, Ken and the staff are on top of any problem that could come up.

I wish you, the Committee and the League the best in the months and years to come. Retirement is wonderful and I am enjoying it very much. I recommend it!

Sincerely,

Austin Caldwell,  
Mayor of Demopolis, 1985 - 2004

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By Ken Smith  
Deputy Director/Chief Counsel

# THE LEGAL VIEWPOINT

## The League’s Legal Department – A User’s Guide

One of the League’s most important functions is responding to legal inquiries from its member municipalities. The League employs four full-time attorneys to provide its members with direct legal assistance when needed. While the legal department has many roles, with over 440 members – representing literally thousands of officials, employees, board members and others who may make requests – there are limits to what the department can do. This article will help readers make the most effective use of the legal department. It is intended simply as a guide, and should be read that way. Because our goal is to serve our member municipalities, League attorneys attempt to remain flexible in the services they provide.

### What Services Are Available?

The legal department’s primary function is to represent the interests of member municipalities throughout Alabama. Therefore, we attempt to have an attorney available by telephone every day during regular business hours. However, the Legal department is not a substitute for local legal representation. The volume of requests we receive makes individual representation impossible. Therefore, we have to restrict our activities to those which we feel best serve all our member cities and towns.

In addition to providing direct legal assistance, the Legal department provides other services, such as: preparation of amicus curiae (friend of the court) briefs in appellate cases; preparation of monthly summaries of court decisions and Attorney General’s Opinions for the League magazine and the League’s Law on Disc computer program; monthly legal articles in the *Alabama Municipal Journal*; drafting manuals explaining the duties and responsibilities of municipal officials and employees; providing sample and model ordinances; conducting educational and training seminars; managing the Alabama Association of Municipal Attorneys; and assisting with the League’s lobbying efforts.

### Who Can Inquire?

This question raises complex ethical conflicts of interest concerning the responsibilities of the League’s attorneys. Explaining it simply, the League represents its member municipalities and not individuals, even if they are municipal officials.

The League answers inquiries from mayors, councilmembers, board members, clerks, attorneys and other representatives of member municipalities. League attorneys do not advise officials about their private legal matters. Additionally, conflict of interest rules generally prohibit us from advising members of the public regarding municipal legal matters, although we do share articles or other general information we have on hand with private citizens. Please do not encourage citizens who are not municipal officials or employees to contact the League for legal advice as we may have to refuse assistance.

Further, the League’s attorneys cannot take sides in disputes involving one municipality against another or in conflicts between municipal officials. League attorneys exercise discretion in these situations and will generally refer you to your local attorney where a potential conflict of interest appears likely to arise. If it appears that we are being asked to resolve a dispute between two or more officials, we may ask that the question be reduced to writing with an agreed to statement of facts between the concerned parties so that we may respond to all sides jointly. We will also make every effort to encourage cooperation on questions involving disputes between municipal officials.

### How to Use the Legal Department

Whether you inquire by letter, telephone, e-mail or fax, the following guidelines will help us give you the most prompt, accurate response:

- Call or write as soon as possible after identifying your problem – immediate deadlines make responses difficult since often a question requires research.

*continued next page*



- Give us as many facts as possible. On questions involving boards, it is best to know under what section of the Alabama Code the board was created.

- If you are following up on an issue you have been discussing with one of our staff members, please advise the receptionist so that your call may be directed to that staff member.

- If you are under a deadline, let us know when it is and we will try our best to meet it.

- Municipal officials and employees are welcome to discuss matters in person at League headquarters in Montgomery. Please call in advance to make an appointment. If your questions involve a review of documents, we may ask that they be forwarded prior to the meeting so that we may review them.

### **Telephone Inquiries**

As noted above, the legal department's primary goal is to have an attorney available by telephone every day during business hours. Of course, there are exceptions, such as during the League's convention or when we are trying to meet a publication deadline, or on hectic meeting days of the Alabama Legislature. We try to return calls either the same or the following day and we try to give an answer over the telephone. However, not every question has a clear legal answer. In these cases, we will try to give you our best legal opinion, based on years of municipal legal experience and knowledge of state and federal laws.

Further, some questions require research before a knowledgeable answer can be given. Therefore, it is best not to put off calling until just before a deadline. Of course, not every question can be anticipated, and when a quick legal response is needed, we will make every effort to provide a speedy answer.

### **Written Inquiries**

Because of the volume of calls, it is difficult to confirm telephone advice in writing. However, we are happy to answer written inquiries in writing and try to do so in a timely fashion. All requests for written responses should be submitted in writing, laying out the question and any relevant facts. Written inquiries are generally answered in the order received and the response time depends upon time available to draft a response. Again, we will try to accommodate a deadline, but this is not always possible. As always, it is generally best to work with your local attorney if a quick response is needed.

We generally treat faxed messages the same as written requests. A carefully written legal opinion takes just as long to prepare in either case. If you simply want us to call you back with an answer, please indicate that in your request.

### **E-mail**

Because of the nature of e-mail requests, they may be treated as either a written request or a telephone inquiry. League attorneys attempt to respond to electronic questions as quickly as possible, but please bear in mind that when our attorneys are out of the office, they may not have access to a computer, which will delay any reply. If you have an e-mail question that must be answered quickly, but have not received a response, it is generally advisable to follow up with a telephone call to be sure that the message was received, and that the attorney you are attempting to reach is in the office.

### **Amicus Briefs**

While the League does not file lawsuits on behalf of its members, we do sometimes file amicus briefs in cases on appeal to either the Courts of Appeal or to the Alabama Supreme Court if the issues involved in the case have statewide significance. If you are involved in a case on appeal and you think the Court should have input from the League, please send a written request for an amicus brief, with supporting documentation, to the legal department.

### **Sample Ordinances**

We maintain a large supply of sample ordinances on many topics. These samples come from several sources. Our most important source for ordinances is our members. If you adopt a new ordinance, it would benefit all League members if you could forward a copy to the League's legal department for our files.

Please remember that these ordinances have not been drafted by the legal department. Before using one as a guide, it is important to adapt these ordinances to your local needs and to obtain advice from your local attorney regarding compliance with statutes and case law.

We are often called upon to review ordinances or to interpret a word or phrase in an ordinance. While we can offer a cursory reading of an ordinance, we cannot be familiar with the circumstances which require the adoption of an ordinance, nor can we investigate facts which might influence the meaning of specific words or the inclusion of specific sections. Our interpretation is not intended to be definitive and should be used merely as a second opinion for your local municipal attorney. He or she is in the best position to provide you with a detailed analysis of your ordinance and provide you with a final answer.

### **Coordination with Local Attorneys**

Each municipality should have its own attorney. The League's legal department is a resource to assist your municipal needs; it is not a replacement for your municipal attorney. Nothing we do or say is meant to interfere with the critical relationship between your municipality and your attorney. When the law is unclear or the inquiry presents substantial risk of litigation, we'll often suggest that you seek advice

*continued page 20*



# Legal Notes

By Lorelei A. Lein  
Staff Attorney

## COURT DECISIONS

**Signs:** Changes in legal, nonconforming billboards violated a restriction in a municipal zoning ordinance that a sign could not be “altered, changed, or moved in any manner that increases its size,” where it is undisputed that a billboard owner changed its billboards so as to increase its total advertising space by 144 square feet in each direction of travel. *City of Foley Board of Adjustment v. H & S Southern Graphics Systems, Inc.*, 878 So.2d 294 (Ala. 2003).

## DECISIONS FROM OTHER JURISDICTIONS

**Public Accommodations – ADA:** Disabled individuals may bring a private cause of action against a public entity to enforce a regulation adopted pursuant to the Americans with Disabilities Act requiring that accommodation be made for disabled persons when a city renovates sidewalks and street curbs. *Ability Center of Greater Toledo v. Sandusky, Ohio*, —F.3d—; 2004WL2256018 (6<sup>th</sup> Cir. 2004).

**First Amendment:** A private sidewalk encircling a privately owned sports complex, which appears like any other public sidewalk and is used as a public thoroughfare, constitutes a public forum and the private owner of the complex is a public actor subject to the requirements of the First Amendment when regulating the public’s access to the sidewalk. *United Church of Christ v. Gateway Economic Development Corp.*, 383 F.3d 449 (6<sup>th</sup> Cir. 2004).

## ATTORNEY GENERAL OPINIONS

**Employees:** A city or county jailer, detention officer, or corrections officer is a “peace officer” within the meaning of Sections 13A-6-21 and 13A-6-22 of the Code of Alabama

1975 if the officer has the power to arrest and is required by the terms of employment as a primary duty to give his or her full time to the preservation of public order and the protection of life or property or the detection of crime. Adherence to APOST standards and the power to arrest are prerequisites to being considered a “peace officer”. 2004-218.

**Elections:** Given the circumstances of Hurricane Ivan, a city may postpone and reschedule its runoff election under Section 11-46-72 of the Code of Alabama 1975, subject to preclearance by the Department of Justice. 2004-219.

**Tobacco Taxes:** Counties and municipalities may use the authority granted in Section 40-25-2(g) of the Code of Alabama 1975 to administer a tobacco tax for cigarettes and require the use of monthly reports, rather than stamps, to account for the monthly sales of cigarettes and remit the taxes collected. 2004-221.

**Courts:** The additional court costs provided in Act 2001-552 apply to all courts in Clay County, including municipal courts. 2004-222. NOTE: Act 2001-552 only applies in Clay County.

**Public Works Bid Law:** If the project on city property will be paid for entirely with private funds, it will not be subject to the requirements of competitive bidding under the Public Works Bid Law. 2004-223.

**Offices of Profit:** A person may serve as a county legislative coordinator and as a member of a city council. 2004-224.

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# Federal Legislative and Regulatory Issues

Mary Ellen Wyatt Harrison  
Staff Attorney

## Homeland Security Spending Bill Update

Congress passed a \$33.1 billion Department of Homeland Security (DHS) spending bill (H.R. 4567) for fiscal year 2005. Four billion of which is allocated for first responder activities. Although H.R. 4567 will boost spending for DHS by \$2.8 billion, or 9 percent, over fiscal year 2004, the increase will primarily fund the President's Bioshield Initiative at \$2.5 billion.

Senator Robert Byrd's (D-W.Va.) amendment to direct \$2 billion to close up funding gaps in state homeland security grant programs, interoperability, firefighter grants and other programs was defeated. Also defeated was an amendment by Sen. Barbara Mikulski (D-Md.) to redirect first responder funding to high-risk areas.

State and local governments and emergency assistance organizations, lobbied intensely for increased funding for first responders and critical programs. One standout success was the inclusion of a provision that will exempt Office of Domestic Preparedness grant funds from the Cash Management Act of 1990. This exemption will allow funds to be provided to state and local governments in advance of expenditure for up to 120 days. H.R. 4567 also provides \$2 billion for the Disaster Relief Fund, \$200 million for the Flood Map Modernization program, \$195 million for First Responder training and \$100 million for pre-disaster mitigation grants. In defiance of a veto threat, the DHS spending bill also bars the privatizing of some immigration services jobs and the contracting with companies incorporated overseas.

## Women in Government Awards

*Good Housekeeping* magazine and the Center for American Women and Politics need your help to find eight winners for the 2005 Good Housekeeping Award for Women in Government and the Good Housekeeping/Wyeth Award for Women's Health.

This year, Mayors Joann Seghini of Midvale, Utah, and Beryl Rothschild of University Heights, Ohio, were among

of seven recipients awarded \$2,500 for their outstanding commitment to improving the quality of life.

The application is open to any woman who works in government, elected or appointed, serving as a school board member or a local and state elected official. Nominees may be honored for a specific achievement or for a career that shows how women in government change lives. A selection panel of distinguished leaders will judge the nominations, with Good Housekeeping selecting the final winners of one award of \$25,000 and six awards of \$2,500 each. The Good Housekeeping/Wyeth Award for Women's Health carries an award of \$25,000 for a woman in government whose achievement advances women's health.

Women In Municipal Government plays an active role in the selection process of the winners. This year, WIMG President JoAnn Thomas, councilwoman, Florence, Ala., served on the selection committee.

The deadline for nominations is December 6, 2004. For nomination forms and information, or to read about past winners, visit [www.cawp.rutgers.edu](http://www.cawp.rutgers.edu) or call 732-932-9384, ext. 231.

## Internet Tax Moratorium Bill

Municipal state league staff and local government officials weighed in during the waning hours of the Congressional session during October to halt passage of a modified version of the Internet tax moratorium that would have further undercut local government taxing authority.

The House leadership sought to attach an amended version of S. 150, the Senate Internet tax moratorium bill, to unrelated spending bills that were set for passage by both the House and Senate prior to the election recess.

S. 150, which passed the Senate by a 93 to 3 vote last April, was a hard fought compromise bill that would reinstate the recently expired moratorium on taxes on Internet access (e.g., taxes on cable modem and high speed DSL

*continued next page*

connections to the Internet). S. 150 will extend the moratorium for four years, rather than indefinitely, continue to grandfather existing taxes on Internet access and preserve key elements of local government's taxing authority. A central element of the S. 150 compromise was preserving the authority of state and local governments to collect taxes on telephone calls even if those calls are made over the Internet.

House Judiciary Committee Chair F. James Sensenbrenner (R-Wis.) sought to amend S. 150 to limit state and local authority to impose taxes on telephone service provided over the Internet. His proposed amendment also sought to reduce the grandfather period for Wisconsin. A grassroots effort to oppose this backdoor, eleventh-hour attempt to use the appropriation process to undermine the hard fought Senate compromise was launched.

State league staff and local elected officials responded immediately, and local governments' message – to oppose any effort to further restrict local government taxing authority – was heard on the Hill. State and local government colleagues and other organizations, successfully defeated these attempts to further restrict local government taxing authority. It is expected that there will be renewed efforts to attach S. 150 to the omnibus spending package that must pass both the House and Senate in a post-election session of Congress.

### **Public Safety Funding**

The Senate has added an amendment to the National Intelligence Reform Act of 2004 that would free up wireless spectrum for first responder communications and funding for interoperability projects. The amendment was made prior to the Senate's passage of the bill on Oct. 8.

The bill (S. 2845) would require television broadcasters that use certain frequencies within the 700MHz band to vacate this space by Jan. 1, 2008, giving public safety agencies access to the spectrum.

The public safety community has been lobbying for additional spectrum for emergency communications, and the 9-11 Commission bolstered its case when it recently called on Congress to pass legislation that would expedite and increase the assignment of radio spectrum for public safety purposes to improve communications between local, state and federal organizations.

"Police, fire, emergency medical and other public safety agencies face severe shortages of radio spectrum in much of the nation, and are often forced to operate on crowded radio frequencies that are incompatible with their neighboring agencies," wrote a group of public safety officials in a Sept. 28 letter to McCain.

"Additional public safety spectrum would enhance our homeland security by promoting more interoperable radio

communications, alleviating dangerous congestion on existing radio systems and allowing for the implementation of state-of-the-art communications technologies to protect the safety of life and property," the authors of the letter added.

The amendment also would create a grant program to help state, local, tribal and regional first responders secure interoperable communications equipment and train their personnel on how to use the new equipment. The House-passed version of the bill, H.R. 10, does not include the spectrum turnover requirement. A conference committee will have to resolve differences between the two versions of the bill.

*continued page 21*

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from your attorney, because he or she will have to represent you should you have to go to court. When your attorney provides advice, he or she does so in the belief that the recommended action puts the municipality in the most defensible legal position. Your municipal attorney is also in the best position to know local factors which influence the need to proceed in a particular manner. Therefore, we generally encourage municipal officials and employees to follow their attorney's advice, especially on questions where the law is open to interpretation or factual matters require further development. Of course, we are always happy to discuss an issue with local attorneys or to verify their interpretation of a statute or case.

You should not seek our advice in the hopes that we will second-guess your attorney. We are here to assist, and not compete with, your attorney. Legal opinions are fact-specific and people who are not lawyers are often unaware of how a fact which seems unimportant to them might affect the legal response. Thus, if our opinion differs from that of local counsel, we will generally advise you to follow the advice of your local attorney.

To further help municipal attorneys represent their clients, the League created the Association of Municipal Attorneys (AAMA) in 1992. AAMA provides a number of services to municipal attorneys. It conducts two training seminars annually for municipal attorneys, publishes updates of ongoing litigation and also maintains an e-mail listserv to enable attorneys to communicate with each other on legal issues. We strongly encourage all attorneys involved in municipal representation to join AAMA and hope that all municipal officials will request that their local attorneys join and participate in this important organization. For more information, contact the League's legal department, or visit the League's web site, where links to information about AAMA are posted.

## Local Political Disputes

As attorneys, we answer your questions regarding municipal law. We often receive calls for "legal assistance" where the caller is seeking resolution to a political disagreement. Every municipality has political disagreements; most cannot be resolved by looking at a statute. In many cases, statutes are subject to multiple interpretations, especially where the responsibilities and duties of municipal officials are concerned. These calls are awkward, and we cannot give you an answer about who is right and who is wrong. These disputes are best resolved in the political arena through compromise and cooperation rather than through legal guidance.

## Coordination with Other Agencies

The League often serves as a contact point on municipal issues for other agencies, including state departments like the

attorney general's office, as well as other entities, such as regional planning commissions. League attorneys often provide advice to representatives of these offices and frequently serve as speakers at educational conferences and seminars run by these agencies. Because of our relationships with these agencies, we may refer you to one of them if we feel they can assist you with your questions.

## Relationship with the Worker's Comp Fund and AMIC

The League administers two risk-pooling type programs for municipalities – Municipal Workers Compensation Fund, Inc., and the Alabama Municipal Insurance Corporation, which provides liability coverage for municipalities. It is important to understand that the legal department does not represent these entities. We do not provide advice regarding coverage or on matters in which one of these entities has an interest. Further, following our legal advice does not guarantee coverage. Questions regarding specific coverage issues or other matters related to these entities should be directed to them, and not to the League's legal department.

## Limitations

Excluded from our advisory services are matters such as:

- drafting individualized ordinance and contracts
- comprehensive review of applications for grants or legal responses
- on-site training for individual municipalities (although League attorneys will meet with representatives of a municipality at League headquarters if an appointment is made)
- litigation
- direct representation or negotiations with third parties on a municipality's behalf

Remember,

- we cannot take sides with one municipality or one official against another
- we generally cannot respond to questions regarding the League's worker's compensation or liability programs; inquiries on these programs should be directed to the appropriate representative

## Don't Hesitate to Call

This user's guide is not meant to discourage you from contacting the League's legal department. On the contrary, we hope that understanding the scope of our services will help you make better use of them. When in doubt about whether we can help you, please don't hesitate to call. Of course, if ethics prohibit us from responding to your question we may have to refuse to answer it, or may refer you to someone who does not have a conflict. We hope you will take advantage of League services and programs. If there is anything we can do to help, please let us know. ■

**Environmental Health Programs for Kids to be Honored**

Applications for the new Children’s Environmental Health Awards program – which is designed to increase awareness, stimulate activities and recognize local, regional, national and international efforts to protect children from environmental contaminants – are currently available from the Environmental Protection Agency.

Nonprofit organizations, governmental agencies, businesses, communities and individuals that are working to protect children from environmental health risks such as air and water pollution, toxic chemicals, tobacco smoke, ultraviolet radiation, pesticides and carbon monoxide are eligible for one of two honors.

The Recognition Award will be bestowed on groups or individuals that have demonstrated a commitment to protecting children from health threats posed by the environment by initiating outreach, education or intervention activities. Winners of this award will receive a certificate

of recognition and permission to use the Children’s Environmental Health Awards logo.

The second honor – the Excellence Award – will be given to applicants who have been leaders in outreach, education and intervention programs to safeguard children from the harmful effects of the environment. Only organizations and individuals that have been involved in the cause for at least six months are eligible for this distinction.

Excellence Award recipients will be recognized at a March 2005 awards ceremony in Washington, D.C.; featured on EPA’s Web site and in an EPA press release; granted access to use of the Children’s Environmental Health Awards logo; and photographed with a senior EPA official. Applications for the awards can be downloaded from <http://yosemite.epa.gov/ochp/ochpweb.nsf/content/news2.htm>. The deadline to submit an application is Dec. 15, 2004. For more information on this opportunity, contact the Office of Children’s Health, (202) 564-2188. ■

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and the ability to transform technology into business advantage," says Laura Larimer, chief information officer, State of Indiana. "The value of PeopleSoft's internet architecture is immense. It drastically reduces the cost of our maintenance, upgrades, and end user training."

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